

desires to be retired by reason of injury or disease. It is clear, therefore, that the injury or disease upon which an application for retirement is based must be an injury or disease resulting from his performance of duty.

With respect to the application, I observe a number of certificates from which I gather that Mr. Perkins is ill and may never be able to return to duty. In my opinion, if his present physical condition resulted from the performance of his duties as a prison officer, then and in that event, his application for retirement having been received by your Prison Officers' Pension Commission, that commission should proceed in accordance with the requirement of Section 6 of your act and call to their aid a physician or surgeon and the applying member should do likewise and thereupon your commission can make a determination in accordance with the further requirements of that section.

The papers which you enclosed are returned herewith.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

Encs.
TB:B

APRIL 17, 1950.

DR. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 26

DEAR DOCTOR ERDMAN:

As we understand it, in connection with the reorganization of the State Department (Forestry Division) you state that an officer of that department originally was discharged from his initial period of service in the armed forces of the United States in 1946; that he subsequently returned to the department for a short period of duty and thereafter accepted an offer of further service with the armed forces, and continues in the military service at the present time.

You ask if the department is required to hold open for an employee on leave of absence with the armed forces, who has re-enlisted after returning from his initial service, the identical position which he held before entering military service.

Chapter 327 of the Laws of 1942 specifies that a person entering the service of the armed forces of the United States in time of war must be given leave of absence for the period of military service and for a period of three months after receiving his discharge from such service.

In this case, we are considering an individual who voluntarily re-enlisted and thus made it impossible for him to return to his original employment from which he received a leave of absence. It is hard to believe that the legislature ever intended that Chapter 327 should apply to a situation such as we are considering. The voluntary

re-enlistment was undoubtedly to the benefit of the employee and such voluntary enlistment cannot thwart the clear mandate of the statute that when the individual in question was discharged from the military service, he must thereafter return to his original place of employment.

In so ruling, this office is mindful that Chapter 72, Laws of 1942, defines the meaning of the words "present war" when used or named within this state should mean so long as the United States of America continues in the present war with the governments of Japan, Germany and Italy. Nevertheless, we feel that this situation is not applicable in light of the fact that the legislature has provided otherwise by the terms of Chapter 327 of the Laws of 1942.

This office has, by formal opinion dated February 11, 1949, addressed to John A. Wood 3d, Secretary of the Teachers' Pension and Annuity Fund, interpreted the statute involved in the manner herein set forth.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. Griggs,
Deputy Attorney General.

MARCH 13, 1950.

STATE PAROLE BOARD,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 27.

GENTLEMEN:

It appears that you desire to be advised as to whether the State Parole Board is empowered by law to consider, for release on parole, a prisoner serving a life sentence, who originally had been sentenced to death and whose death sentence had been commuted by action of the Governor to a sentence of imprisonment for life.

It is our opinion and we so advise you that the State Parole Board cannot release upon parole such a prisoner serving a life sentence after commutation of a death sentence, for we construe the pertinent statutes to reflect a legislative intent that the power to release such a prisoner from confinement shall at all times reside in the Governor.

"The pardoning power is generally regarded as not being inherent in any officer of the state, or any department of the state, but the power is one of the government, in the people, who may confer it on any officer or department as they see fit." (46 C. J. 1184 and foot-note cases).

In New Jersey, the people have determined that the pardoning power shall be vested in the Governor and this by virtue of Art. V, Sec. II, par. 1, of the State Constitution, wherein it is provided that "The governor may grant pardons and reprieves in all cases other than impeachment and treason and may suspend and remit fines and forfeitures."

"Although there is authority to the contrary, it is generally held that the general power to pardon necessarily contains in it the lesser power of remission and commutation. If the whole offense may be pardoned, a fortiori a part of the punishment