

While it is true that the word "parole" was not specifically alluded to in said Section 4, nevertheless, we feel that the Legislature intended by the use of the phrase "remitted or commuted" to include, in the broader sense, the term "parole" and any other method that might be used to shorten the period of confinement of a commuted life term prisoner.

For the above reasons, and to give meaning and purpose to Chapter 83, P. L. 1948, we are of the opinion that it is part of the constitutional and legislative policy of this State that the Governor shall at all times control the destiny of a prisoner whose sentence of death has been commuted to one of life, and this particularly in view of the fact that such prisoner will be denied none of the rights or privileges which would be available to him if your Board were permitted to consider his case for purposes of parole.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

MARCH 13, 1950.

DR. DANIEL BERGSMA,
State Commissioner of Health,
Department of Health,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 28.

MY DEAR DR. BERGSMA:

I have your letter of the 7th instant stating that at the present time your department has eight nurses with permanent status who receive less than 50% of their total salary from State funds and that the balance of their salary may be made up from funds of one or more local communities in whose area they carry out nursing functions of your department.

The question which you have presented for consideration is whether these nurses should be compelled to join the State Employees' Retirement System. The answer is in the affirmative. These nurses undoubtedly are civil service employees, and by the State Employees' Retirement System act such employees are required to be members of the Retirement System. I therefore advise you to certify the names of these employees to the State Employees' Retirement System.

I note your observation that your department was advised by the Retirement System on March 6, 1946 that these nurses could be members of the Retirement System but that such membership was not compulsory. This determination may have been reached on the assumption that these employees were not full time employees of the State, but I think this reasoning is unsound. Undoubtedly, the first duty of these

nurses is to the State, and I also assume that they render to the State all the service that the State requires of them. This being so, I consider them as full time employees.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

MARCH 13, 1950.

MR. FRANK B. BAER, *Secretary,*
Prison Officers' Pension Fund,
1604 Greenwood Avenue,
Trenton 9, New Jersey.

FORMAL OPINION—1950. No. 29.

DEAR SIR:

I have your letter of the 9th instant with enclosure of application for service retirement of one Fusco, a prison officer.

Your letter states that Mr. Fusco is 47 years of age and has had only seventeen years of State service.

It is clear from the accompanying papers that Mr. Fusco is not seeking retirement because of age and service under Section 1 of your act (P. L. 1941, Chapter 220), which requires twenty years of service and attained age of 55 years. Apparently he is seeking retirement because of illness. Two physicians certify as to his illness and both agree that he is unable to perform his former work.

I do not understand that Mr. Fusco claims that his present illness and disability arose out of his employment and he has not reached the age of 55 years and has not had twenty years of service with the State and I do not see how he can be granted a pension under your act. Of course, if he should resign, his accumulated deductions could be returned to him under Section 9 of the act and, of course, if his death should ensue while he is still a prison officer, a pension can be paid to the surviving widow, minor children or dependent parents, as pointed out in Section 4 of your act. This section, as you know, provides that in the event of the death of one of your prison officers from causes other than injuries or illness received or incurred in the performance of his duties, and where such officer has paid into your fund the full amount of his assessments or contributions and has served in the employ of the State for five years, twenty-five per centum of the pension which would have been paid him had he served twenty years shall be paid to the widow, etc., and for each additional year of service thereafter, the proportion of the amount of the pension to be paid to the widow, etc., as the case may be, shall be increased to the extent of five per centum over and above the twenty-five per centum just mentioned for each additional year of service up to and including twenty years.