

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.

If I am in error in concluding that Mr. Fusco desires to retire because of disease not incurred in performance of duty but in fact claims that such disabling disease was in fact incurred in performance of duty, then the procedure outlined in Section 6 of your act should be followed.

I am returning herewith the papers which you sent me.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

Encs.
TB:B

APRIL 12, 1950.

HON. HARRY C. HARPER,
Commissioner of Labor and Industry.
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 30.

DEAR COMMISSIONER :

In compliance with your request for an interpretation of the term "and other foodstuffs" as used in R. S. 34:6-105, otherwise known as the Bakeries and Confectioneries Law, please be advised that it is our opinion that the cardinal purpose or intent of the whole act shall control and that all the parts be interpreted as subsidiary and harmonious (Sutherland Statutory Construction, 3rd edition, Section 4704).

In attempting to arrive at the meaning of a word or phrase as used by the Legislature in any specific law one must necessarily construe such word or phrase with reference to the leading idea or purpose of the instrument.

In the case of *International Trust Co. vs. American Loan and Trust Co.*, 65 N. W. 78, it was held

"It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, and to separate words and then apply to each, thus separated from its context, some particular definition given by lexicographers and then reconstruct the instrument upon the basis of these definitions. An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascribed from the context, the nature of the subject matter treated of, and the purpose or intention of the parties who executed the contract or of the body which enacted or framed the statute or constitution."

Likewise Chancellor Kent in his Commentaries observed :

"In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief

felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion."

Therefore, by the great weight of authority we must conclude that the term "or other foodstuffs" cannot be lifted out of its context but must be read in the light of the entire instrument, "No person shall engage in the business of making or manufacturing biscuits, pies, bread, crackers, cake, macaroni, candy, . . . or other foodstuffs or confections for the purpose of sale unless licensed so to do by the commissioners," and must be interpreted to apply only to confections and allied products. The act cannot be construed to include the use of mono-sodium glutamate to be used to impart a meat flavor to foods.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: GRACE J. FORD,
*Ass't. Deputy Attorney General
in Charge.*

APRIL 17, 1950.

MR. GEORGE M. BORDEN, *Secretary,*
State Employees' Retirement System,
1 West State Street,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 31.

DEAR MR. BORDEN :

Reference is made to your letter of March 21 regarding the computation of retirement allowance of Mrs. Mary E. Westcott. You state that Mrs. Westcott retired on January 1, 1950, and that prior to that date she was an employee of Cumberland County, in which the State Employees' Retirement System became effective on July 1, 1949.

You have inquired specifically whether, in figuring the final compensation of Mrs. Westcott for purposes of her retirement allowance, your Board of Trustees should consider salaries received by her prior to January 1, 1945, which was exactly five years prior to the effective date of her retirement.

In my opinion the answer is no.

Final compensation is defined in the State Employees' Retirement Act as follows (N. J. S. A. 43:14-1, subparagraph e) :

"'Final compensation' means the average annual compensation earnable by a member for the five years immediately preceding his retirement, or, at the option of such member, it shall mean the average annual compensation earned by a member during any five consecutive years of his or her membership, within which period of five consecutive years he was entitled to retirement for service, said five years to be selected by the applicant prior to the date of retirement."