

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

It will be noted that the option given to the member by the last portion of the above quoted definition applies only if the member is selecting a period of five consecutive years "within which * * * he was entitled to retirement for service." Inasmuch as the State system did not become effective in Cumberland County until July 1, 1949, Mrs. Westcott was not entitled to retirement for service under this act prior to that date. The option in question is, therefore, not open to her, and her final compensation must be figured as that which was earnable by her for the five years immediately preceding her retirement.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

tpc;d

APRIL 24, 1950.

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

FORMAL OPINION—1950. No. 32.

MY DEAR MR. BORDEN :

I have your letter of the 19th instant stating that Senate Bill No. 107 has passed both houses and awaits the Governor's signature.

You also state that, in view of the fact that the bill is to take effect immediately upon the Governor's approval, you are endeavoring to determine the method of procedure to be followed in having the two new municipal representatives elected. The bill in question provides for two new representatives to be elected from municipal membership, one to hold for a term of three years and one to hold for a term of two years.

You also call my attention to the fact that, under a rule of your Board adopted in the year 1923 providing that when nominations are made for membership in the Board of Trustees, if the nominee receives fifty per cent or more of the votes cast he shall be declared elected. In examining the bill for the election of the two new municipal members, which bill amends Section 43:14-7 of the Revised Statutes, under e, I find that the two new trustees shall be elected by the member employees of the municipalities and that the "same method of holding an election now used for the State employees' representatives shall be followed" in elections held for municipal representatives. I understand that, since the year 1923 when the rule above mentioned was adopted, where a nominee received fifty per cent or more of the ballots cast, he was declared elected. In view of the fact that Senate Bill No. 107, if it becomes a law, requires you to adopt the same method of holding the election for the new representa-

tives as is now used for State representatives, I advise you that the ballot should provide spaces for the writing in of two names for the new trustees and in one space should be the words "or the term of three years" and in the other space should be the words "for the term of two years," and that if either or both of the two nominees receive fifty per cent or more of the ballots cast they shall be declared elected.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

MAY 25, 1950.

DR. WILLIAM S. CARPENTER,
President, Civil Service Commission,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 33.

DEAR SIR:

Receipt is acknowledged of your request for my opinion as to existing demotional rights of Frederick E. Sieper, Transportation Inspector, and John Rogers, Traffic Maintenance Foreman, recently employees of the City of Passaic. You advise that the City of Passaic adopted civil service on November 2, 1948; that your records show at said time Mr. Sieper held the title of Bus Inspector, which was subsequently changed to Transportation Inspector. Mr. Rogers at the same time held the title of Foreman, Parking Meter and Traffic Maintenance Division, which was changed to Traffic Maintenance Foreman.

Revised Statutes 11:21-6 provides:

"Hereafter, all officers, clerks and employees in the employ of any county, municipality or school district at the time of the adoption of this subtitle by such county, municipality or school district, coming within the competitive or non-competitive class of the civil service, except such as may be appointed between the time of the filing of the petition for the adoption of this subtitle and holding of the referendum for the adoption thereof in such county, municipality or school district, shall continue to hold their offices or employments, * * * (P. L. 1940, c. 150, p. 317, § 1)."

An examination of the file discloses that both men held the listed positions at the time of the adoption of civil service in the City of Passaic and that these positions were embodied in the classification plan. Thus their positional status was fixed as of November 2, 1948. Subsequently both positions were abolished.