

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-

In the case of *Kraibuehler vs. Civil Service Commission*, 124 N. J. L. p. 99, the Supreme Court held:

"It is settled that positions within the civil service may be abolished and that employees under civil service may be separated from their positions for reasons of economy. *Santucci vs. Paterson*, 113 N. J. L. 192; *Byrnes vs. Boulevard Commissioners of Hudson County*, 121 Id. 497; *Gianettino vs. Civil Service Commission*, 120 Id. 531.

"Statutory provisions pertinent to civil service employees separated from the service without delinquency or misconduct on their part are R. S. 11:22-9 and R. S. 11:22-10.

"R. S. 11:22-9 provides:

"When any person holding an office or position under the classified service has been separated from the service because of reasons of economy or otherwise, \* \* \* his name shall be placed upon a special eligible list, which list shall take precedence over all other civil service lists, and shall be entitled to reinstatement at any time thereafter in the same or any similar office or position of the same kind as that from which he was previously separated as soon as such an opportunity arise. \* \* \*

"R. S. 11:22-10 provides:

"A person in the classified service whose position has been abolished for reasons of economy or otherwise \* \* \* shall, with the approval of the commission, be demoted to some lesser office or position in the same department in the regular order of demotion and placed therein with the salary of pay attached. \* \* \*"

"Under the first provision a person separated from the service has the right to have his name placed upon an eligible list for reinstatement when an opportunity arises; but there is no provision for displacing another employee. Under the second provision a person whose position has been abolished has, with the approval of the commission, the right to be demoted to some lesser office or position in the same department. The two statutory enactments were not passed at one time. The first was enacted as section 23 of chapter 156, Pamph. L. 1908, Comp. Stat., p. 3803, § 79, amended by chapter 128, Pamph. L. 1933 and chapter 11, Pamph. L. 1935. The second was enacted as section 1 of chapter 122, Pamph. L. 1916, 1924 Supp., § 144-98. The two overlap in their application and may, we think, be read together to the extent of deducing a legislative intent that where the right of demotion exists it is restricted to a demotion within the department within which the person has been employed. Aside from that the right of one who has been separated from the service or whose position has been abolished, for reasons of economy or other reason not grounded in his delinquency or misconduct, is to have his name placed upon a special eligible list with reinstatement at an appropriate time thereafter. Prosecutors have not been deprived of any right thus accorded them."

From an examination of the Civil Service Law, particularly Sections 11:22-9 and 11:22-10 and a consideration of the facts, I am of the opinion petitioners' claim to a demotion must be denied there being no position or employment of a similar class or character to which a demotion could be made, but that they are entitled to the

placement of their names on the civil service list for appointment should the positions be again created.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: JOSEPH LANIGAN,  
*Deputy Attorney General.*

JL:rk  
Att: File ret'd.

---

MAY 25, 1950.

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

FORMAL OPINION—1950. No. 34.

DEAR SIR:

Receipt is acknowledged of your request for my opinion as to whether the Board of Chosen Freeholders of the County of Hudson can create the position of Commissioner of Public Works in the Department of Public Works and place the incumbent thereof as the superior of the County Engineer.

Revised Statutes by 40:21-3, among other things, provides:

"In addition to the officers and employees whose appointment is specifically provided for by law, the board of chosen freeholders may appoint or provide for the appointment of such other officers, agents and employees as may be required for the execution of the powers conferred upon said board or any board or officer within the county."

This statute vests in the Board of Chosen Freeholders the right to create the position of Commissioner of Public Works and prescribe his powers and duties. However, such position, when validly created must be placed in the competitive division of the classified civil service and be filled on a permanent basis as a result of an open competitive examination.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: JOSEPH LANIGAN,  
*Deputy Attorney General.*

JL:rk  
Att: File ret'd.