

MAY 25, 1950.

MR. JOHN A. WOOD, 3D., *Secretary,*
Teachers' Pension and Annuity Fund,
Trenton Trust Building,
Trenton 4, New Jersey.

FORMAL OPINION—1950. No. 35.

DEAR SIR:

I have your letter of the 18th instant. The question propounded for my consideration is whether the employees of your system are in fact State employees.

The answer is yes, although this is contrary to the views expressed by a former Attorney General in an opinion to Hon. John Enright, Secretary of your Pension Fund, under date of July 1, 1919. That opinion was written by a member of the then staff of the Attorney General's office, now deceased, and was predicated upon the assumption that under law (Chapter 80, Laws of 1919, sec. 248) granting to the Teachers' Pension and Annuity Fund the powers and privileges of a corporation, that in fact a body corporate was created. I cannot read subsection 2 of that law, which is now R. S. 18:13-27, as creating a body corporate; it merely confers on the Teachers' Pension and Annuity Fund the powers and privileges of a body corporate. A similar power is conferred in the State Employees' Retirement Act (R. S. 43:14-10).

That your fund is an agency or instrumentality of the government I have not the slightest doubt. Under the Constitution of 1844, Article IV, Section VIII, paragraph 6, it was provided that "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." The identical provision of the Constitution of 1844 just noted, was retained in Paragraph 1 of Section IV of Article VIII of the new Constitution of 1947.

When your fund was created, it was accomplished by an act of the Legislature enacted in the year 1919 by the addition of an article known as XXVIII to the school law of 1903.

It is true that the employees of your fund have never been classified into the civil service and that, undoubtedly, was occasioned by the determination of the former Attorney General.

The true facts are that all of the employees ever since the creation of the fund have been paid out of State appropriations and they are so paid today. Of course, I realize that by Section 14 of Chapter 92 of the Laws of 1948, the Board of Trustees of your system and all their respective functions, duties, etc., were transferred to the Division of Budget and Accounting established under said act in the Department of the Treasury, and except as otherwise provided in that act, each of the pension funds mentioned in that act as agencies were continued with all the powers, functions and duties imposed by law upon them.

In order that there may be no misunderstanding of the purport of this opinion, I advise you that, in my opinion, not only are the employees of your fund State employees but many of them undoubtedly are subject to classification under the civil service law.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

MAY 31, 1950.

THE HONORABLE LLOYD B. MARSH,
Secretary of State,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 36.

DEAR SIR:

Receipt is acknowledged of your letter of May twenty-third, in which you request an opinion as to the date on which the term of office of Howard F. Barrett, Judge of the County Court of Morris County, will expire.

It is our opinion that Judge Barrett's term of office will expire on April 1, 1953.

The provisions of the Constitution of 1947 which we deem to be pertinent to the question before us are:

There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions . . . (Art. VI, Sec. IV, par. 1).

There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas. (Art. VI, Sec. IV., par. 2).

The Governor shall nominate and appoint, with the advise and consent of of the Senate, . . . the Judges of the County Courts . . . (Art. VI, Sec. VI, par. 1.).

The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect. (Art. XI, Sec. IV, par. 2.)

From the several paragraphs of the Constitution of 1947 above recited it is readily apparent that the framers intended — and there can be no doubt that the people who ratified the instrument so understood it — that a single court of permanent constitutional status in each county, formally denominated the County Court, was to replace the five separate courts (including the Court of Common Pleas) held by the Judges of the Court of Common Pleas, and that the Judges of the Court of Common Pleas were to become, without interruption in term of office, the Judges of the new County Courts.

The framers of the Constitution of 1947 did not expressly designate a number of years as the term of office of Judges of the County Courts appointed after the effective date of the Judicial Article thereof. This we ascribe neither to oversight nor to an intent to leave to the Legislature — which for want of fundamental treatment would have the power to legislate upon the subject—the fixing of such term. As we see it, the term was taken care of in the clause (hereinabove recited) which requires that the Judges of the County Courts “shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas.” (Art. VI, Sec. IV, par. 2.)