

taxes by the act entitled "A supplement to an act entitled 'An act for the assessment and collection of taxes,' approved April eighth, one thousand nine hundred and three," approved April fourteenth, one thousand nine hundred and six (L. 1906, c. 120, p. 210), as amended and supplemented, are hereby continued.

Under the provisions of section one of said act (P. L. 1906, c. 120), it was provided that

The term of office of the members first appointed shall commence on the first day of May, nineteen hundred and six, and the members so appointed by the Governor shall be appointed for the terms of one, two and three years respectively; and, thereafter, as the terms of said members expire, appointments shall be made for a term of three years

The same section of said 1906 act further provided that if the first appointments of members of the county boards of taxation should be made when the Senate would not be in session they would be "valid until the first day of May, nineteen hundred and seven, and the appointments of successors shall be made as provided in this act, their terms to commence on the first day of May, nineteen hundred and seven." Both of these provisions were still part of section one of said 1906 act as last amended by the Legislature (P. L. 1933, c. 281) before enactment of the Revised Statutes (1937).

We have ascertained from your office that your official records show that there has been an observance of the May first beginning date with respect to the term of office of members of county boards of taxation heretofore appointed for a full term. In view of this long continued construction, and especially in view of the Legislature's apparent recognition thereof (particularly as evidenced by the proviso, in R. S. 54:3-3, above marked and which first made its appearance in said section by virtue of P.L. 1940, c. 113), we are constrained to adhere to the same construction. Contemporaneous and long-standing exposition exhibited in usage and practice under a statute requires a similar construction in case of doubt. *In re Hudson County*, 106 N. J. L. 62,

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

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

JUNE 8, 1950.

FORMAL OPINION—1950. No. 39.

DEAR SIR:

I have your letter of the 2d instant with copy of letter to you from R. William Lagay, Superintendent of the New Jersey State Prison Farm at Rahway. It appears from the papers submitted that one Joseph Evans has been receiving a retirement:

allowance from your fund amounting to \$30.79 monthly. It also appears from Mr. Lagay's letter that Evans was received at the State Prison on January 31, 1950, on a conviction of lewdness, his term of imprisonment being fixed as two to three years, and that he was thereafter transferred to the Prison Farm at Rahway.

By Chapter 221 of the Laws of 1938 no pension or subsidy is to be paid by the State * * * to any person for the period during which he is confined in a penal institution as a result of conviction of crime involving moral turpitude, with certain exceptions therein named which need not be noted. The crime of which Joseph Evans was convicted is one involving moral turpitude.

The question is whether you shall continue to pay him the retirement allowance of \$30.79, which, of course, includes not only the pension element, but the annuity element as well. By your statute, R. S. 43:14-1 (g), "Pension" means payments for life derived from appropriations made by the state * * *. In my judgment, the pension element should be withheld so long as Evans remains under the jurisdiction of the prison authorities and until his final discharge.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

JUNE 14, 1950.

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

FORMAL OPINION—1950. No. 40.

DEAR MR. BORDEN :

I have your letter of the 12th instant with enclosure of letter from Peter P. Walsh, Esq., a member of the Bar, concerning a member of your system, who is now confined to an institution. You enclosed me a copy of a designation signed by such member in which she named a beneficiary to receive her accumulated deductions in the event of her death prior to retirement on pension.

You state that a brother of the member is considering the possibility of applying for guardianship papers so that he may apply for an ordinary disability retirement allowance. Such an application can be made by anyone acting on her behalf. (R. S. 43:14-30.) Your real question is, would the guardian have the right to designate a beneficiary and select one of the optional modes of retirement. In my opinion, he could not. You will notice in the section which I have just mentioned that anyone acting on behalf of the member may make application for ordinary disability retirement, and the same language is used in R. S. 43:14-31 with respect to accident disability retirement.