

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.

With respect to the exercise of an option as provided in R. S. 43:14-38, the member, in my opinion, must make the election, and I am likewise of opinion that he would have no right to designate a beneficiary. Upon the members' retirement for ordinary disability, monthly payments of the amount allowed may be made to her guardian duly appointed, and should there be a balance due upon her death, such balance can be paid to her estate.

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. 41.

DEAR MR. BORDEN:

I have your letter of the 9th instant with enclosures. I gather from the papers that a veteran retired from your retirement system by withdrawing his accumulated deductions on February 15, 1949, and ceased to be eligible for any of the benefits of your act until he re-enrolled on November 1, 1949; that on April 28, 1949, while mowing his lawn, he had a heart attack.

The right to withdraw his accumulated deductions was accorded the veteran by R. S. 43:14-43 "without prejudice to his right as a veteran to any benefit to which he may be entitled under any other law."

Undoubtedly, the veteran withdrew his accumulated deductions and thus ceased to be a member of your fund because of the privilege accorded him by the Veterans' Act to retire after twenty years of service and reaching the age of sixty-two. (R. S. 43:4-1 et seq.). It now appears that the veteran, after suffering the heart attack, decided to rejoin the system and he did so. I believe he now claims the right to an accident disability allowance.

When he suffered the heart attack, he was not a member of your fund and his re-enrollment after the accident did not restore to him the right to an accident disability retirement when such accident if it, in fact, be established as such, occurred, as I have indicated, during the period of time when he was not a member of the fund.

I am returning herewith all the papers which you enclosed me.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

Encs.