

The sole question to be decided, as I understand, is whether the Secretary-Treasurer shall be certified. The act of 1949 so directs.

You have forwarded to me a copy of the agreement between the City of Paterson, City of Passaic and City of Clifton, which three municipalities form the Passaic Valley Water Commission. In the agreement between these municipalities, the Secretary-Treasurer is to be appointed by the Commission for the term of four years at a salary of \$3,500 per annum. Nowhere in the sections of the Revised Statutes referred to in the Laws of 1949 do I find any provision concerning a definite fixed term of years for the Secretary-Treasurer. The Water Commission derives its sole power from the Legislature and the act of 1949 directs that among the other employees of the Water Commission, the Secretary-Treasurer shall be included and shall be classified by the Civil Service Commission into the classified service.

The counsel of the City of Paterson takes the position that the act of 1949 is unconstitutional in that it impairs the obligation of a contract, that is, it impairs the agreement between the Cities of Paterson, Passaic and Clifton which provided for a term of office and the compensation to be received by the Secretary-Treasurer. With this conclusion, I cannot agree. The Passaic Valley Water Commission is a creature of our law and its officers as well as the Civil Service Commission are to obey the act in advance of the determination by a court of competent jurisdiction that the act is unconstitutional for any reason. See *Schwartz vs. Essex County Board of Taxation*, 129 N. J. L., 129.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB.B

JULY 17, 1950.

MR. J. LINDSEY DEVALLIERE, *Director,*
Department of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 47.

DEAR MR. DEVALLIERE:

Under memorandum dated July 11th you have requested an opinion as to whether Regulation 4 of the official state travel regulations promulgated by proclamation of the Governor on July 1, 1950, in effect rescinds a departmental regulation of the highway department reading as follows:

“Moving expenses will be allowed when employees are transferred permanently from one location to another; or when temporarily transferred, moving expenses will be allowed when the cost to the state will not exceed transportation and/or living expenses allowed for the total period of the assignment.”

You ask whether, in light of possible transfer of employees resulting from re-organization, the state must pay the moving expenses in the event of a permanent transfer.

We believe the answer to this question to be in the negative.

While R. S. 27:1-8 regarding the organization of the state highway department provides that the commissioner may formulate and adopt rules and regulations and prescribe duties for the efficient conduct of that department, its officers and employees, it does not give you authority to pay obligations incurred for which there was no appropriation under the annual appropriation act. In other words, there would first have to be a line item set up covering such expenditures.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

JULY 20, 1950.

COLONEL JOHN H. AHRENS,
Adjutant General,
Department of Defense,
Trenton 10, New Jersey.

FORMAL OPINION—1950. No. 48.

DEAR SIR:

I have your letter of the 18th instant propounding for my consideration two questions as follows:

- a. Are employees in the unclassified service, such as armory personnel who are hired under the provisions of Section 38:2-21, Revised Statutes, required by law or regulations to join the State Employees' Retirement System?
- b. If the reply to *a* is negative, may the Chief of Staff, State Department of Defense, establish such a requirement and insist that new employees join the State Employees' Retirement System as a condition for employment?

The answer to both inquiries is in the negative.

As to your first inquiry, R. S. 38:2-21 authorizes the Quartermaster General to appoint all custodians, armorers and other persons employed in the care of armories, arsenals and camp grounds.

The functions, powers and duties of the Quartermaster General were by Section 6 of Chapter 82 of the Laws of 1948 transferred to the State Department of Defense to be exercised by the Chief of Staff of said department.

Under the Civil Service law (R. S. 11:4-4) officers, noncommissioned officers, enlisted men, and other persons employed in the military or naval service of the State and under military or naval discipline and control are in the unclassified service of the civil service.