

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.

Under the State Police retirement and benevolent fund act provision is made for retirement for service and age and for disability and for injury or disease and allows pensions to widows and children of dependent parents.

None of the men appointed under the above act qualify under the retirement and benevolent fund, because they do not have the number of years of service provided by said act.

Answering your inquiry as to whether these men should be granted continuous service credit as provided in R. S. 38:23 and retain their pension rights, would say that this act has no application to these men, because when they went into military service under the terms of Chapter 394 they resigned their temporary positions. They accepted appointment in accordance with Memo 176 which stated that the appointments were only temporary and the men so appointed would submit their resignations if for any reason they left the department, and any who did resign could be considered for reinstatement or re-enlistment. So that during the time they were in military service they had no standing with the State Police, being temporary appointees and having resigned to enter the military service.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: ROBERT PEACOCK,
Deputy Attorney General.

JULY 24, 1950.

HONORABLE CHARLES R. ERDMAN, JR., *Chairman,*
Board of Directors, Morris Canal & Banking Company,
Department of Conservation and Economic Development,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 50.

DEAR SIR:

I have your letter of the 20th instant with enclosure of agreement between the Morris Canal and Banking Company and the John Swenson Dry Docks, Jersey City, made June 10, 1948, for a term of five years from June 15, 1948, at an annual rental of \$10,000, payable in advance, in equal monthly installments. The lease covers a part of the Little Basin in Jersey City.

You ask, first, whether the lease is valid and binding upon the lessee despite the fact that the lessor has a thirty day cancellation privilege and this same privilege is not available to the lessee. The thirty day clause in the lease is inserted pursuant to the requirement of R. S. 13:12-18 which, after authorizing a letting of part or parts of the canal property, provides as follows:

"* * * but any and all leasehold estates so created shall be terminable upon thirty days' notice to the lessee of the desire of the canal and banking company or the State of New Jersey to terminate the same."

All employees in the classified civil service are required to join the State Employees' Retirement System (see R. S. 43:14-2.3, last clause).

I have examined the militia law in the Revised Statutes (R. S. 38:1-1 et seq.) as well as Chapter 82 of the Laws of 1948 establishing the State Department of Defense, and find nothing in those laws to indicate that any employee of the State who is in the unclassified service shall be required to join the State Employees' Retirement System, and, in the absence of legislation upon the subject, I advise you that, in my opinion, the Chief of Staff of the State Department of Defense is without authority to make a rule or regulation that employees of the State Department of Defense who are, as I have indicated, in the unclassified service, join the State Pension System as a condition for employment. However, I believe that the Trustees of the State Employees' Retirement System will admit to membership any employee of the State who is in the unclassified service upon application being made for that purpose.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

JULY 10, 1950.

MAJOR WILLIAM O. NICOL, *Deputy Superintendent,*
N. J. State Police,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 49.

DEAR MAJOR NICOL:

Your request for opinion regarding the status of members of the State Police appointed under Chapter 394, P. L. 1941, is at hand. Your request sets forth that you have several inquiries from members of your department who resigned under the provisions of the above act, and who have been in military service, as to whether or not upon returning to the State Police they should be credited with continuous service pursuant to the provisions of R. S. 38:23-1 and subsequent clauses.

Chapter 394, of the Laws of 1941, provides for the appointment of 100 additional members of the State Police to be assigned to such duty as the superintendent, in his discretion, shall determine. The superintendent, with the consent of the Governor, under said act could increase the present commissioned and non-commissioned personnel as he deemed necessary. Par. 3 of the above act sets forth that these appointments and promotions shall be temporary and for the duration of the present defense emergency only, and any and all such appointments and promotions may be terminated upon the order, in writing, of the Governor.

In order to carry out the provisions of Chapter 394, P. L. 1941, the Legislature appropriated \$206,266.00 or so much thereof as may be necessary.