

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.

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.”