

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.”

I see no infirmity in the lease by reason of the cancellation privilege inserted therein pursuant to the requirement of the statute just referred to.

Your second question is whether the Board of Directors of the Morris Canal and Banking Company have the legal authority to cancel the lease if in their judgment such action is justified at the present time, or whether the lease must be continued for the full five year period. The lease in question is now in force and has a period of nearly three years yet to run. It can be terminated upon giving the required thirty days' notice as provided in R. S. 13:12-18, but the reason for such cancellation I think should be inserted in your minutes, if such action should be taken.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B

JULY 28, 1950.

DANIEL BERGSMAN, M. D., M. P. H.,  
*State Commissioner of Health,*  
*Department of Health,*  
State House, Trenton, N. J.

FORMAL OPINION—1950. No. 51.

DEAR DOCTOR:

This is in response to your letter concerning the term of Dr. Richard E. Shope, who was appointed as a member of the Public Health Council.

It appears from your letter that Dr. Shope was confirmed by the Senate on March 13, 1950. Previously, a Dr. Harvey N. Davis had been appointed as a member of the Public Health Council for a term of one year beginning July 1, 1947. His term would expire on July 1, 1948. However, no appointment was made to fill the office held by Dr. Davis at that time. In March of 1950, Dr. Shope was nominated by the Governor to membership on the council and confirmed by the Senate on March 13, 1950, as indicated above.

The question for determination is when does the term of office of Dr. Shope expire. Does he hold for a term of seven years from the time of the confirmation of his appointment, or does he hold for a term of seven years from July 1, 1948, the date when the term of Dr. Davis expired?

In my opinion, Dr. Shope holds for a term of seven years from the date of the confirmation by the Senate, to wit, March 13, 1950.

The statute relating to the appointment of members of the Public Health Council, to wit, Chapter 177, P. L. 1947, Article II, Section IV, provides as follows:

"Each member shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of seven years and until his successor is