

JULY 28, 1950.

MR. ELMER G. BAGGLEY, *Secretary,*
Police and Firemen's Retirement System,
1 West State Street,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 52.

DEAR MR. BAGGLEY :

Receipt is acknowledged of your letter of July 25th in which you inform me that you are receiving numerous inquiries from various municipal officials, as well as from members of the Police and Firemen's Retirement System, who have or who may be called to duty either as active reservists or through selective service.

They desire to know what are their respective rights as to leaves of absence, tenure and pension contributions while on active service.

I have examined our Revised Statutes and particularly Sections 38:23-4; 38:23-5 and 38:23-6 thereof and upon a consideration of the problem, I am of the opinion that such rights are fully protected.

For their information, I would summarize these rights as follows :

"Every person holding office, position or employment * * * under the government of this State, or of any county, municipality or school district * * * who * * * has entered, or hereafter shall enter, the active military or naval service of the United States or of this State, in time of war or an emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service * * * shall be granted leave of absence for the period of such service and for a further period of three months after receiving his discharge from such service

"No person holding any office, position or employment under the government of the State of New Jersey or of any county, municipality or school district who has or shall hereafter enter the active military or naval service of the United States * * * and who, at the time of such entry was or is a member in good standing of any pension, retirement or annuity fund, shall suffer the loss or impairment of any rights, benefits or privileges accorded by the laws governing such fund; and the time spent in such service * * * shall be considered as time spent in the office, position or employment held by him at the time of his entry into such service, in all calculations of the amount of the pension to which he is entitled and of the years of service required to entitle him to retire.

"During the period beginning with the time of the entry of such person into such service and ending at the earliest of (a) three months after the time of such person's discharge from such service or (b) the time such person resumes such office, position or employment or (c) the time of such person's death or disability while in such service, the proper officer of the State, county, municipality, school district, political subdivision, board, body, agency or commission shall contribute or cause to be contributed to such fund the amount required by the terms of the statute governing such fund based upon the amount of compensation received by such person prior to his entry into such service and during the period first mentioned in this section any such person receiving compensation from the State, county, municipality, school district, political subdivision, board, body, agency or

commission, shall continue to contribute the amount required by statute to be paid by members of such fund and during the period first mentioned in this section any such person not receiving compensation from the State, county, municipality, school district, political subdivision, board, body, agency or commission shall not be required to contribute the amount required by statute to be paid by members of such fund, but said amount shall be contributed for such person by the State, county, municipality, school district, political subdivision, board, body, agency or commission.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

AUGUST 3, 1950.

MR. ELMER J. HERRMANN, *Clerk,*
Essex County Board of Elections,
Hall of Records,
Newark 2, New Jersey.

FORMAL OPINION—1950. No. 53.

DEAR SIR:

Reference is made to your letter of August first, in which you request, on behalf of the Essex County Board of Elections, an opinion "relative to Sections 19:27-11 and 19:27-6, R. S. Laws of New Jersey, as to procedure pertaining to the proclamation issued by Governor Driscoll, under date of July 25th, 1950, declaring an election to be held in Essex County on November 7th, 1950, to fill the vacancy caused by the resignation of Percy A. Miller, Jr."

The said Percy A. Miller, Jr., was a member of the General Assembly from Essex County. He resigned as such member on May 17, 1950, thereby causing a vacancy to exist in the representation of Essex County in the General Assembly.

The writ of election issued by the Governor (in the nature of a proclamation, as required by R. S. 19:27-5) designates the next general election day (November 7, 1950) for the election to fill said vacancy. Such designation accords with R. S. 19:27-6, which provides that the writ "may designate the next general election day for the election . . ."

By virtue of R. S. 19:27-11, in the event of a vacancy occurring in the representation of any county in the Senate or General Assembly "after the last day for filing petitions for nominations for the primary election and prior to twenty-five days preceding the general election," if a writ of election shall have issued prior to twenty-five days preceding the general election and the writ shall designate the next general election day for the election to fill such vacancy, "the members of the county committee of each political party representing the territory affected by such vacancy are hereby authorized to select a candidate for the office in question and within twenty-two days prior to the general election to file a statement of such selection duly certified to with the county clerk, and the person so selected shall be the candidate of the party at the ensuing general election." R. S. 19:27-11 also makes provision for the nomination of candidates by petition.