

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.

The obvious intent of R. S. 19:27-11 is to make unnecessary a special primary election in connection with certain vacancies and yet to make available the machinery of the general election for the filling of such vacancies. Thus, insofar as the section relates to the filling of a vacancy in the representation of any county in the Senate or General Assembly, in the case where such vacancy occurred after the last day for filing petitions of nominations for the primary election and prior to twenty-five days preceding the general election (as in the instant case), when the writ of election designates the next general election day for the election to fill such vacancy and has been issued prior to twenty-five days preceding the general election (as in the instant case) county election officials should disregard the provisions of R. S. 19:27-6 and proceed under R. S. 19:27-11 (as well as under all other applicable provisions of law).

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

AUGUST 15, 1950.

MR. GEORGE M. BORDEN, *Secretary,*
State Employees' Retirement System,
1 West State Street,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 54.

DEAR SIR:

I have your letter of the 9th instant in which you call my attention to Chapter 326 of the Laws of 1942 and inquire "Should the employing department, of any employee who enlists or is inducted into military service at the present time, make contributions to his annuity savings fund while he is in military service? In a recent formal opinion, number 52, it is indicated that contributions should be made in behalf of such employee."

Formal Opinion No. 52, dated July 28, 1950, I am sure fully answers your inquiry. However, answering your question specifically as to a person who enters the military service *at the present time* and who is a member of a pension fund, it is my opinion that the contributions which the member would have made had he not entered military service must be made by the State, county, municipality, school district, political subdivision, board, body, agency or commission by whom such person is employed.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Acting Attorney General.

TB :B