

You seek my advice as to whether the Act of 1950 may be applied to the above cited cases, even though the actual termination of Federal recognition took place prior thereto and that these officers were discharged from their commissions in the NJNG by reason of failure to maintain their qualifications for Federal recognition.

Upon a consideration of the state of facts and a review of the statute, I am of the opinion that Section 12 of the Act of 1950, supra, may be applied to the cases referred to in your letter, where Federal recognition was terminated or withdrawn prior to June 26, 1950, the operative date of the act,, provided the effective date of the discharge from commission or warrant is subsequent to June 26, 1950.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:MB

OCTOBER 3, 1950.

HON. WALTER T. MARGETTS, JR.,
State Treasurer,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 64.

MY DEAR MR. MARGETTS:

Your letter of July 21st requesting opinion as to the effect of the affidavit which is required on forms presented by dealers selling securities to a State agency is acknowledged and the opinion rendered herewith.

STATEMENTS OF FACTS.

There are no actual facts in the presented problems but all are based on hypothetical questions.

QUESTION PRESENTED.

No. 1. Does the word "bonus" on the affidavit required on invoices transmitted by security dealers upon the sale of securities to an agency of the State include the payment of a commission to a second broker-dealer for the latter's assistance in negotiating the transaction with the State agency?

ANSWER.

The answer is no.

REASONS.

The word "bonus" as defined by Webster's Universal Unabridged Dictionary is:
"an extra compensation beyond the amount agreed upon; an extra payment or consideration given as a reward or an inducement, or as a means of avoiding loss, in many contracts and business transactions."

It is defined in Black's Law Dictionary, Second Edition as :

"an extra consideration given for what is received" and also "as a gratuity;"

In Bouvier's Law Dictionary, Rawles Third Revision as:

"a consideration given for what is received" and also "it is not a gift or gratuity, but is paid for some service or consideration and is in addition to what is ordinarily given,"

Kenicott vs. Wayne County, 16 Wall (US) 452.

In the case of *Taylor et al vs. Errion*, 137 N. J. Eq. 221, Vice-Chancellor Jayne speaking for the then Chancery Court said :

"A bonus is something given in addition to what is ordinarily earned by or strictly due to the recipient."

Similar conclusions and statements of law were expressed in the cases :

Jones vs. Loughman, 288 N. Y. S. 44, Ct. of Ap. N. Y., 174 Fed. 289.

Covington vs. South Covington and C. St. Ry., 147 Ky. 329.

Payne vs. U. S., 269 Fed. 871.

Wilkie vs. Commission Internal Revenue, 127 Fed. 2nd, page 953, C. C. A. 6.

In the case of *Smith vs. David Crockett Co.*, 85 Conn. 282, it was held that :

"though an agreement to pay a bonus does not necessarily mean a payment of a bribe, it generally means a sum given or paid beyond what is legally required but the word may also be used to designate bribery so that where in a contract for services as salesman there was no explanation of a provision for the reimbursement of sums to be paid by the salesman as 'bonuses' evidence was admissible under proper plea to explain that the payments were to be made as bribes to purchasing agents."

"An agreement to pay a bonus is not necessarily a corrupt and unlawful agreement. Generally a bonus is a sum given or paid to the recipient. The words "payment of a bonus" may also be used in the sense of payment of a bribe (Century Dictionary) of the payment of a sum to weaken or destroy the fidelity of a trusted agent."

The meaning of the word "bonus" varies with the context in which it is used.

Leonidas, D. C. Md., 32 Fed. Suppl. 738.

The uniform invoice as used by the Division of Budget and Accounting includes the following :

"All bills over \$5.00 must be sworn to

.....
being duly sworn, on his oath saith that within bill is correct in all its particulars; that the articles have been furnished or services rendered as stated therein, and that no bonus has been given or received on account of said bill.

.....
(Sign Here)

....."
(Official Position)

N. J. R. S. 52:18A-9, Laws 1948 provides that the Director of the Division of Budget and Accounting shall have the authority to prescribe uniform forms to be used by all Departments or other agencies of the State Government in encumbering any funds appropriated, that the Director shall prepare the forms upon which shall be rendered all statements of indebtedness against any department, institution, commission, committee, official, board, or body of State Government, and that the forms, in this section provided, shall, when so prepared, be the only forms used for the evidence and record of such encumbrances and indebtedness.

N. J. R. S. 52:18A-10, Laws 1948 provides among other things that the Director may administer the oath to the persons presenting the encumbrance or statement of indebtedness and to any witness presented on behalf of such person and may examine such person or witness as to the truth, fairness and correctness of such encumbrance or statement of indebtedness.

From a reading of the above it is apparent that it is the intention of the Statute to repose in the Director of the Division of Budget and Accounting the authority to prepare a uniform form to be used by all Departments. The invoice to be used by the State Investment Council must be in uniformity to those used by other Departments or Divisions.

It is evident, further, that it is the purpose of the form to determine whether or not any bribe, extraordinary payment, rebate or kick-back was given on account of said claim set up in the invoice other than the payment for ordinary service rendered. The payment of a commission to the second broker-dealer for the latter's assistance in negotiating the transaction with the State agency is not such a bonus as is contemplated within the meaning on the affidavit.

QUESTIONS PRESENTED.

No. 2. Where the selling dealer's confirmation accompanying the invoice discloses the transaction had been negotiated by the second broker-dealer but not the fact that a commission was to be paid to the latter, does that spell out a bonus as set forth in the affidavit?

No. 3. Where a formal written offer to sell securities is transmitted to the State agency prior to the transaction and same has been submitted to the second broker-dealer with an indication he was acting as agent for the selling dealer and receiving commission for his services, does that constitute a bonus as referred to in the affidavit?

No. 4. Where the selling dealer pays an undisclosed commission to a regular employee for negotiating the transaction and which commission is based on the total selling price of the securities, is this transaction affected by the word "bonus" as appears on the affidavit attached to the invoice?

ANSWER.

The answer is no. (Questions No. 2, No. 3 and No. 4 are grouped together as they may be answered by the same reasoning.)

REASONS.

For the reasoning expressed in the answer to Question No. 1, unless the bonus paid is for a bribe, rebate, kick-back or for something other than legitimate services rendered, no statement for such service must appear on the affidavit unless requested by the Director of the Division of Budget and Accounting on the prescribed form.

Since the creation of the State Investment Council, Laws 1950, Chapter 270, in the purchase of securities the Council may prepare a questionnaire if they are desirous of obtaining the responses to the above questions, but as presently set up it is the writer's opinion such information is not required to be answered.

QUESTION PRESENTED.

No. 5. Does the word "bonus" on the affidavit accompanying the invoice transmitted by the security dealers upon the sale of securities to agencies of the State affect the second broker-dealer who happens to be an office holder of the State or Municipality?

ANSWER.

The answer is no.

REASON.

Where the transaction is legitimate and the bonus is not a gratuity or bribe, no disclosure is required whether or not the broker-dealer is an office holder of the State or Municipality. I can find no law or statutory regulation prohibiting an office holder of the State or Municipality from legitimately performing services of the nature imposed in the query and receiving compensation therefor.

I believe the foregoing opinion adequately answers the questions proposed by you.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: LOUIS S. COHEN,
Deputy Attorney General.

OCTOBER 23, 1950.

HON. J. LINDSAY DEVALLIERE,
Director, Budget & Accounting,
Department of the Treasury,
State House,
Trenton, N. J.

FORMAL OPINION—1950. No. 65.

DEAR SIR:

This is in response to your letter of the 18th instant relative to the application of Mr. Fred C. Ginder for a pension under the Veterans Act. It appears from the record that Mr. Ginder's services with the State during 1928 and up to and including August 11, 1950, cover a period of seventeen years, ten months and eleven days, which leaves approximately twenty-six months of service to complete the twenty years required by the Veterans Pension Act (R. S. 43:4-1 and 43:4-2). These sections have been amended on several occasions but the amendments have no application to the