

for him a total retirement allowance of one-half of his final compensation at any retirement age, not below sixty, as elected by the member . . ."

If a deposit of \$1500 meets the requirement of the statute as above set forth and the Board of Trustees so find, in my opinion the request may be granted, otherwise not.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B

DECEMBER 6. 1950.

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

FORMAL OPINION—1950. No. 84.

DEAR SIR:

I have your letter of the 4th instant stating that there appears to be some conflict on the policy of enrolling temporary employees who, if regularly employed, would be in the classified service of the civil service. I understand you have a situation where such a temporary employee was admitted to membership in your fund and who has now been called into Federal military service. The question is whether the amount which such employee would have paid into your fund had he not entered military service must be paid by the State.

The answer is "no."

You refer to Chapter 326 of the Laws of 1942, which provides for such payment, but I am quite sure we must also take into consideration the provisions of Chapter 327 of the laws of that year as being pertinent to the question we are considering; for I am of opinion that the two statutes mentioned are in pari materia and must be considered together. The temporary employee was filling a position coming within the classified service and his services could have been dispensed with at any time and he could not have been classified under any circumstances into civil service without examination and certification. Chapter 327 of the Laws of 1942 provides for a leave of absence to those entering the armed forces of the United States and the right to return to position upon his discharge therefrom. The member of your fund of whom you write, as the correspondence indicates, was never given a leave of absence and properly so because he never was a regular employee and never served a working test period, as required by the civil service law. Under Chapter 221 of the Laws of 1947, where a person is employed temporarily by the State and the temporary employment results in permanent employment, he is permitted to make contributions covering his temporary service in accordance with

rules and regulations of your board and is then to receive the same annuity and pension credits as if he had been a member during his temporary service.

In writing this I am not unmindful that there are employees of the State who are not covered by the civil service and, in my opinion, these employees may be admitted at any time. Civil service employees, in my judgment, should not be admitted until they have served their working test or probationary period and have become permanent employees.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB :b

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DECEMBER 5, 1950.

HON. ROBERT J. WEGNER,  
*The House of Assembly of N. J.,*  
Paterson, N. J.

FORMAL OPINION—1950. No. 85.

DEAR ASSEMBLYMAN WEGNER:

The Legislature of New Jersey during the 1950 session amended Section 1 of the Revised Statutes 34:15-12. Under the terms of the amendment (Chapter 175 P. L. 1950) the law will become effective on January 1, 1951.

The controversy revolves around paragraphs "a," "b" and "y" which are as follows:

- a. For injury producing temporary disability, sixty-six and two-thirds per centum ( $66\frac{2}{3}\%$ ) of the wages received at the time of the injury, subject to a maximum compensation of thirty dollars (\$30.00) per week and a minimum of ten dollars (\$10.00) per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.
- b. For disability total in character and permanent in quality, sixty-six and two-thirds per centum ( $66\frac{2}{3}\%$ ) of the wages received at the time of injury, subject to a maximum compensation of twenty-five dollars (\$25.00) per week and a minimum of ten dollars (\$10.00) per week. This compensation shall be paid for a period of four hundred and fifty weeks, at which time compensation payments shall cease unless the employee shall have submitted to such physical or educational rehabilitation as may have been ordered by the rehabilitation commission, and can show that because of such disability it is impossible for him to obtain wages or earnings equal to those earned at the time of the accident, in which case further weekly payments shall be made during the period of such disability, the amount thereof to be the previous weekly compensation payment diminished by the portion thereof that the wage,