

We therefore experience no difficulty in concluding that persons employed in connection with the maintenance or operation (by the respective State institutions) of commissaries or stores established by authority of the provisions of law above cited (source P. L. 1931, c. 13) are State employees.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

dac:d

APRIL 27, 1951.

THE HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 17.

DEAR COMMISSIONER:

You advise that certain of the private hospitals coming under jurisdiction of your department, and being subject to license under the provisions of R. S. 30:11-1 et seq., as amended, contemplate the establishment of a practice which would require patients of said hospitals to remain in the custody of the institutions after their treatment was concluded, such custody to operate as a guarantee for payment of the costs of furnishing medical care and hospitalization.

You desire to be advised whether there is any warrant in law for such practice and whether any such institution can legally hold a debtor patient in this type of custody pending payment of such hospital bill for medical care and treatment.

It is our opinion and we advise you that such a practice would be completely without warrant in law and, in addition, is suggestive of false imprisonment. A careful examination of the pertinent statutes and the provisions of our Constitution fails to disclose any grounds upon which such a practice might be justified, and none exists. It is a fundamental concept of both the Constitution of New Jersey and that of the United States that persons shall not be imprisoned for debt. (N. J. Const. Art. 1, par. 13.) Nor shall any person be deprived of his liberty without due process of law. (U. S. Const. Amend. XIV.) The deprivation of liberty of an individual within the four walls of a charitable hospital institution is just as much imprisonment as if that individual were confined in a State or county penal institution.

For the reasons set forth above, we advise you that the suggested procedure of holding debtor patients in custodial detention in a hospital facility, to guarantee payment of the costs of medical care and treatment, is illegal and cannot be permitted to exist under the law in this State.

Very truly yours,

THEODORE D. PARSONS,
Attorney General of New Jersey.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU: HH

JULY 3, 1951.

MR. GEORGE M. BORDEN, *Secretary,*
State Employees' Retirement System,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 18.

DEAR MR. BORDEN:

You have requested my opinion with reference to the following facts:

An employee of the State, holding a position in the unclassified service for some years prior to World War II, secured a military leave of absence from the State in order to enter military service. On his return from military duty during World War II he rejoined the State service, again in an unclassified position. The employee now seeks to enroll in the State Employees' Retirement System and to purchase credit for his previous State service. You now inquire whether the State, rather than the employee, is obligated to pay to the retirement system the contributions that would have been paid by the State, during the period of the employee's war service, had the employee been a member of the State system during that time.

Our statutes protecting the pension rights and benefits of public employees entering military service, and requiring the employing governmental agency or department to pay the required pension contributions for such persons, namely, chapter 326, P. L. 1942 as amended (R. S. 38:23-5 and 38:23-6) refer or relate to employees, who, at the time of entry on military service, was or is a member in good standing of a pension fund or system.

In my opinion the employee, whose application is now before you, not having been a member of the State retirement system when he entered on active military service, cannot now receive the benefits of the statutes cited in the preceding paragraph.

The question presented is not one of first impression with this office. Under date of April 14, 1944, inquiry was made by the State Employees' Retirement System, whether if applications for employees in the unclassified service, absent on military service, are not filed by the employing department, and such employees "return to their positions after the close of the war and then make application for membership, would the department be required to pay their contributions for the period of military service?"