

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

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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?"

Under date of April 18, 1944, and again under date of May 24, 1946, this office answered the above question in the negative. It has been suggested that perhaps chapter 118, P. L. 1943 (R. S. 43:14-2.8) was not considered when the aforementioned opinions were written. This statute provides as follows:

"Any State employee who was or shall hereafter be inducted into the military or naval service of the United States before making application for enrollment in the retirement system shall be accepted as a member upon his filing application, and his regular salary deductions as determined by the board of trustees shall be paid to the retirement system by the employing department as provided by chapter two hundred fifty-two, pamphlet laws of one thousand nine hundred and forty-two, as amended by chapter three hundred twenty-six, pamphlet laws of one thousand nine hundred and forty-two. This provision shall not apply to any employee whose appointment is temporary or seasonal."

Although this statute is not specifically mentioned in the April 18, 1944 and May 24, 1946 opinions of the Attorney General hereinbefore referred to, it is to be assumed that consideration was given thereto. In any event, the conclusion hereinabove expressed by me has not been reached without due consideration of said act.

Chapter 118, P. L. 1943, was enacted to enable State employees, who were, or who might be, inducted into military service, prior to enrolling in the State system, to join such system, and to have the State make the required contributions for them for the period of military service, provided the benefits of the act were claimed by the employee, *while in the service*.

In order to reach a contrary conclusion, I would have to hold that chapter 118, P. L. 1943, in fact repeals chapter 326, P. L. 1942, by wiping out for all purposes, the requirement in the latter act, that employees affected, be members in good standing of a pension fund, at the time of entry into military service. A general repealer is not to be presumed, in the absence of specific words, or evidence of specific intention, to that end. I find no such intention or evidence in chapter 118, P. L. 1943. What the latter means to me, is that it attempted to prevent the loss of pension rights on the part of employees, who were inducted, before they made application to enroll in the State system. It was not intended to assist State employees, in the unclassified service, who did not join the State system prior to going into the military service, or who did not endeavor to join while in the service. In short, the two statutes must be read together.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By : DANIEL DE BRIER,  
*Deputy Attorney General.*