

Accordingly, the Department of Conservation and Economic Development may by contract, and without advertising for bids, commit expenditures in any amount from the appropriation labelled "Promotional Expenses (New Jersey Council)."

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By : DOMINIC A. CAVICCHIA,
Deputy Attorney General.

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OCTOBER 8, 1951.

DR. LESTER H. CLEE,
President, Civil Service Commission,
State House,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 30.

MY DEAR DR. CLEE:

You are desirous of knowing whether under the terms of R. S. 38:23-1 an officer or employee of this State is entitled to leave of absence with pay while engaged in field training. The answer is "Yes" and to that extent Civil Service Circular No. 18, dated June 13, 1943, as revised April 11, 1951, should be amended accordingly.

You also inquire whether pursuant to R. S. 38:12-4 as amended by P. L. 1941, chapter 109, section 23, which statute contains approximately the same wording as R. S. 38:23-1, but which affects members of the National Guard, the Naval Militia, or New Jersey Guard, an officer or employee of the State is entitled to leave of absence with pay while engaged in field training. The answer is "Yes" and to that extent Circular No. 18 aforesaid must be amended.

You inquire whether in conformity with a certain opinion rendered by the Superior Court of New Jersey, Appellate Division, entitled *Sylvester J. Lynch, Plaintiff-Appellant, vs. Borough of Edgewater, Defendant-Respondent*, 14 N. J. Super. 329, that portion of Circular 18 above which limits payment of salary in full to a period of two weeks or less should be amended, and whether one being called into military service to attend a training course is entitled to full pay during the entire time of such training procedure contrary to the circular aforesaid.

The pertinent section of the statute R. S. 38:23-1 provides:

"An officer or employee of the State or a county or municipality, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve Force and United States Marine Corps Reserve, or other organization affiliated therewith, shall be entitled to leave of absence from his respective duty without loss of pay or time on all days on which he shall be engaged in field training. Such leave of absence shall be in addition to the regular vacation allowed such employee."

In *Lynch vs. Edgewater, supra*, wherein the plaintiff recovered from defendant his full salary for a period of ninety days covered by his absence to attend a field training period of that duration, it was contended by the defendant that the term "field training" as used in the aforementioned statute meant the fifteen days maximum period for which a reserve officer can be compelled to serve in any one year during peacetime and not a greater period for which any officer might volunteer. The court held that the words "field training" as used in the aforementioned statute were defined as a period of time in which the Legislature intended to offer incentive to an individual member of the reserve system for the purpose of keeping his interest and skill in military affairs at a high degree of efficiency, and contemplated among other things service in mobilization, concentration, instruction, or maneuver camps.

The Superior Court quoted the following language from *Parks vs. The Union County Park Commission*, 7 N. J. Super. 5 (App. Div. 1950) :

"We believe that the comparison of the aforementioned statutes indicates that the Legislative intendment of R. S. 38:23-1 was to engender on the part of trained military personnel an incentive to retain their interest and skills in military affairs at a high degree of efficiency through the reserve organization training program, with a minimum of sacrifice to them and to provide additional compensation for their service. Under the provisions of this statute, members of reserve organizations of the United States Armed Forces are entitled to a leave of absence from their duties as employees of the State, county or municipality 'without loss of pay or time' while engaged in field training."

It would therefore appear that a member of the organized reserve who performs temporary active duty to engage in field training as above defined will so serve without loss of pay or time on all days during which he shall be engaged in field training as defined above and may not be limited to a two weeks' period. To that extent Circular 18 must be amended.

R. S. 38:12-4 as amended by P. L. 1941 contains approximately the same wording as R. S. 38:23-1, but affects members of the National Guard, the Naval Militia, or New Jersey Guard. Therefore any officer or employee of the State is entitled to be paid in full during the field training period, whether in excess of two weeks or not, for the reasons above set forth, and to that extent Circular 18 must likewise be amended.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By : JOHN W. GRIGGS,
Deputy Attorney General.

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