

DECEMBER 28, 1951.

HON. J. LINDSAY DE VALLIERE,
Director, Division of Budget & Accounting,
Department of the Treasury,
State House,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 34.

DEAR SIR:

Your recent communication with reference to the application for a widow's pension of Helen G. Tuesday, widow of William H. Tuesday, a former State Trooper, who died as a result of suicide, is acknowledged. You inquire whether a pension legally may be paid to the widow when the death of her husband resulted from suicide.

It is my opinion, and I so advise, that, the fact that Trooper Tuesday died as a result of a self-inflicted wound, does not preclude or bar his widow's right to a pension, if his service was efficient and honorable.

The pertinent section of the statute, establishing the State Police Retirement and Benevolent Fund, namely, R. S. 53:5-5, is quoted herewith:

"The widow or children under the age of sixteen years, or dependent parent or parents of any member of the Department of State Police who shall have heretofore lost or shall hereafter lose his life in the performance of his duty, or where death results from injury received in the performance of duty, or having served not less than ten years in the Department of State Police shall die from causes other than injuries received in the performance of duty, shall receive a pension equal to one-half of the salary, including maintenance allowance, of such member at the time of his death. If there are a widow and children such pension shall be for the widow and the children and shall be paid to the widow. If there are three or more children under the age of sixteen years and no widow, the children shall receive the pension in equal shares until they attain the age of sixteen years. If there are two children under the age of sixteen years and no widow, they shall be paid twenty-five dollars per month each until they attain the age of sixteen years. If there is only one child and no widow, he or she shall be paid the sum of thirty dollars monthly until he or she attains the age of sixteen years. If there is no widow and no children under the age of sixteen years then such pension shall be paid to the parent or parents dependent upon the deceased member. If any widow or parent entitled to a pension aforesaid remarries, then such pension shall cease and shall not be paid to such widow or children."

It will be observed from the foregoing, that a pension is provided for the widow of a State trooper, when the latter (1) loses his life in the performance of duty; *or* (2) loses his life as the result of injury received in the performance of duty; *or* (3) having served not less than ten years in the department, dies from causes other than injuries received in the performance of duty.

The statute evinces, as I view it, a clear legislative intent to protect the aforementioned beneficiaries, not only when the trooper dies from service-connected causes, but, as the statute reads, also in those cases where the trooper has served not less than ten years, and dies from causes other than service-connected ones. The words "causes other than injuries received in the performance of duty" are all-inclusive in their scope, and in the absence of language requiring a deprivation of benefits because of the suicide of the trooper, must be construed to include even those cases where the cause of death is a self-inflicted wound. "Primarily, the intent of the Legislature is to be harvested from the language of the statute." *Leeds vs. Atlantic City*, 13 N. J. Misc. 858. If the Legislature had desired to rule out those cases where death results in suicide, it could have done so by appropriate language.

In any event, our courts have already considered the position of the widow, seeking a pension, when her spouse died as a result of suicide, in *Angersbach vs. South River Police Commission*, 122 N. J. L. 1, which decision, I am of the opinion, is controlling in the matter before us.

In the cited case, the Supreme Court had before it the application of the widow of a policeman for a pension, based on the death of her husband, whom it was alleged, died by his own hand. The court held:

"It is urged by respondent that all of the circumstances point to self-destruction. No one saw the act that produced death. The proofs are circumstantial. Presumptions favor innocent as against criminal conduct.

But, whether the death be accidental or suicidal, we conclude that the relator is entitled to judgment upon the proofs in this case.

The act, R. S. 43:16-4, provides:

"The widow or children or sole dependent parent of any member of the police or fire department, who shall have paid into the fund the full amount of his annual assessment or contributions and shall have lost his life in the performance of his duty or died from causes other than injuries received in the performance of duty, shall receive a pension equal to one-half of the salary of the member at the time of his death, but not exceeding one thousand dollars. If there are a widow and children, pension shall be paid to the widow for the use of herself and the children, * * *

In the instant case, the right of relator is based upon a reasonable interpretation of the statute. Nothing is contained in the statute barring recovery in the event of self-destruction, not contemplated when the contractual obligation was created."

The statute before the court in the *Angersbach* case, namely R. S. 43:16-4, and the statute under which Mrs. Tuesday makes her claim, namely, R. S. 53:5-5, are similar to each other, in their provisions relating to the widow's right to a pension, and, in my opinion, the views of the court in the *Angersbach* decision, relative to the former statute, apply with equal force and effect to R. S. 53:5-5.

The right of a widow to a pension, under the circumstances stated, is subject, however, to the additional requirement that the service of the deceased spouse must have been efficient and honorable. This requirement of efficient and honorable service was well summarized by the old Supreme Court in *Kelly vs. Kearins, et al.*,

132 N. J. L. 308, in which the Court referring to the statute under which certain veterans may retire after twenty years of public service (R. S. 43:4-1 et seq.) and which statute contains no specific requirement of honorable service, stated:

"Many are the statutory classes and conditions for the retirement of public servants on pension and for the establishment and upkeep of pension funds. See R. S. 1937, Title 43. And yet a reading of each discloses a clear legislative pattern determinative of the policy of the State for the retirement on pension of public servants for honest and efficient services. Cf, *Walter vs. Police and Fire Department, &c.*, Trenton, 120 N. J. L. 39, 42; 198 Atl. Rep. 383."

Although the foregoing case related specifically to retirement rights under the Veterans' Act, nevertheless, I think the statement of policy enunciated is applicable to all claims arising under our various pension laws, including claims for widows' pensions.

In the case before us, the fact that Trooper Tuesday died as a result of a self-inflicted wound does not of itself infer or impute dishonorable or inefficient service.

In short, if, in the instant case, the record shows honorable and efficient service on the part of the trooper up to the time of the suicide, and the conditions set forth in R. S. 53:5-5 are met, then, in my opinion, the trooper's widow is entitled to her pension.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By : DANIEL DE BRIER,
Deputy Attorney General.

OCTOBER 29, 1951.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 35.

DEAR COMMISSIONER:

In your letter of October eighteenth you request an opinion as to the beginning date of the four-year term of the three members of the Fish and Game Council, Department of Conservation and Economic Development, who were originally appointed for a two-year term beginning April 1, 1949, and whose reappointment this year was not confirmed by the Senate until June 26th. The question essentially raised by your letter is whether under P. L. 1948, chapter 448 ("Department of Conservation and Economic Development Act"), there is a continuity of terms of office for members of the Fish and Game Council, with April first as the beginning date for each term.