

must be complied with. This means that a mere majority vote of the members of a governing body in favor of the appropriation is not sufficient, and that such appropriation must be passed by at least two-thirds vote of all its members.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.

tpc:b

AUGUST 27, 1952.

DR. LESTER H. CLEE, *President,*
Civil Service Commission,
State House, Trenton, N. J.

FORMAL OPINION—1952. No. 24.

DEAR DOCTOR CLEE:

You have asked whether a State employee who has accepted a commission in the Regular Army Services should be considered on leave of absence without pension rights, or whether the acceptance of such commission is tantamount to a resignation from his civil position.

We feel that the answer to the above is "Yes," and that the acceptance of the commission was voluntary and was considered a waiver of all rights under the pension statute, and a waiver of the requirements of leave of absence.

Where, on the other hand, an individual goes into a component of the Reserve of the Army, the result would be otherwise, as being a leave of temporary expediency.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: JOHN W. GRIGGS,
Deputy Attorney General.

SEPTEMBER 8, 1952.

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

FORMAL OPINION—1952. No. 25.

DEAR SIR:

You have requested our opinion as to whether funds in Account M 50 in the 1952 Appropriation Bill, which provides \$156,500 for the Rehabilitation Commission, may be used to defray general administration expenses of the commission. Account

M 50 has provided the aforesaid sum for tuition, vocational purposes, artificial appliances, hospitalization, medical examinations and medical treatments, and has further provided as follows:

"In addition there is appropriated to the Rehabilitation Commission, the balance on June 30, 1952, of all Federal funds, together with all Federal receipts during 1952-53. All such funds applicable to programs of prior fiscal years shall be available for both administration and case services."

You have informed me that the Federal Government has failed to provide sufficient funds for the necessary administrative costs of the Rehabilitation Commission, and that if that commission is to continue its beneficial program for the handicapped, it will be necessary for the State to provide the funds for paying administrative costs.

In my opinion, the needed money may be taken, if the State Treasurer so permits, from other items in the appropriation for the Rehabilitation Commission, under the "flexibility" provision in section four of the Appropriation Act (chapter 43, P. L. 1952), which reads as follows:

"4. In order that there be a flexibility in the handling of appropriations, any department or other State agency receiving an appropriation by any act of the Legislature may apply to the State Treasurer for permission to transfer a part of any item granted to such department or agency to any other item in such appropriation. Such application shall only be made during the current year for which the appropriation was made, and if the State Treasurer shall consent thereto, he shall subject to the approval of the State Auditor, place the amount so transferred to the credit of the item so designated; provided, however, that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose; and provided further, that any item for capital improvement may be transferred to any other item of capital improvement on the approval of the State Treasurer."

The situation here presented would appear to be the very sort contemplated by the Legislature when it enacted the above quoted provision. The lawmakers could not have intended that the rehabilitation program be allowed to lapse for want of Federal funds to defray administration expenses. The provision in Account M 50 appropriating Federal receipts for both administration and case services must be deemed an item in the appropriation, within the meaning of the flexibility clause of the Appropriation Act.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.