

APRIL 27, 1953.

MR. ELMER G. BAGGALEY, *Secretary,*
Consolidated Police & Firemen's Pension Fund Commission,
State House Annex,
P. O. Box 1266
Trenton, New Jersey.

FORMAL OPINION—1953. No. 12.

DEAR MR. BAGGALEY :

I have your letter of April 8, 1953 requesting my opinion in connection with executions directed against pension allowances made by local police and firemen's pension commissions in causes where the defendant is a retired pensioner. You also inquire what action should be taken by the Consolidated Police and Firemen's Pension Fund Commission after July 1, 1953 in connection with these executions, in view of the fact that as of that date all funds of local police and firemen's pension systems are to be in the hands of the new Consolidated Police and Firemen's Pension Fund Commission pursuant to the terms of Chapter 358, P. L. 1952 (R. S. 43:16-7.1).

I understand that your question was suggested by a judgment entered in the New Jersey Superior Court, Chancery Division, Union County, under date of September 15, 1950, wherein a portion of certain pension payments being paid to the defendant by a local police and firemen's pension fund, were ordered paid to the plaintiff in the cause.

In the first place, the judgment in that matter, you will observe, is by its very terms based upon the consent of the defendant. This judgment, therefore, is not to be regarded as a precedent as to what may or may not be done under the circumstances, in the absence of the consent of the defendant.

The consent by the judgment debtor to the terms of a judgment, authorizing the payment by the pension authorities of a portion of his salary to the plaintiff, may be regarded as tantamount to an assignment. Chapter 253, P. L. 1944 does not prohibit an assignment, as was pointed out by our courts in *Sganga vs. Police and Firemen's Pension Fund Commission*, 2 N. J. Super. at 578 (1949).

The rule is well stated by our courts in *Passaic National Bank vs. Eelman*, 116 N. J. L. at 286 (1936): "The exemption of public pensions, as such, from liability to execution and garnishment is ordinarily derived from statute." Section 8 of Chapter 253, P. L. 1944 provides that all pensions granted by local police and firemen's pension fund commissions shall be exempt from execution, garnishment, attachment, sequestration or other legal process.

If your information is correct that local police and firemen's pension commissions have been permitting the attachment of pension moneys subsequent to the enactment of Chapter 253, P. L. 1944, I am unable to state under what authority this is being done, unless, of course, it was being done with the consent of the pensioner. If done otherwise, I am of the opinion that it was contrary to the statute cited above.

As to what action should be taken by the Consolidated Police and Firemen's Pension Fund Commission on executions against its funds, may I point out that section 3 of Chapter 358, P. L. 1952 (R. S. 43:16-5) in referring to the Consolidated Police and Firemen's Pension Fund Commission, states that all rights and privileges heretofore granted and extended to members of a municipal police or fire department "are hereby expressly reserved, continued and transferred from the local pension funds

to the Consolidated Police and Firemen's Pension Fund. Further, Section 7 of the same statute (R. S. 43:16-7) states that "all pensions granted under this chapter shall be exempt from execution, garnishment, attachment, sequestration or other legal process."

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: DANIEL DE BRIER,
Deputy Attorney General.

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Authorities

Statutes:

Chapter 253, P. L. 1944
Chapter 358, P. L. 1952

Cases:

Passaic Bank vs. Eelman, 116 L. 279
Newark vs. American Realty Co., 26 Misc. 240
Mechanics Finance Co. vs. Austin, 8 N. J. Misc. 582
Finnegan vs. State Board of Tax Appeals, 131 L. 276
Sganga vs. Police & Firemen's Pension Fund Commission, 2 N. J. Super. 575

APRIL 29, 1953.

HON. WILLIAM J. DEARDEN, *Director,*
Division of Motor Vehicles
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 13

DEAR MR. DEARDEN :

Reference is made to your request for a formal opinion concerning the application of the provisions of Chap. 343, Laws of 1952 (R. S. 39:3-79.1).

This law provides generally for the use of mud flaps on any bus, truck, full trailer or semi-trailer of a registered gross weight exceeding three tons. The law contains the following proviso :

"This act shall not apply to pole trailers, dump trucks, tanks, or other vehicles where the construction thereof is such that complete freedom around the wheel area is necessary to secure the designed use of the vehicle."

You desire to know whether or not all the enumerated vehicles are required to have mud flaps unless they come within the provisions of the above-quoted exception.

The answer to your question is, "Yes."

It is my opinion that pole trailers, dump trucks and tanks are joined in a general classification with such other vehicles to be determined by you, the construction of