

JUNE 28, 1954.

HON. ARCHIBALD S. ALEXANDER
State Treasurer of New Jersey
 State House
 Trenton, New Jersey

FORMAL OPINION 1954 — No. 15

DEAR MR. ALEXANDER :

You have requested the opinion of this Office as to whether the Board of Trustees of the Alcoholic Beverage Law Enforcement Officers Pension Fund may legally permit the purchase, by members of the Fund, of past service credits; and should the answer to the preceding question be in the affirmative, what is the latitude extended to the Board of Trustees in the formulation of a proposed rule and regulation governing the calculation of the cost of such purchase.

Most of the pension systems for our public employees permit the purchase of credits for prior service, under such rules and regulations on the subject as the respective Boards of Trustees may adopt, or in some cases, pursuant to a formula or calculation written in the applicable statute. Illustrative of statutes of this type are R. S. 18:13—43, as amended, and R. S. 18:13—47 as amended, both relating to the Teachers Pension and Annuity Fund, and N. J. S. A. 43:14—63 and 43:14—65 relating to employees of certain public agencies participating in the State Employees Retirement System.

In the first place, it must be noted that the statute establishing the Alcoholic Beverage Law Enforcement Officers Pension Fund (N. J. S. A. 43:8A—1 to 43:8A—25 incl.) does not contain any specific language authorizing the purchase of prior service credits. Apparently, however, a suggestion has been made to the Board of Trustees that such right is implied by the provisions of N. J. S. A. 43:8A—7 (2) (b) which, together with the two sentences preceding this specific subsection, read as follows:

“(2) Upon retirement for service a present entrant member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his aggregate contributions at the time of retirement; and

(b) A pension in the amount which, when added to the members annuity will provide a total retirement allowance equal to two per centum (2%) of his average final compensation multiplied by the number of years of service during the first twenty-five years of service for which the member has contributed, up to twenty-five, plus one per centum (1%) of his average final compensation multiplied by the number of all other years of service.”

N. J. S. A. 43:8A—7 (2) (b) quoted above refers to two types of service, namely “service during the first twenty-five years of service for which the member has contributed, up to twenty-five,” and, secondly, “all other years of service.”

Inasmuch as both types of service, as above described, are credited to the member with varying weights for pension purposes, we must assume that each type of service, must in turn be limited by the definition of the term “creditable service” which appears in N. J. S. A. 43:8A—1 which is the definition section of the statute before us. In this section the term “creditable service” is defined as meaning:

"service rendered while a member, or before becoming a member of the pension fund, for which credit is allowed as provided under section four of this act."

This section four, namely N. J. S. A. 43:8A-4, is as follows:

"Only service as a law enforcement officer which was rendered by a member before the date of the establishment of this pension fund, or since he became a member, or since he last became a member in case of a break in service, shall be considered as creditable for the purposes of this Act."

The word "service" as used in section 43:8A-7 (2) (b) (supra), is therefore, to be construed to mean "creditable service" as defined by N. J. S. A. 43:8A-4 (supra) as, otherwise, this section would have no meaning.

In other words, the various sections above discussed all relating to service, must be read and construed in conjunction each with the others. As thus read, they mean, in our opinion, simply that a law enforcement officer, as defined by the Act, may only be credited for pension purposes, with the kind of service as is defined by N. J. S. A. 43:8A-4 (supra); and that this credit under the terms of N. J. S. A. 43:8A-7 (2) (b) (supra) may be of two types, namely, credit for service during the first twenty-five years of service for which the member has contributed up to twenty-five years, and credit for all other years of service as a law enforcement officer, each type of service being entitled to a different value or weight in the calculation of the pension to be paid.

At no place, however, as we have previously observed, does this statute authorize, as other statutes do, the purchasing of credits for prior service.

The right to purchase prior credits is an additional benefit which the Legislature may grant or withhold.

The rule governing statutory construction in this situation is well settled. As most recently expressed in *Rosenthal vs. State Employees Retirement System*, 30 N. J. Super. 136, 140 (App. Div. 1954), the Court stated:

"Where wording of a statute is explicit and clear, the court is not free to indulge in a presumption arising from extrinsic evidence that the Legislature intended something other than that which it actually expressed. Except where uncertainty and ambiguity appear, a statute must speak for itself and be construed according to its terms. *Bass v. Allen Home Improvement Co.*, 8 N. J. 219 (1951)."

In other words, the statute before us is to be regarded as meaning what it says, and should be given no broader construction or effect than its language justifies. *Belfer v. Borrella*, 6 N. J. Super. 557, Aff'd, 9 N. J. Super. 287, (1950).

In view of the fact that other pension statutes make a clear distinction as between prior service, and other service, or require matching contributions on the part of the employee, and further in view of the absence of any language in the statute now before us authorizing the purchase of prior service credits, it is our opinion that such credits may not be purchased, but such years of service, may be credited "as all other years of service" in the formula set forth in N. J. S. A. 43:8A-7 (2) (b) (supra) subject to the provisions of N. J. S. A. 43:8A-4. Accordingly, any rule to the contrary that may be adopted on the subject by the Board of Trustees would be invalid.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By : DANIEL DE BRIER
Deputy Attorney General.