

SEPTEMBER 2, 1954.

EDWARD B. McCONNELL, *Esq.*
Administrative Director of the Courts
State House Annex
Trenton, New Jersey

FORMAL OPINION 1954—No. 17.

DEAR MR. McCONNELL:

You have advised this Office that you are in receipt of a voucher submitted by the Treasurer of Bergen County seeking reimbursement from the State of New Jersey for forty (40%) per cent of the pension paid by Bergen County to former Judge A. Demorest Del Mar for the period April 1, 1954 to June 30, 1954.

Your inquiry states that Judge Del Mar was retired under the provisions of the Veterans' Pension Act (R. S. 43:4-1 to 43:4-5 inclusive). This retirement was authorized by the County of Bergen. Inasmuch as the facts on which this retirement by Bergen County was based are not before us, we assume for purposes of this opinion, without conceding the fact, that the County's action was legally valid and proper.

It is our opinion, and we so advise you, that this claim of Bergen County for reimbursement should be denied.

The present claim for reimbursement apparently is based upon the provisions of N. J. S. A. 2A:3-19, which provides as follows:

"The salaries of the judges of the several county courts shall be payable from county funds, by the treasurers of the respective counties, in equal semimonthly installments; provided, however, that 40 per cent of the salaries, which may be paid to June thirtieth in any year to the judges of the county courts in any county by reason of the provisions of this article, shall be refunded to said county by the state treasurer on warrant of the director of the division of budget and accounting in the department of the treasury on vouchers certified or approved by the county treasurer and the administrative director of the courts."

The sections of the Veterans' Pension Act to be considered in connection with your inquiry are the following:

R. S. 43:4-3.

"A person so retired shall be entitled, for and during his natural life, to receive by way of pension, one-half of the compensation then being received by him for his service, which shall be paid in the same way and in the same installments as his compensation has been payable. No pension paid under this article shall be less than fifty dollars per month, unless the person so retired shall at the time of his retirement be receiving compensation of less than fifty dollars per month, in which case he shall be paid on retirement the full amount then being received by him for his service. * * *"

R. S. 43:4-4.

"Provisions for all pensions arising under this article shall be made in the appropriation or tax levy for the department of the public service from which the person shall be retired. No pension shall cease or become invalid by reason of the abolition of the department or office in which he served, or any change in its title."

We shall first dispose of R. S. 43:4-4 supra, by pointing out that this section of the statute requires that the veteran's pension shall be paid by "the department of the public service from which the person shall be retired." In the case before us, this is, of course, Bergen County.

R. S. 43:4-3 supra, states that the pension shall be paid to the veteran "in the same way and in the same installments as his compensation has been payable." The source of this section is Chapter 84, P. L. 1912, antedating by many years N. J. S. A. 2A:3-19 (Chapter 257, P. L. 1949), namely, the statute quoted above, obligating the State to pay forty per cent of the salary paid to a county judge. We cannot impute to the 1912 statute requiring the pension to be paid "in the same way and in the same installments" as the compensation was paid, any intention to encompass the condition created by the 1947 statute, whereby the State obligated itself to refund to the County a portion of the salary, heretofore paid by the County, to county judges. The duty to pay the salary is that of the employing county. The obligation of the State is only to refund to the county a portion of that which the county originally paid to the Judge.

Further, we are of the opinion that the reference in R. S. 43:4-3 that the veteran shall be paid "in the same way and in the same installments" as the compensation was paid, refers only to the mode of procedure, manner and time by which and when the compensation was paid, and does not refer to the source from which the compensation was paid, R. S. 43:4-4 supra, providing that the burden of the pension shall be upon the department or office from which the veteran is retired.

The word "way" (i. e. "in the same way") used in R. S. 43:4-3 may be defined as meaning, when employed in this sense, "manner or method", (Webster's New International Dictionary). In *Marvel v. Camden County*, 135 N. J. L. 575 at 577 (Sup. Ct. 1947), the Court had before it for consideration a statute requiring the filling of vacancies by a Board of Freeholders "in the same manner as the original selection or appointment." The Court held that the word "manner" is to be construed as meaning "mode of procedure."

Aside from the foregoing considerations, we point out that R. S. 2A:3-19 creates an obligation on the part of the State to refund forty per cent of the salary initially paid in its entirety by the county to the judge, and does not refer to pensions. To endeavor to extend the obligation of the State to pension payments, as distinct from salary payments, is to ignore the clear distinction between these two terms.

Our Courts consistently have held that pension payments are but a "reward" given for honest and efficient service (See *Walter v. Police and Fire Commission of Trenton*, 120 N. J. L. 39, 42 (Sup. Ct. 1938) and *DeLorenzo v. Newark*, 134 N. J. L. 7, 9 (E. & A. 1945), or a "gratuity" (See *Eckert v. New Jersey Highway Department*, 1 N. J. 474, 480 (1949). More recently, the Appellate Division of our Superior Court in *Ballurio v. Castellini*, 29 N. J. Super. 383, 389 (App. Div. 1954) in a case involving a veteran's pension, held that:

"A pension is a bounty springing from appreciation and graciousness of the sovereign; it is an inducement to conscientious, efficient and honorable service . . ."

Additionally, our courts have stated that a public officer or employee is not entitled to a pension as of right. (See *Restaino v. Board of Commissioners of the City of Newark*, 16 N. J. Misc. 266 (Cir. Ct. 1938). In view of the foregoing decisions, we believe it is evident that a veteran's pension cannot be regarded as salary which is earned, but is, as our courts have stated, merely a reward or gratuity or bounty given to an employee, for which there is no vested right until awarded.

In reaching this conclusion, we are not unmindful of certain provisions of Chapter 6, Title 43, which refers to certain judicial officers, receiving on retirement or incapacity pursuant to the terms and under the specific conditions of the statutes hereinafter cited, what is referred to as an "annual salary or compensation" during the remainder of their natural life. (See R. S. 43:6-2 and R. S. 43:6-6). The wording of these statutes in describing a pension, as salary or compensation, is unusual, and does not conform with normal statutory language on the subject. Witness that the 1948 Judicial Retirement Statute (N. J. S. A. 43:6-6.1 to 43:6-6:10 incl.), in referring to the benefits payable thereunder to certain retired or disabled judicial officers calls such benefits a pension. In any event, Judge Del Mar's retirement was not under the provisions of R. S. 43:6-2 or 43:6-6 referred to above, but was under the Veterans' Pension Act, which specifically describes the benefits being received by him, as a pension, and not as a salary or compensation.

Inasmuch as pension payments made under the Veterans' Pension Act cannot, in our opinion, in the absence of express words to the contrary, be regarded as salary, the County of Bergen would not be entitled to reimbursement from the State, for any portion of these payments.

Yours very truly,

GROVER C. RICHMAN, JR.
Attorney General

By : DANIEL DE BRIER
Deputy Attorney General

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SEPTEMBER 2, 1954.

HON. FREDERICK M. RAUBINGER
Commissioner of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION 1954—No. 18.

DEAR COMMISSIONER:

You have requested our opinion as to whether the Law Against Discrimination applies to a private school for boys, providing a course of study from kindergarten through preparation for college, which is owned and operated by a board of trustees and not by a religious or sectarian institution, and which receives no income except from tuition fees and contributions from private sources.

In my opinion, the Law Against Discrimination does apply to such a school. Section 11 of the law (P. L. 1945, c. 169 as amended by P. L. 1949, c. 11, N. J. S. A. 18:25-12f.) makes it an unlawful discrimination for the owner or operator of "any place of public accommodation", in extending the privileges and facilities thereof, to discriminate against any person on account of race, creed, color, national origin, or ancestry. The term "place of public accommodation" is defined in the law (N. J. S. A. 18:25-5j) as including "any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey." The definition then goes on to provide as follows: