

SEPTEMBER 15, 1954.

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

## FORMAL OPINION 1954—No. 19.

DEAR MR. ALEXANDER:

You advise that you had been requested by the Regional Director of Region II of the United States Department of Health, Education and Welfare, to furnish that Department with the opinion of this Office as to the validity of Chapter 84, P. L. 1954, and as to the fact that any benefits granted or extended to members of the present State Employees' Retirement System based on accumulated equities under that System are not conditioned on future employment.

Chapter 84, P. L. 1954 is entitled:

"An Act to provide coverage for certain State, county, municipal, school district and public employees, under the provisions of Title II of the Federal Social Security Act, as amended; repealing chapters 14 and 15 of Title 43 of the Revised Statutes including acts amendatory thereof and supplementary thereto; granting refund of accumulated deductions paid thereunder or membership in the Public Employees' Retirement System created hereunder, specifying contributions to be paid and benefit rights therein."

This statute, as you will note, (1) authorizes and directs the State Treasurer as the State agency, established under Chapter 253, P. L. 1951, as amended, and with the approval of the Governor, to enter into an agreement with the United States Department of Health, Education and Welfare to extend the provisions of the Federal Old-Age and Survivors Insurance system to certain State, county, municipal and school district and other public employees; (2) repeals as of December 30, 1954, chapters 14 and 15 of Title 43 of our Revised Statutes, under which our present State Employees' Retirement System is established and functions and pursuant to which the benefits of this System may be extended to county and municipal employees; and (3) establishes as of January 1, 1955, a new State retirement system known as the Public Employees' Retirement System.

It is our opinion that Chapter 84, P. L. 1954 was duly and properly enacted, effectively abolishes as of December 30, 1954 the present State Employees' Retirement System, validly accomplishes the several other purposes set forth in the title of this act (*supra*), and is fully in effect subject only to the various effective dates for specific sections, as is set forth in said act.

The various tests of constitutionality to be applied to legislation relating, as Chapter 84, P. L. 1954 does, namely, to pension and retirement rights for various groups, were early set forth by our Courts in *Hulme v. Trenton*, 95 N. J. L. 30, (Sup. Ct. 1920) affirmed 95 N. J. L. 545 (E. & A. 1920). These tests inquire whether the object of the Legislation under consideration is expressed in its title, whether the employees dealt with have a proper relationship to each other, and whether it avoids the pitfall of being special legislation. A reading of the title of Chapter 84 of P. L. 1954, *supra*, makes evident the fact that the object of this legislation is precisely and fully set forth in its title. As to the remaining tests, the Supreme Court, in the case cited, pointed out that it would not be "incongruous" to

include "all public servants in a general pension act," and further, that such legislation cannot be assailed as special legislation. The language of the Supreme Court in the *Hulme* decision is equally applicable to the 1954 statute now before us for consideration.

It is also clear under the decisional law of our State that the Legislature, as a condition of employment, may require a public employee to become a member of a newly created pension system, at the same time depriving him of membership in an existing pension system. This point was adjudicated by our Supreme Court, in *Pension Commission of the Police and Fire Department of Atlantic City v. Atlantic City Fire Department Pension Fund*, 97 N. J. L. 117 (1922) aff'd 98 N. J. L. 794 (E. & A. 1923).

The facts in that case disclose that in 1920 the Legislature enacted Chapter 150, P. L. 1920, which provided for certain retirement and pension rights for policemen and firemen of municipal police and fire departments of this State, and their dependents. The act further directed the then existing municipal police and fire department pension funds to turn over funds in their possession to the municipal pension boards created under the 1920 statute. The respondent in this case, the old municipal pension fund, declined to turn over to the newly created pension fund, certain assets in the possession of the former. The Supreme Court ordered the turnover, stating that it was within the power of the Legislature to provide for a formation of a new pension system and to direct that assets of the old System, be turned over to the new fund.

The Supreme Court further went on to say that such type of legislation is "but the expression of the legislative will and purpose to make changes in the control, administration and sources of retirement and pension funds," and that the contention of respondent that legislation of this nature amounts to a forfeiture and deprivation of vested rights, is "beside the mark", such legislation being "no more than the change of one legislative trustee for another." (p. 795).

It is also appropriate to note at this point, that our Courts have uniformly held that:

"It appears to be the general rule, and is certainly the rule in this state, that compulsory deductions from the salaries of governmental employees by the authority of the government for the support of a pension fund create no contractual or vested right between such employee and the government, and neither such employees nor those claiming under them have any rights except their claims be based upon and within the statute governing the fund." *Bennett v. Lee*, 104 N. J. L. 453 (Sup. Ct. 1928); *Plunkett v. Pension Commissioners*, 113 Id. 230 (Sup. Ct. 1934), affirmed 114 Id. 273 (E. & A. 1935); *Salley v. Firemen's and Policemen's Pension Fund Commission and Jersey City*, 124 N. J. L. 79 (Sup. Ct. 1940).

The second inquiry presented for determination is whether Chapter 84, P. L. 1954 adequately protects all accumulated equities granted or extended to members of the State Employees' Retirement System, to be terminated as of December 30, 1954.

It is our opinion that Chapter 84, P. L. 1954 does adequately protect all accumulated equities and that such accumulated equities are not conditioned in any manner upon future employment.

As we have observed heretofore, the present State Employees' Retirement System is based on the provisions of chapters 14 and 15 of Title 43 of our Revised Statutes, and the various amendments and supplements thereto. The repeal of these statutes, provided for in paragraph 4 of Article II of the 1954 statute aforementioned,

is specifically conditioned upon a series of provisos, set forth in paragraph 5 of Article II, all of which have for their specific intent and purpose the protection and safeguarding of equities and benefits held as of December 30, 1954 by members of the present State Employees' Retirement System. These specific provisions, in our opinion, adequately and legally accomplish this purpose.

The power of the Legislature to provide in a new pension act for the safeguarding of pre-existing equities and benefits was approved by the Supreme Court in *Seire v. Police and Fire Pension Commission of Orange*, 6 N. J. 586, at 591, in which case the Court speaking of a 1944 pension act, held as follows:

"By the 1944 act, the Legislature created a statewide pension system for full-time policemen and firemen designed to ensure the uniform protection of all such public officers through the medium of pensions payable from a fund maintained upon a sound actuarial basis. The Legislature recognized the financial burden imposed on municipalities by pension funds operating within the scope of the earlier legislation and sought to reduce it. For the protection of those persons who were members of existing municipal funds and were disqualified by age or ill health to become members in the state fund, the municipal funds were permitted to continue in existence."

Yours very truly,

GROVER C. RICHMAN, JR.  
*Attorney General*

By : DANIEL DE BRIER  
*Deputy Attorney General*

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OCTOBER 11, 1954.

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

### FORMAL OPINION 1954—No. 20.

DEAR MR. ALEXANDER:

You have asked our opinion as to the proper method of computing the tax exemption of an honorably discharged veteran who, on October 1st of the pretax year, is the owner of vacant property assessed at less than \$500, and who, thereafter, during the tax year, improves the property by the erection of a building. Your request assumes that the veteran has complied with all statutory prerequisites for exemption.

The veteran's exemption is provided for in Article VIII, Section I, Paragraph 3 of the Constitution of 1947, as amended, which reads in part as follows:

"Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war or of other emergency as, from time to time, defined by the Legislature, in any branch of the Armed Forces of the United States shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars (\$500.00), which exemption shall not be altered or repealed." \* \* \*