

MARCH 9, 1955.

MR. GEORGE M. BORDEN,  
*Public Employees' Retirement System,*  
48 West State Street,  
Trenton, New Jersey.

## FORMAL OPINION—1955. No. 7.

DEAR MR. BORDEN:

This is in answer to your letter of February 3, 1955, in which you ask whether the Board of Trustees of the Public Employees' Retirement System may make a regulation defining the term "in service" as used in N. J. S. A. 43:15A—41 (c) and N. J. S. A. 43:15A—57 which refer to death benefits of members of the Public Employees' Retirement System who die "in service".

You have suggested that a rule be promulgated which treats a person to be "in service" for a period of three months while on official leave of absence without pay, for the purposes of the above-cited Sections of the Public Employees' Retirement Act.

You have pointed out that the Department of Civil Service treats an employee as "in service" for the purposes of acquiring seniority and promotion rights, only if said employee is actively employed with pay or on official sick leave or absence with pay.

N. J. S. A. 43:15A—39, as amended, deals with the term "in service" for the purpose of computing service for retirement purposes. It provides as follows:

" . . . In computing service or in computing final compensation, no time during which a member was absent on leave without pay shall be credited, unless such leave of absence was for three months or less, or unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State. Any such member shall be required to contribute, either in the lump sum or by installment payments, an amount calculated, in accordance with the rules and regulations of the Board of Trustees, to cover the contributions he would have paid for any service or compensation credited for the period of such official leave of absence without pay, unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State".

Although N. J. S. A. 43:15A—39 deals with the term "in service" for the express purpose of computing service for retirement, the legislation appears to be silent on the term as it might affect death benefits of a person who died while on leave of absence without pay.

N. J. S. A. 43:15A—17 provides as follows:

"The General administration and responsibility for the proper operation of the Public Employees' Retirement System and for making effective the provisions of this act shall be vested in the board of trustees. Subject to the limitations of the law, the board shall, from time to time, establish rules and regulations for the administration and transaction of its business and for the control of the funds created by this subtitle and shall perform any other functions required for the execution of this act . . ."

N. J. S. A. 43:15A—17 gives the Board of Trustees a limited rule-making power, which is confined to establishing rules and regulations "for the administration and transaction of its business and for the control of funds . . .".

The fact that the Legislature saw fit to define the term "in service" in N. J. S. A. 43:15A—39 for the purpose of computing service creditable for retirement indicates that the Legislature considered this definition to be within the proper sphere of legislation enactment. The Board of Trustees cannot take upon itself legislative prerogatives merely because the legislation is silent in the area of definition of the term "in service" as used in N. J. S. A. 43:15A—41 (c) and N. J. S. A. 43:15A—57, which referred to death benefits of members of the Public Employees' Retirement System who die "in service".

The correction of this omission is a matter for supplemental legislation.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General*

By: CHARLES S. JOELSON,  
*Deputy Attorney General*

MARCH 23, 1955.

MR. GEORGE BORDEN, *Secretary,*  
*Public Employees' Retirement System,*  
48 West State Street,  
Trenton, New Jersey.

### FORMAL OPINION—1955. No. 8.

DEAR MR. BORDEN:

This is in answer to your communication of March 15, 1955, in which you ask whether a county, municipality, or department of the State may upon request effect the retirement by the Board of Trustees of the Public Employees' Retirement System of a member of the system who is sixty years of age or over, but under the age of seventy.

N. J. S. A. 43:15A—47 provides as follows:

"Retirement from service shall be as follows:

a. A member who shall have reached 60 years of age may retire from service by filing with the board of trustees a written statement duly attested, stating at which time subsequent to the execution and filing thereof he desires to be retired. The board of trustees shall retire him at the time specified or at such other time within 30 days after the date so specified as the board finds advisable.

b. A member who shall have reached 70 years of age shall be retired by the board for service forthwith, or at such time within 90 days thereafter, as it deems advisable, except that an employee reaching 70 years of age may be continued in service from time to time upon written notice to the board of trustees by the head of the department where the employee is employed."

It should be noted that retirement by the Board in the case of a member who is sixty years of age or over, but not yet seventy years of age, shall be at the application of the member himself.

The only exception to this requirement made by our Public Employees' Retirement Act is with regard to disability retirement. N. J. S. A. 43:15A—42 provides as follows with respect to such cases: