

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:

OPINIONS

"A member, who shall have been an employee in each of the 10 years next preceding his retirement, shall, upon the application of the head of the department in which he shall have been employed or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees, on a regular disability allowance if he is under 60 years of age and on a service allowance if he has reached or passed that age. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired."

N. J. S. A. 43:15A-43 deals with accident disability retirement of members who have not attained the age of seventy, and also requires medical proof of physical or mental incapacity for the performance of duty.

In view of the foregoing, it is our opinion that the Board cannot retire a person under the age of seventy at the request of his public employer unless the conditions set forth in N. J. S. A. 43:15A-42 and N. J. S. A. 43:15A-43 dealing with disability retirements are fully met.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General

By: CHARLES S. JOELSON,
Deputy Attorney General

MAY 4, 1955.

MR. STEPHEN E. SCHANES,
Bureau of Public Employees' Pensions,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 9. (Revised)

DEAR MR. SCHANES:

This is in answer to questions raised with reference to the status of employees of the Compensation Rating and Inspection Bureau for purposes of Social Security coverage and eligibility for membership in the Public Employees' Retirement System.

BACKGROUND AND HISTORY

By virtue of P. L. 1911, c. 95, there was established a system of workmen's compensation insurance. Every insurance company or mutual association insuring employers against liability to employees was required to file its classification of risks and premiums and rules pertaining thereto, together with the basis rates and system of merit or schedule ratings applicable to such insurance, with the Commissioner of Banking and Insurance, hereinafter called the "Commissioner," and obtain his approval thereof before same could take effect (P. L. 1917, c. 178).

To secure an impartial application of such filed and approved matter, the commissioner was "authorized to create, organize, and supervise such rate, and inspection bureau or bureaus with such jurisdiction under his supervision as hereinafter provided." (P. L. 1917, c. 178, par. 15).