

entire Chapter 5 in order to preserve the Home Life Assistance program. Article IV was saved from repeal in toto. In addition, there were deleted express repealers of several specific statutes which had amended portions of Articles I and II which contain provisions for the financing and administration of the Home Life Assistance program set up in Article IV. The acts thus saved from repeal included P. L. 1947, c. 128, P. L. 1944, c. 194, P. L. 1940, c. 118, P. L. 1939, c. 377, and P. L. 1938, c. 151. These, it will be noted, included the most recent amendments to R. S. 30: 5—7 and R. S. 30:5—8.

Further, the practical construction adopted by the State, county and federal agencies concerned with the administration of the Home Life Assistance program since the adoption of P. L. 1951, c. 138 is in accordance with the opinion we have expressed herein. It is a well established principle of law that the interpretation placed upon statutes by officials charged with their administration or application will receive considerable weight in resolving any ambiguity which may be thought to inhere in a statute. See *Weinacht v. Board of Chosen Freeholders*, 3 N. J. 330 (1949); *Ford Motor Company v. N. J. Department of Labor and Industry*, 7 N. J. Super. 30 (App. Div. 1950), aff'd. 5 N. J. 494 (1950).

Very truly yours,

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

By: HAROLD KOLOVSKY,  
*Assistant Attorney General.*

MARCH 30, 1955.

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

### FORMAL OPINION—1955. No. 13.

DEAR MR. SCHANES:

You have asked our opinion as to whether, under P.L. 1954, Chapter 84, providing for the Public Employees' Retirement System, personnel of the State Militia or New Jersey National Guard, who serve in the Department of Defense in a permanent capacity, are entitled to "prior service credit" for time spent, prior to their so becoming state employees, in the active military service of the United States in time of war.

You have advised us that such credit has been claimed by virtue of R.S. 38:14-9. This legislation was originally enacted as Section 9 of Chapter 49 of the Public Laws of 1937, entitled "An Act concerning the militia of the State." It provides as follows:

"For all purposes, officers and enlisted men who entered the active service of the United States in time of war by appointment or enlistment, or under call, order or draft by the president, or who shall hereafter enter such service under like conditions, shall be entitled to credit for the time served in the active service of the United States, as if such service had been rendered in the state."

Reference should also be made to R.S. 38:12-8 (Section 7, Chapter 95, Public Laws 1939) which provides as follows:

“Officers and enlisted men serving the State in a permanent duty status shall be eligible for the disability and retirement privileges and benefits available to all other employees of the State . . .”

N.J.S.A. 43:15A-1 through N.J.S.A. 43:15A-86 (Chapter 84, Public Laws 1954) set forth and created a comprehensive retirement system for public employees. It provides, in detail, the rights and privileges which are to be accorded under the Act to all public employees, and also the special rights and privileges to be accorded to public employees who are “veterans”.

N.J.S.A. 43:15A-6(1) defines the periods of active military service which constitute a public employee a “veteran” for purposes of the Public Employees’ Retirement Act. It includes the active military or naval service of the United States during World War I between April 6, 1917 and November 11, 1918, during World War II between September 16, 1940 and September 2, 1945, and also such active service during other specified periods of war or emergency.

N.J.S.A. 43:15A-60(a) provides that public employees who have been in active military or naval service during such specified periods must be accorded prior service credits for service rendered in the employ of the State, a county, municipality, school district, or board of education. This section does not deal with the question of whether or not public employees are to be given prior service credits for time spent in the active military or naval service in time of war or emergency.

The section which deals with the question of credit for military or naval service is N.J.S.A. 43:15A-10, which provides:

“Any state employee who had entered or shall hereafter enter into the active air, military, or naval service of the United States before making application for enrollment in the retirement system shall be accepted as a member upon his filing application, provided such application is made within three months after entry into such active air, military, or naval service, and his regular salary deductions as determined by the board of trustees shall be paid to the retirement system by the employing department as provided by chapter 252 of the laws of 1942 as amended by chapter 326 of the laws of 1942 . . .”

The section quoted above deals with State employees who are not or were not members of the retirement system at the time of their entry into the armed forces. It makes specific reference to chapter 252 of the laws of 1942 as amended by chapter 326 of the laws of 1942 (N.J.S.A. 38:23-5) which deals with State employees who are or were members of the retirement system at the time of their entry into the armed forces, and which provides as follows:

“No person holding any office, position or employment under the government of the State of New Jersey or of any county, municipality, school district, or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter, or heretofore or hereafter in time of emergency entered or shall enter, the active military or naval service of the United States or the active service of the Women’s Army Auxiliary Corps, the Women’s Reserve of the Naval Reserve or any similar organization authorized by the United States to

serve with the Army or Navy and who, at the time of such entry was or is a member in good standing of any pension, retirement, or annuity fund, shall suffer the loss or impairment of any of the rights, benefits or privileges accorded by the laws governing such pension, retirement or annuity funds; and the time spent in such service by any such person shall be considered as time spent in the office, position or employment held by him at the time of his entry into such service, in all calculations of the amount of pension to which he is entitled and of the years of service required to entitle him to retire . . ."

It thus appears that no general provision has been made by the legislature for the granting of prior service credits to state employees who were in active military service before entering into the employ of the state. Furthermore, there is no indication in Chapter 84 of the Public Laws of 1954 that the legislature intended to give to veteran members of the State Militia or the New Jersey National Guard serving in the Department of Defense in a permanent status any greater benefits than are given to any other state employees who are veterans. There is no indication that the legislature intended to ingraft any exceptional benefits for any class of public employees upon the comprehensive plan and system set up by Chapter 84 of the Public Laws of 1954. This is consonant with R.S. 38:12-8 which requires that "officers and enlisted men serving the State in a permanent duty status shall be eligible for the disability and retirement privileges and benefits available to all other employees of the State," and which was enacted subsequent to R.S. 38:14-9, upon which the claim for exceptional prior service credit is based.

It is, therefore, our opinion that active military service in the armed forces of the United States prior to the date that any member of the retirement system became eligible for membership in the system by virtue of his public employment cannot be used as a basis for prior service credit in the Public Employees' Retirement System by any public employee.

In view of the foregoing, we do not, in this opinion, find it necessary to pass upon the question of whether or not, under R.S. 38:14-9, and for a purpose other than Chapter 84 of the Public Laws of 1954, a member of the State Militia or New Jersey National Guard serving in the Department of Defense in a permanent capacity is entitled to service credit for active service in the armed forces of the United States in time of war in cases where such active service was rendered before the person became a State employee.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General*  
*of New Jersey.*

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