

neglected to extend protection to employees of independent governmental agencies such as the Passaic Valley Sewerage Commission, but there is no basis for believing that in its corrective action the Legislature intended to protect such employees and exclude others comparably situated. Indeed, the introducer's statement attached to the bill which became L. 1945, c. 175, expresses its purpose as being to effectuate the legislative policy the veterans' protection "should be general and apply equally to all veterans and not to any individual or group"; and in the legislation itself there could have hardly been more appropriately comprehensive language than the phrase "all those engaged in the public service in any of its branches within this State." See *State v. McCall*, 14 N. J. 538, 545 (1954.)"

It will be observed from the foregoing, that the Court considered Chapter 175, P. L. 1945 in relation only to the act it was designed to supplement, namely the Veterans' Tenure Law. (See *Brickett v. Lagay*, 134 N. J. L. 1 (E. & A. 1945). The Veterans' Tenure Act, however, applies only to persons "holding any employment, position or office under the government of this state . . ." and as we have noted hereinbefore, we are of the opinion that employees of Rutgers University do not hold such employment.

The contention made on behalf of Rutgers University regarding the alleged public nature of employment by it, would result in extending to the statute under discussion a construction greatly beyond, and different from, its words. We are bound by the canon of construction which requires that a statute be given no broader construction or effect than its language justifies. *Belfer v. Borrelli*, 6 N. J. Super. 557 (1949) aff'd. 9 N. J. Sup. 287, (1950).

Except where uncertainty and ambiguity appear, a statute must speak for itself and be construed according to its own terms. *Bass v. Allen Home Improvement Co.*, 8 N. J. 219 (Sup. Ct. 1951).

Had the Legislature intended to constitute service with Rutgers University as public employment with the State for purposes of the act establishing the Public Employees' Retirement System, the Legislature could have so stated.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: HAROLD KOLOVSKY,
Assistant Attorney General.

MAY 25, 1955.

MR. ELMER G. BAGGALEY,
Consolidated Police and Firemen's Pension Fund Commission,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 21.

DEAR MR. BAGGALEY:

You have requested our opinion as to whether the widow of a fireman who was killed in the performance of his duties after having served honorably for more than twenty-five years and after having reached the age of sixty-five, should be granted a widow's pension under R. S. 43:16-4, or the lesser widow's pension provided by R. S. 43:16-3.

It is clear that under the provisions of R. S. 43:16-1, as amended, the deceased should not have been employed as a fireman at the time of his injury in the line of duty which resulted in his death, since this statute provides for the mandatory

retirement of members who have reached the age of sixty-five, and have served honorably for twenty-five years. R. S. 43:16-1, as amended, follows:

"In all municipalities any active member of a police department or of a paid or part paid fire department or of a county police department including active members of the paid or part paid fire departments of any fire district located in any township which has adopted the provisions of an act entitled "An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments," approved April fifteenth, one thousand nine hundred and twenty (P. L. 1920, c. 160) or of chapter sixteen of Title 43 of the Revised Statutes, who shall have served honorably in the police or fire department for a period of twenty-five years and reached the age of fifty-one years, or any employee member of any such department who shall have served honorably in such department for a period of twenty-five years and who has reached the age of sixty years shall, on his own application, be retired on a service retirement pension equal to one-half of his average salary. Any active member of the police or paid or part paid fire department including active members of the paid or part paid fire department of any fire district as aforesaid who shall have served honorably for a period of twenty-five years and reached the age of sixty-five years and any employee member of any such department who shall have served honorably in such departments for a period of twenty-five years and reached the age of seventy years shall be retired on a service retirement pension equal to one-half of his average salary."

You have informed us that in this case, as in all other similar cases, the Consolidated Police and Firemen's Pension Fund Commission followed a policy of calling the mandatory nature of the above legislation to the attention of the proper authorities in the various employing municipalities, and directed the retirement of persons subject to compulsory retirement. We further understand that your Commission accepted no contributions in behalf of the member in question after he reached the age of compulsory retirement.

We now turn to a consideration of R. S. 43:16-3 and R. S. 43:16-4. The former provides a pension for the widow of a member of a police or fire department "who shall have been retired on a Service retirement pension or who shall have continued in service after becoming eligible for such pension and shall not have lost his life while on duty, or shall have been retired on a service disability pension, and which member shall have paid into the fund the amount of his annual assessments or contributions required . . ." The latter provides a greater pension for the widow of a member of a police or fire department "who shall have paid into the fund the full amount of his annual assessments or contributions and shall have lost his life while on duty."

The language of R. S. 43:16-4 requires that a member who loses his life while on duty have paid in full his annual assessment or contributions up to the time he so loses his life in order for his widow to be eligible for the greater benefits therein provided. Since no contributions are accepted in behalf of a member remaining on duty after the compulsory retirement age, such a member cannot be regarded as having satisfied all of the requirements of R. S. 43:16-4.

Furthermore, if a widow's pension were granted, under R. S. 43:16-4, to the widow of a fireman who continued as a member of a fire department in contravention of R. S. 43:16-1, as amended, the Consolidated Police and Firemen's Pension Fund Commission would be in the position of condoning a violation of the Act under which it is created.

Nor does the provision in R. S. 43:16-3 which establishes a pension to the widow of a member of a police or fire department "who shall have continued in service after becoming eligible for pension and shall not have lost his life while on duty" sanction any member being kept on duty after the age of compulsory retirement. It is evident that this provision deals with a member, under the age of sixty-five who, although eligible for permissive retirement, remains as a member of a police or fire department as expressly allowed by R. S. 43:16-1, as amended. It also applies to a fire or police chief who may be retained in service after the age of sixty-five by the governing body of a municipality pursuant to the express authority of R. S. 43:16-1.1.

In view of the foregoing, it is our opinion that no pension rights may be granted under R. S. 43:16-4 to the widow of a member of a fire or police department who continues in such employment beyond the mandatory retirement age provided in N. J. S. A. 43:16-1.

Pension rights may, however, be granted to the widow herein of the lesser pension benefits provided under R. S. 43:16-3, since it provides for the widow of a member "who shall have been retired on a service retirement pension . . ." The member herein should be so regarded since he should have been in retirement status at the time of his death.

Very truly yours,
GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

CSJ/gc

MAY 25, 1955.

HONORABLE CHARLES R. HOWELL,
Commissioner of Banking and Insurance.
State House Annex,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 22.

Re: Taxation of annuity considerations, deductibility of considerations returned under provisions of annuity policies.

DEAR COMMISSIONER HOWELL:

Our advice has been requested as to whether it is proper for an insurance company in filing its annual report as required by Section 8, Chapter 132, P. L. 1945, N. J. S. A. 54:18A-8, to deduct from gross considerations on annuity policies sums paid at death or surrender of the policy. We understand that the companies concerned have asserted a right to a deduction only as to sums paid on annuity contracts under which annuity payments have not commenced and we limit our opinion to a consideration of that situation.

In connection with this problem we have examined the provisions of several policies. One provides, "If the annuitant dies before the policy anniversary on which the annuitant's age, nearest birthday, is 65, the Company will pay to the beneficiary a sum equal to the premiums for this policy * * *. The owner can surrender this policy at any time before the pension date and receive its cash value. * * *." Another of such policies provides that if a participant shall die before the effective annuity date there shall be refunded to his beneficiary the contributions made with respect to such annuity with interest. Likewise, if the employment of a participant