

November 30, 1955.

MR. GEORGE M. BORDEN, *Secretary,*
Public Employees' Retirement System,
48 West State Street,
Trenton, N. J.

FORMAL OPINION—1955. No. 41.

DEAR MR. BORDEN:

This is in answer to your request for an opinion as to whether a member of the Public Employees' Retirement System may purchase credit towards retirement for a period of time covering a leave of absence without pay which exceeded three months. You have asked us to consider both the case of a member whose leave of absence without pay in excess of three months was at a time prior to January 1, 1955, and the case of a member whose leave of absence without pay in excess of three months was subsequent to January 1, 1955. It should be understood that we are not herein dealing with cases of leaves of absence for which service credits are allowed for retirement purposes by the provisions of any law of this state, but only with routine leaves of absence pursuant to discretionary authority given to the head of the employment unit.

The Public Employees' Retirement Act (N. J. S. A. 43:15A-1, et seq.) went into effect on January 1, 1955. N. J. S. A. 43:15A-39, which is a part of that act, provides as follows:

" . . . In computing the 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 3 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." . . .

Under the above section, it is clear that a member shall not be entitled to purchase credit for a leave of absence without pay which exceeds three months "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."

The corresponding section when the old State Employees' Retirement Act was in effect was R. S. 43:14-27, now repealed, which provided as follows:

" . . . In computing the 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 was allowed for retirement purposes, at the time the leave of absence was granted, both by the head of the department, or other branch of the State service not included in a department in which the member was employed, and the board of trustees.*" (underscoring supplied).

It appears from the foregoing that if an employee was on leave of absence without pay for more than three months, and such period was not allowed for retirement purposes at the time such leave was granted, both by the head of his department and the board of trustees of the State Employees' Retirement System, such period of leave of absence could not be used in computing service toward retirement even under the old State Employees' Retirement Act.

Since it is our understanding that in none of the cases in your office at the present time which concern applications to purchase credit toward retirement for a period of time covering a leave of absence of more than three months prior to January 1, 1955, was such leave of absence approved by the head of the department involved and the board of trustees of the State Employees' Retirement System at the time such leave of absence was granted, we are not required to deal with the problem of whether or not such a leave of absence if it had been so approved, could be computed toward retirement by the purchase of credit therefor at the present time.

It is, therefore, our opinion that the Board of Trustees of the Public Employees' Retirement System should deny applications presently under consideration for the purchase of credit towards retirement for a period of time covering leaves of absence without pay which exceeded three months.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

December 8, 1955.

HONORABLE JOHN P. MILLIGAN,
Director, Division Against Discrimination,
Department of Education,
162 West State Street,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 42.

DEAR MR. MILLIGAN:

You have requested our opinion as to whether the Law Against Discrimination (N. J. S. A. 18:25-1 et seq.) applies to summer camps operated by bona fide religious or sectarian institutions. We understand that your inquiry refers to summer camps maintained for children of school age rather than to recreational vacation facilities for adults.

We have reached the conclusion that if such a camp caters to the public generally, it is covered by the Law Against Discrimination as a "place of public accommodation"; but if attendance at the camp is limited to members of a certain creed or of a particular religious or sectarian institution, it is not subject to that law.

The law prohibits discrimination because of race, creed or color in the admission of persons to "any place of public accommodation" (N. J. S. A. 18:25-12(f)). Section 18:25-5(j) of the law provides in part as follows:

"A place of public accommodation' shall include any tavern, road-house, or hotel, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; * * * swimming pool, amusement and recreation park * * * gymnasium * * * kindergarten,