December 8, 1955.

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

## FORMAL OPINION—1955. No. 43.

DEAR MR. BORDEN:

You have requested our opinion as to the amount of prior service credit to be granted by the Public Employees' Retirement System to a non-veteran who is presently Deputy Clerk of the Mercer County District Court, and who was so employed at the time Mercer County adopted the former State Employees' Retirement System in November, 1954. Specifically, you have asked us whether this employee is entitled to receive prior service credit for such service performed prior to January 1, 1949, when pursuant to P. L. 1948, ch. 384, every district court of a city became a county district court or a part of a county district court. We understand, that, pursuant to N. J. S. A. 43:15A-74, he has already been granted prior service credit for service rendered subsequent to January 1, 1949 and up until June 30, 1955, which was the date the Public Employees' Retirement System became effective in Mercer County.

N. J. S. A. 43:15A-75 provides that if the Public Employees' Retirement Act is adopted by a county or municipality, "an employee who elects to become a member within one year after this act so takes effect shall be entitled to a prior service certificate covering service to the county or municipality prior to the date this act so becomes effective."

It should be pointed out that the employee in question is not a county employee, but is rather a state employee who is paid by Mercer County. In *Pierson v. O'Connor,* 54 N. J. L. 36 (Supreme Court, 1891) the court considered the status of the district courts which were at that time known as city district courts. The Supreme Court stated (page 39):

> ". . . Can the District Court in any sense be regarded as an institution under the municipal government of the City? True, by law creating the court, it can have existence only in certain cities, and its jurisdiction is, to some extent, bounded by the City limits, but neither the court nor its clerk is in any wise concerned in municipal administration. The city and its officers belong to a department of government quite different from that in which the District Court has its place. One is an administrative agency of the state over territory assigned to it, and the other is part of the judicial power of the State.
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> "That the city is charged with the payment of the salaries of both the judge and the clerk does not serve to characterize the office as a municipal office. Both the judge and his clerk have their appointment from the state; the judge directly, his clerk indirectly from the judge, and it would be immaterial in giving character to the office whether the legislature had directed their salaries to be paid out of the state, county, or city treasury. It was clearly within the power of the legislature to enforce either mode of making compensation. The District Court has, I think, no relationship with municipal government. The municipality may be a suitor in the court, and bound by its judgments. The government of the city may be changed or abolished

and a new form of government set up, and the court still remain with its powers and duties unimpaired. . ."

In *Varbalow v. Civil Service Commission,* 15 N. J. Misc. 444 (Supreme Court, 1944), the court held a sergeant at arms of a District Court to be "in the state service and not a municipal officer."

However, despite the fact that the employee in question is to be considered a state employee, he is entitled to the same prior service credits as are allowable to county employees by virtue of N. J. S. A. 43:15A-79, which provides as follows:

> "All employees of the state whose compensation is paid in whole or in part by any county or municipality in which chapter 15 of Title 43 of the Revised Statutes has been, or in which this act is, adopted shall be entitled to receive the same benefits as employees of such county or municipality are entitled to receive and the county or muniicpality paying such compensation shall have the same obligations with respect to such employees of the State as it has to its own employees under this act."

A question arises as to whether the employee in question became entitled to credit for his service as Deputy Clerk in the District Court of the City of Trenton prior to January 1, 1949, since N. J. S. A. 43:15A-79 places upon a county which has adopted the Public Employees' Retirement Act only those obligations which it has to its own employees, namely the allowance of prior service credit for service to that county. However, since there is no question that the employee is entitled to prior service credit for his service as Deputy Clerk rendered subsequent to January 1, 1949, when the city district court in which he had previously served became a county district court, there would appear to be no reason for denying him prior service credit for the period of time during which he served in an identical capacity prior to January 1, 1949.

City district courts became known as county district courts pursuant to P. L. 1948, ch. 384. Section 9 thereof provides as follows:

> "The clerks, deputy clerks, sergeants-at-arms, assistants, clerical assistants and employees of the district courts shall continue in their respective offices, positions and employments and, in the case of city district courts and district courts of judicial districts in counties, the said officers and employees shall be transferred to the county district court of the county wherein the said former courts are located, and they shall continue to perform their respectitve or similar functions and duties, except that one of them may be designated pursuant to rules of the Supreme Court as the supervising clerk of the County District Court."

The employee in question is clearly entitled under N. J. S. A. 43:15A-79 to prior service credit for his service rendered in the employ of the county district court since January 1, 1949. Since the nature of his functions and duties were the same after January 1, 1949 as before that date, he should not be cut off from receiving credits for the earlier period of his employment.

You have suggested that the allowance of credits for the earlier period might be based on R. S. 40:11-5, which provides as follows:

> "Whenever heretofore there has been or hereafter there may be effected by appointment, transfer, assignment or promotion, of a municipal employee, to any other department or position in the municipal employ, or to a position or department of the county government; or when there has been or here-

after may be effected by appointment, transfer, assignment or promotion, of a county employee, to any other position or department in the county employ, or to a department or position of the municipal government, in counties of the first or second class, the period of such prior service in said county or municipal employment, for any purpose, whatsoever, shall be computed as if the whole period of employment of such employee had been in the service of the department, or in the position, to which the said employee had been appointed, transferred, assigned or promoted."

However, since R. S. 40:11-5 refers to appointment, transfer, assignment or promotion of municipal or county employees, it is doubtful that the legislation could be applied to the employee in questiton whom we have already established to be a state employee. We prefer to have our opinion as to the allowance of service credit herein upon N. J. S. A. 43:15A-79 as interpreted in the light of P. L. 1948, ch. 384. A consideration of these statutes leads us to the opinion that the employee under consideration is entitled to receive prior service credit payable by Mercer County for time spent as Deputy Clerk of both the District Court of the City of Trenton and the Mercer County District Court.

Very truly yours,

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

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

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December 28, 1955.

HONORABLE *EDWARD* J. PATTEN,
*Secretary of State,*
State House,
Trenton 7, New Jersey.

## FORMAL OPINION—1955. No. 44.

MY DEAR SECRETARY OF STATE:

You have requested our opinion as to the beginning and ending dates of terms of office of County Clerks and Surrogates.

Article 7, Section 2, Paragraph 2 of the Constitution of 1947 provides as follows:

"County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law."

It is seen that the Constitution does not provide when the terms shall commence or end.

An analysis of the various statutes pertaining to County Clerks and Surrogates indicates that the legislature has not defined the beginning and ending termini of