

Indeed, for the taxpayer to appeal the apportionment valuations or the apportionment would be fruitless for no matter what change was made in either, the amount of the tax assessed against the taxpayer would not be affected. Moreover, even if it desired to do so, the taxpayer would not be permitted to contest either the apportionment valuation or the apportionment. See *New Jersey Water Company v. Hendrickson*, 88 N. J. L. 595 (Sup. Ct. 1916); aff'd 90 N. J. L. 537 (E. & A. 1917).

The letter accompanying your request for this opinion indicates that there is a question as to the rate of interest to be charged on franchise and gross receipts taxes paid after the due date. As quoted above, R. S. 54:31-58 provides that these taxes shall be ". . . subject to the same . . . interest . . . as personal taxes . . ." This has reference to the interest rate on personal property taxes, for which a taxpayer is personally liable under R. S. 54:4-1, as amended.

The interest rate on such taxes is arrived at pursuant to R. S. 54:4-67 which states, inter alia:

"The governing body may also fix the rate of interest to be charged for the nonpayment of taxes or assessment on or before the date when they would become delinquent. The rate so fixed shall not exceed eight per cent per annum."

Thus, a resolution adopted in accordance with this provision operates to fix the rate of interest to be charged on franchise and gross receipts taxes paid after the due date.

Yours very truly,

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

By: THOMAS L. FRANKLIN,  
*Deputy Attorney General.*

May 16, 1955.

HON. ARCHIBALD S. ALEXANDER,  
*State Treasurer of New Jersey,*

State House,  
Trenton 7, New Jersey.

### MEMORANDUM OPINION P-12.

Re: *Pension Fund Voucher Signatures*

DEAR MR. ALEXANDER:

We have your recent memorandum requesting our opinion as to whether the chairman of the board of trustees of a pension fund may "properly authorize the secretary of the board, or some other official of the board, to affix his signature by machine" to the pension fund vouchers.

The several statutes creating the State Pension Fund Systems vary somewhat in defining the powers and duties of the officers of the board of trustees or commissioners who are charged with the responsibility of administering the pension funds. Some statutes provide that all payments from the funds shall be made by the State Treasurer only upon "vouchers signed by the chairman and countersigned by the secretary of the board of trustees," (N. J. S. A. 43:15A-35), while others provide that all moneys paid out of the pension fund shall be paid by the State Treasurer upon warrants "signed by the president and secretary of said pension commission, or such other officers as the pension commission shall designate," (R. S. 43.7-19,

as amended). Still others provide that all payments from the pension fund shall be made by the State Treasurer "only upon vouchers signed by the chairman and countersigned by such other person as the board of trustees may designate," (R. S. 18:13-104), and R. S. 43:16A-14(2) states that all payments shall be made by the State Treasurer only "upon vouchers signed by two persons designated by the board of trustees." (See also N. J. S. A. 43:8A-17(2), R. S. 43:16A-14(2) and R. S. 43:7-19, as amended.)

In determining the question posed, we think that it turns on the proposition as to whether the statute creating a particular pension fund gives authority to the pension officer to delegate his power to sign the voucher and whether the exercise of that power is discretionary or ministerial.

Generally, it has been held that in the absence of statutory authority, a public officer cannot delegate his discretionary authority. "An officer, to whom a power of discretion is entrusted, cannot delegate the exercise thereof, except as prescribed by statute" (67 C. J. S. Sec. 104). "Where judgment and discretion are required of municipal officers, they cannot be delegated without express legislative authority." (*State, Danforth. pros. v. City of Paterson*, 34 N. J. L. 163, (Supreme Court 1870)). "A public officer charged with the performance of official duties does not necessarily have the power to delegate his authority to a person not authorized by law to act," (43 Am. Jur. Sec. 461). "Official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person." (43 Am. Jur. Sec. 461.)

It is not easy to enunciate a hard and fast rule distinguishing which acts are discretionary from those which are ministerial, but the following definitions have received court approval:

"A ministerial act has been defined as 'one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority and without regard to or the exercise of his own judgment upon the propriety of the act being done' \* \* \*.

"Discretion may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment and conscience and not controlled by the judgment or conscience of others." (*Independent School District of Danbury v. Christiansen*, 49 N. W. 2d 263 (Supreme Court Iowa, 1951). See also *Schwartz v. Camden*, 77 N. J. Eq. 135 (Ch. 1910).

The officers and members of the several boards of trustees and commissions are legislatively charged with the responsibility of administering the pension funds. The signing of the warrant by the pension officials is evidence of the determination made by them, in the exercise of their judgment and discretion, that the payee is entitled, under the existing facts and law, to the pension payment therein referred to. The power to make this determination cannot be delegated, unless there be specific statutory authorization for such delegation.

Since several of the pension acts contain express authority for the delegation of the power to sign pension vouchers, while others do not, reference should be made in each case to the applicable statute.

Very truly yours,

GROVER C. RICHMAN, JR.,  
Attorney General.

By: ROGER M. YANCEY,  
Deputy Attorney General.