

treated and counted in the same manner as absentee ballots for the general election and the result of the canvass certified to the appropriate district clerk.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: JOSEPH LANIGAN
Deputy Attorney General

JL:MG

JANUARY 11, 1956

MR. WILLIAM J. JOSEPH
Assistant to Secretary
Division of Pensions
State House Annex
Trenton, New Jersey

FORMAL OPINION, 1956—No. 2

DEAR MR. JOSEPH :

You have asked our opinion as to whether a teacher who retires as a member of the Teachers' Pension and Annuity Fund upon full retirement allowance at a time when she lacks a sufficient period of service in order to be covered by Social Security may continue to be paid such full retirement allowance in the event she subsequently becomes eligible to receive Social Security benefits by reason of public employment covered by Social Security.

You have brought to our attention a situation which may likely come about now that, by virtue of the authority of c. 37, P.L. 1955, the State Agency for Social Security has entered into a contract with the Secretary of the United States Department of Health, Education and Welfare for the purpose of extending Social Security coverage to members of the Teachers' Pension and Annuity Fund effective January 1, 1955. You ask us to contemplate a situation in which a teacher retires on full retirement allowance effective March 31, 1956, at a time when she will have only five quarters of coverage under Social Security instead of the six quarters which are necessary to entitle her to Social Security benefits. You ask us to assume further that such teacher is immediately re-employed as of April 1, 1956 as a substitute teacher, a position which is not covered by the Teachers' Pension and Annuity Fund, but which would be covered by Social Security. As a result of such employment for a period of three months, such teacher would obtain her sixth quarter of Social Security coverage, thereby making her eligible to receive Social Security benefits if she has attained the required age. Incidentally, during this three month period of employment as a substitute, she might still continue to receive her pension inasmuch as R.S. 43:3-5, as amended, removes the disqualification established by R.S. 43:3-2, as amended, against a pensioner holding public employment in the case of a retired member of the Teachers' Pension and Annuity Fund who is employed by the State, county, municipality, or school district "at a salary or compensation of not more than seven hundred fifty dollars (\$750.00) per year."

Specifically, you ask whether or not, in the situation outlined in the paragraph

immediately above, the Teachers' Pension and Annuity Fund is entitled to offset against the full retirement allowance of such teacher, the amount received or receivable by her by way of Social Security benefits to which she may become entitled by reason of the sixth quarter of employment as a substitute teacher at a time when she was not a contributing member of the Teachers' Pension and Annuity Fund.

Sec. 68, c. 37, P.L. 1955, provides as follows:

"When a member who retires reaches age 65, or upon retirement of a member after the attainment of age 65, the board of trustees shall reduce the retirement allowance by the amount of the old age insurance benefit under Title II of the Social Security Act paid or payable to him whether received or not. Membership in the retirement system shall presume the member's acceptance of and consent to such reduction. However, such reduction shall be subject to the following limitations:

"(a) The amount of the old age insurance benefit shall be computed in the same manner as computed by the Federal Social Security Administration, except that in determining such benefit amount only the wages or compensation for services performed in the employ of the State, or 1 or more of its instrumentalities, 1 or more of its political subdivisions, or 1 or more instrumentalities of its political subdivisions, or 1 or more instrumentalities of the State and 1 or more of its political subdivisions shall be included. . ."

The above section requires that Social Security benefits based upon specified public employment are to be offset from retirement allowances from the Teachers' Pension and Annuity Fund. It does not limit this offset to benefits based upon public employment at a time before retirement under the Teachers' Pension and Annuity Fund Act. Furthermore, it would be a distortion of the clear purpose of c. 37, P.L. 1955, which is generally to integrate the Teachers' Pension and Annuity Fund with Social Security, if a member of the Teachers' Pension and Annuity Fund were to be permitted to avoid the necessity of giving the Fund credit for Social Security benefits based upon public employment by the simple expedient of retiring on full pension at a time when she does not have sufficient service covered by Social Security to entitle her to Social Security benefits, and thereafter accept employment as a substitute teacher which will entitle her to such benefits. In view of this fact, and in view of Sec. 68, c. 37, P.L. 1955, it is our opinion that the Teachers' Pension and Annuity Fund is entitled to offset against the retirement allowance of the teacher in the case which you have presented to us for consideration, the amount received or receivable by her for Social Security benefits to which she might become entitled by reason of service rendered subsequent to retirement in the employ of a school district or board of education.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHARLES S. JOELSON
Deputy Attorney General