

It was stated in *State v. Rutherford*, 98 N.J.L. 465, 466 (E. & A. 1923) with respect to the constitutional provision here involved that "the language of the constitution seems to us too plain to call for interpretation or construction", and that clearness of expression, here as there, dictates the answer to the problem posed. Perforce the constitutional provision, coupled with the pertinent statutes, submerged lands or the moneys derived from the sale of such lands are dedicated to the permanent school fund. But, the income arising from such lands, while limited to being expended for the annual support of the free public schools or if deemed expedient for an increase of the capital of the fund, is not so dedicated. Thus in terms of accounting our fundamental law envisions two accounts—a school fund investment account (perpetual fund) and a school fund income account (income from perpetual fund). As revenue from the licenses here is neither submerged land nor proceeds from the sales thereof, it must be applied to the latter account.

Our position with respect to the proper application of the license revenue is buttressed by R.S. 18:10-6 which provides that income from the leases of submerged lands shall be a part of the income of the school fund. License revenue and lease income are both gains derived from the lands here held and for present purposes seem equivalent. These incomes are allied by nature and may be said to be of the same kind. On principle they should be afforded like treatment.

It is our opinion that revenue from license agreements permitting the party thereto to maintain any structure or to dig, dredge or remove any deposits of sand or other material upon or from the submerged lands of the State should be applied to the school fund income account.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD ASHBY
Legal Assistant

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SEPTEMBER 4, 1956

MR. JOSEPH E. CLAYTON
Assistant Commissioner of Education
Department of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION, 1956—No. 14

DEAR COMMISSIONER CLAYTON:

You have requested our opinion as to whether a teacher who was 65 years of age or older when she retired on March 31, 1956, and who then did not have sufficient quarters of coverage by virtue of public employment to qualify her for Social Security benefits, and who has since qualified for such benefits through private employment, may be employed as a substitute teacher earning not more than \$1,200.00 annually without any offset being applied against her retirement allowance.

In our opinion, such a person may be employed as a substitute teacher without

any offset being applied against her retirement allowance. The applicable law, Section 68 of C. 37, P.L. 1955 (N.J.S.A. 18:13-112.70) provides:

"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 enactment makes provision for offset in two circumstances only. In the case of a member who retires before age 65, the offset is applied at the time such person reaches age 65. In the case of a member who retires after attaining age 65, the offset is applied at the time of retirement. Under the facts stated, the teachers retired at age 65 and worked their final quarter qualifying them for Social Security benefits in private employment. No offset may be applied against their teachers' pensions because of subsequent earnings as substitute teachers.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

SEPTEMBER 18, 1956

HON. ROBERT L. FINLEY
Deputy State Treasurer
State House
Trenton 7, New Jersey

FORMAL OPINION, 1956—No. 15

DEAR MR. FINLEY:

You have requested our opinion as to what effect the Social Security Amendments of 1956, Pub. L. No. 880, 84th Cong., 2d Sess., Ch. 836 (August 1, 1956), amending Title II of the Social Security Act, may have upon the offset provisions of c. 84, P.L. 1954, and c. 37, P.L. 1955, as amended.

The State acts in question deal with the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund. Both of them contain sections providing for offsetting the amount of an individual's Social Security benefit against the