

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

amount of his or her retirement allowance payable from the State administered systems.

Section 59 of c. 84, P.L. 1954, (N.J.S.A. 43:15A-59) provides, *inter alia*:

"Upon attainment of age 65 by a retired member or upon retirement of a member after the attainment of age 65, the board of trustees shall reduce such member's retirement allowance by the amount of the old age insurance benefit under Title II of the Social Security Act payable to him. 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 wages or compensation for services performed in the employ of the State, 1 or more of its instrumentalities, 1 or more of its political subdivisions, or 1 or more instrumentalities of its political subdivisions, shall be included. \* \* \*

Section 68 of c. 37, P.L. 1955, (N.J.S.A. 18:13-112.70) similarly provides *inter alia*:

"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. \* \* \*

Two principal changes have been effectuated by the enactment of the Social Security Amendments of 1956. First, the age at which women may commence receiving Social Security benefits has been reduced from sixty-five to sixty-two. Sec. 102, amending Sec. 216 (a) of the Social Security Act. Second, fewer quarters of coverage are now required in many instances for both men and women to obtain the benefits of the legislation. Section 108 of the act provides that Section 214(a)(3) of the Social Security Act has been amended to read as follows:

"(3) In the case of any individual who did not die prior to January 1, 1955, the term 'fully insured individual' means any individual who meets the requirement of paragraph (2) and, in addition, any individual with respect to whom all but four of the quarters elapsing after 1954 and prior to (i) July 1, 1957, or (ii) if later, the quarter in which he attained retirement age

or died, whichever first occurred, are quarters of coverage, but only if not fewer than six of such quarters so elapsing are quarters of coverage."

Your first question is:

"1. Do these new Social Security amendments have an effect upon persons who have already retired from the two systems and who under previous Federal Law were not eligible for Social Security benefits by virtue of public employment and who now would qualify for such benefits by virtue of a reduction in the requirement concerning quarters of coverage? For example, a female employee age 62, who retired on July 31, 1956, would receive a full retirement allowance for the remainder of her life by virtue of the fact that she had not qualified for a Social Security benefit under previous Federal Statute. This person is eligible to receive Social Security benefits as of November 1, under the new Federal amendments. Does this new eligibility mean that this person's retirement allowance will be off-set by Social Security benefits upon her attaining age 65 even though she retired at a time when the new amendments were not in effect?"

As you state, at the time of retirement from State service of the individuals in question, they were not entitled to Social Security benefits by virtue of the public employment in which they had been engaged. Under the Social Security Amendments of 1956, they will be entitled to receive such benefits commencing November, 1956 and thereafter, notwithstanding the fact that they have not been employed subsequent to their retirement. Thus, this Federal legislation applies to employees who retired prior to its enactment. It is clear from the language of both State enactments that when the individuals in question attain the age of 65 the offset must be applied. It is not the retirement of a person under the age of 65 which brings into operative effect the offset provisions of the sections in question. The offset is not applied until such retired person attains the age of 65. It is at this time, subsequent to the passage of the amendatory Federal legislation, that the amount of the Social Security benefit is examined so that the offset may be applied. Hence, there is no meritorious question of retroactive application or the like. We may observe that if a person retired prior to August 1, 1956 without then having sufficient quarters of coverage in public employment to be fully insured, and also attained the age of 65 prior to that date, the offset would not be applied.

We may note also that neither paragraphs (e) and (f) of N.J.S.A. 18:13-112.70 nor paragraphs (d) and (e) of N.J.S.A. 43:15A-59 are pertinent to the question presented. Paragraph (e) of N.J.S.A. 18:13-112.70 and paragraph (d) of N.J.S.A. 43:15A-59 relate to an increase in the amount of the benefit. The Federal legislation in question has not changed the amount of the benefit; rather, it has reduced the retirement age for women and decreased the number of quarters of coverage required to be "fully insured". Paragraph (f) of N.J.S.A. 18:13-112.70 and paragraph (e) of N.J.S.A. 43:15A-59 have substantially the same language. Paragraph (f) of N.J.S.A. 18:13-112.70 provides:

"(f) Whenever the amount of such reduction from the retirement allowance shall have been once determined, it shall remain fixed for the duration of the retirement allowance, except that any decrease in the amount of the old age insurance benefit under Title II of the Social Security Act shall result in a corresponding decrease in the amount of reduction from the retire-

ment allowance, and except that any error may be corrected, as provided in section 63 of this act. \* \* \*'

The amount of reduction from the retirement allowance is determined at the time the offset is applied. Thus, in the particular example you pose in your first question, the offset or amount of reduction from the retirement allowance of the female employee in question would be determined and applied when she reaches 65 years of age. It would remain unchanged thereafter except in the case of a decrease in the amount of the benefit.

Under the Social Security Act as amended, but prior to the 1956 amendments in question, a person who retired at age 65 or older needed only six continuous quarters of coverage to be fully insured. Thus, those members of the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund who retired at age 65 or older on June 30, 1956, then having six continuous quarters of coverage in public employment, were fully insured and the offset provisions of our New Jersey statutes were applied to them. Under the Social Security Amendments of 1956, a minimum of six quarters of coverage is still required in order to be fully insured.

You next ask:

"2. Do the new Federal amendments affect the calculation of the retirement allowance of a person retiring after October 1, but prior to November 1, 1956, who would not qualify for a Social Security benefit under previous federal law but who will be eligible for benefits after November 1, under the new amendments?"

3. Will the new Federal amendments apply in determining the retirement allowances of all persons retiring after November 1, 1956?"

The answer to both of these questions is obviously in the affirmative. We may add that we have been informed by counsel to the Department of Health, Education and Welfare that the amendments to section 214 (a) (3) are effective upon enactment, i.e. August 1, 1956.

We emphasize that a legislative declaration of policy is clearly implicit in both the Public Employees' Retirement System and the Teachers' Pension and Annuity Fund statutes. These laws were not designed to grant two pensions to a member employee, that is, a State retirement allowance plus Federal Social Security benefits.

The evident policy underlying these enactments was to integrate State pensions and Federal Social Security in order to permit public employees and teachers to obtain greater benefits than would otherwise be actuarially practicable. The application of the offset provisions permits the granting of these greater benefits by deferral of a substantial portion of the liability to the Federal Social Security fund. By the integration acts, the Federal government for the first time assumed that liability to public employees and teachers of New Jersey.

The additional benefits now available pursuant to Chapter 84 of the Laws of 1954 and Chapter 37 of the Laws of 1955 include the death benefits of one and one-half times the salary for all active members up to age 70 and three-sixteenths of salary for retired members age 60 or over. If the State, instead of the Federal government, had to pay for these benefits, sound actuarial policy would require the maintenance of large reserves to meet the liabilities thereby created. In sum, the policy of the enactments in question is to grant to public employees and teachers

greater benefits than could be obtained for them otherwise and to accomplish this end without heavy additional outlay. The policy of the enactments is not to furnish *double* pensions, both State and Federal, as some employees seeking to avoid the offset provisions of the acts apparently consider. The payment of such benefits would be an unjustifiable windfall, fiscally and actuarially ruinous to the State of New Jersey. There has been some avoidance of the offset provisions heretofore on technical legal grounds by employees who had not qualified for Federal Social Security coverage through public employment at the time of retirement. Such avoidance cannot be available in the future, under the present laws, for the vast majority of public employees and teachers.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: LAWRENCE E. STERN  
*Deputy Attorney General*

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SEPTEMBER 18, 1956

MR. WILLIAM J. HARDING, *President*  
*Middlesex County Board of Taxation*  
County Record Building  
New Brunswick, N. J.

FORMAL OPINION, 1956—No. 16

DEAR SIR :

You have requested our opinion regarding the eligibility for veterans tax exemptions of persons honorably discharged or released under honorable circumstances from active service in the armed forces of the United States since the commencement of the Korean conflict.

*Art. VIII, Sec. 1, Par. 3* of the 1947 Constitution of New Jersey provides as follows :

*"Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service, in time of war or of other emergency as, from time to time, defined by the Legislature, in any branch of the Armed Forces of the United States shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars (\$500.00), which exemption shall not be altered or repealed. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war or of other emergency as so defined in any such service shall be entitled, during her widowhood, and while a resident of this State, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from*

time to time may be provided by law. The widow of any citizen and resident of this State who has had or shall hereafter have active service in time of war or of other emergency as so defined in any branch of the Armed Forces of the United States and who died or shall die while on active duty in any branch of the Armed Forces of the United States, or who has been or may hereafter be honorably discharged or released under honorable circumstances from active service in time of war or of other emergency as so defined in any branch of the Armed Forces of the United States shall be entitled, during her widowhood and while a resident of this State, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemptions as from time to time may be provided by law.”  
(Italics added)

N.J.S.A. 54:4-3.12j, as amended, L. 1953, c. 436, provides:

“Every person a citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from *active service in time of war* in any branch of the Armed Forces of the United States and a widow as defined herein, during her widowhood and while a resident of this State, shall be entitled, on proper claim being made therefor, to exemption from taxation on real and personal property to an assessed valuation not exceeding five hundred dollars (\$500.00) in the aggregate.”  
(Italics supplied)

The definition section of this act, N.J.S.A. 54:4-3.12i, as amended by L. 1952, c. 231 and L. 1953, c. 436, reads as follows:

“As used in this act:

“(a) ‘Active service in time of war’ means active service at sometime during one of the following periods:

“The Korean conflict, June 23, 1950, to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December 16, 1950, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States;

\* \* \* \* \*

“(d) ‘Honorably discharged or released under honorable circumstances from active service in time of war,’ means and includes every form of separation from active, full-time duty with military or naval pay and allowances in some branch of the Armed Forces of the United States in time of war, other than those marked ‘dishonorable,’ ‘undesirable,’ ‘bad conduct,’ ‘by sentence of general court martial,’ ‘by sentence of summary court martial’ or similar expression indicating that the discharge or release was not under honorable circumstances. A disenrollment certificate or other form of release terminating temporary service in a military or naval branch of the armed forces rendered on a voluntary and part-time basis without pay, or a release from or deferment of induction into the active military or naval service shall not be deemed to be included in the aforementioned phrase.”

The introducers’ statement appearing on Assembly Bill 2 of the First Special