

SEPTEMBER 26, 1956

HON. JOHN W. TRAMBURG, *Commissioner*
Department of Institutions and Agencies
State Office Building
Trenton 7, New Jersey

FORMAL OPINION, 1956—No. 20

DEAR COMMISSIONER TRAMBURG:

You have requested our opinion as to whether funds accumulated by a County employee in the Public Employees' Retirement System can be used for the support of the wife and children of that employee when that employee has deserted his wife and children in destitute circumstances and they have become public charges.

It is our opinion that such funds can be made available through judicial process for the support of the employee's wife and children even though N.J.S.A. 43:15A-53 provides:

"The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of this act and the moneys in the various funds created under this act, shall be exempt from any State or municipal tax and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court and, except as in this act otherwise provided, shall be unassignable."

The New Jersey Supreme Court in *Fischer v. Fischer*, 13 N.J. 162 (1953) dealt with a similar problem. The question in the *Fischer* case was whether a pension provided to a retired police officer of the City of Irvington under R.S. 43:16-1 et seq., as amended, was wholly immune from judicial appropriation, before the individual installments reach the hands of the pensioner, to the satisfaction of alimony established by judgment. R.S. 43:16-7 states:

"* * * All pensions granted under this chapter shall be exempt from execution, garnishment, attachment, sequestration or other legal process.* * *"

The Court held that the language of the above provision did not prevent reaching pension benefits payable to the husband to satisfy the wife's award of alimony. Justice Heher, in so holding, looked to the policy behind this provision and stated on page 167:

"* * * it is abundantly clear that the policy of the immunity provision is to shield the pensioner against the coercive remedial and executorial processes available to creditors, and thus to secure the pensioner and his family against improvidence and want. 'Legal' process undoubtedly has this generic sense i.e., legal and equitable remedies in favor of those having a right of action grounded in contract or tort, a penalty or a forfeiture."

Justice Heher further stated on page 168:

"A holding barring recourse to the statutory pension to absolve the public from the burden of supporting the pensioner's wife or children would be perverse of the true intent and meaning of the act * * *."

R.S. 43:16-7 provides for an exemption from execution, garnishment, attachments, and sequestration or other legal process. In N.J.S.A. 43:15A-53 the exemption is from any state or municipal tax and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court. The language of the two is sufficiently similar to indicate that in both instances the Legislature had in mind the same general policy. This policy has been spelled out by the N. J. Supreme Court in *Fischer v. Fischer, supra*, and as stated above, is to protect the pensioner from creditors and not to relieve him of his obligation of support.

It should be pointed out, however, that our New Jersey Supreme Court distinguished between exemption of pension funds from civil process by contract provision and statutory exemption of pension funds from civil process. The Supreme Court in *Hoffman v. Hoffman*, 8 N. J. 157 (1951), held that the provisions of a group insurance contract made between the defendant's employer and an insurance company making retirement annuity benefits payable to the employee upon his retirement non-assignable, either by voluntary act or by operation of law, were valid and enforceable and payments made under the policy to the defendant were not subject to attachment by the defendant's former wife to pay accrued alimony under a judgment of a court in a sister state. The language used by Justice Heher in the *Fischer* case, *supra*, in making the distinction is as follows:

"The *Hoffman* case cited *supra* is plainly not to the contrary. There, the subject matter was a group insurance contract which made the retirement annuity and death payments 'nonassignable, either by voluntary act or by operation of law'; and the holding was that if the annuity benefits were made available for the satisfaction of the foreign decree for alimony 'that contractual undertaking' would be violated. There, the contract was enforced *inter partes*; here, the determinative is the policy of the statute." *Fischer v. Fischer*, 13 N. J. 162, 169 (1953).

We may also observe that N.J.S.A. 43:15A-53 was enacted subsequent to the Supreme Court's decision in *Fischer v. Fischer, supra*, and that it is a familiar principle of law that the Legislature in enacting statutes is presumed to be familiar with decisional authority relating thereto.

Therefore, since the exemption with which we are here concerned, N.J.S.A. 43:15A-53, is a statutory exemption and, as stated previously, similar to R.S. 43:16-7, pension funds accumulated can be made available through judicial process for the support of the employee's wife and children. Presumably, the pension funds to which you refer are the accumulated deductions standing to the credit of the husband's individual account in the annuity savings fund. You state that your request for opinion has arisen in connection with one specific instance in which Home Life Assistance has been granted to a woman because of the desertion of her husband. You say that she "is presently receiving assistance for herself and seven children while her husband, who prior to his desertion was a public employee, has an accumulated fund in the Public Employees' Retirement System".

N.J.S.A. 43:15A-41 provides:

"a. A member who withdraws from service or ceases to be an employee for any cause other than death or retirement shall receive all or such part as he demands, of the accumulated deductions standing to the credit of his individual account in the annuity savings fund * * *".

Of course, in order to reach these funds, the right of the wife and children to support payments must be adjudicated and appropriate process must be issued by way of execution, etc. pursuant to such adjudication. The Juvenile and Domestic Relations Court has concurrent jurisdiction with the Chancery Division of the Superior Court in matters pertaining to support. N.J.S. 2A :4-18; N.J.S. 2A :34-24.

R.S. 30:5-14 provides:

“Whenever it appears that a child has received assistance under any provision of this chapter, either directly or indirectly, by reason of the desertion of its father, the state board of children’s guardians or the county welfare board may institute proceedings in any court of competent jurisdiction, constituted for the trial of such causes, for the purpose of collecting from such father any or all assistance granted to such child under any provision of this chapter. * * *”

We should note that P. L. 1951, c. 138 did not repeal the Home Life Assistance Program found in Article IV of Chapter 5 of Title 30, nor did it repeal Articles I and II of Chapter 5 insofar as they were applicable to the administration and financing of the Home Life Assistance Program found in Article IV. Attorney General’s Formal Opinion 1955—No. 12.

N.J.S.A. 30:5-41.1 similarly provides:

“Whenever assistance is granted to or for any person pursuant to the chapter hereby supplemented, the State Board of Child Welfare, or the welfare board of the county where such assistance was granted, shall be authorized to take all necessary and proper action to enforce the maintenance and support of such person by those relatives legally responsible therefor under the laws of this State.”

We note that under the Uniform Reciprocal Enforcement of Support Act, N.J.S. 2A :4-30.1 et seq., this State or a political subdivision thereof has the right to initiate proceedings against any person owing a duty of support to a resident of New Jersey to whom support has been furnished by the State or political subdivision in order that the State or its political subdivision may secure reimbursement for expenditures made. N.J.S. 2A :4-30.8.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By : LAWRENCE E. STERN
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