

judgments nisi in matrimonial matters; and *final state agency decisions or actions, except here the time shall run from the date of the service of the decision of the agency or of notice of the action taken, as the case may be.*" (Italics added).

The operative date of the decision would appear to be the date of notification and mailing, May 9, 1955.

The provision of the Temporary Disability Benefits Law providing for review, R.S. 43:21-50(b), as amended, states:

"Individuals claiming benefits under the State Plan shall be entitled to review hearing and determination as provided in unemployment compensation cases."

The provision of the Unemployment Compensation Act governing appeals is R.S. 43:21-6(b)(1)(C), as amended, which provides:

"Any claimant or any interested entity or person may file an appeal from any determination * * * within five calendar days after the delivery of notification, or within seven calendar days after the mailing of notification, of such determination. *Unless such an appeal is filed such determination shall be final* and benefits shall be paid or denied in accordance therewith. * * *"
(Italics added).

"It is sound jurisprudence and public policy as well that there should be finality to judgments of courts of competent jurisdiction which parties let go unchallenged, by failing to exercise their right of appeal." *Miller v. McCutcheon*, supra, at p. 130.

Our opinion is that the appeals of Khanan Chodorowsky (Charles Chodorow) and Antonio Cucci were not timely and additional payments under the Temporary Disability Benefits Law should be denied to them.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: ROBERT E. FREDERICK
Deputy Attorney General

MR. GEORGE M. BORDEN, *Secretary*
Public Employees' Retirement System
48 West State Street
Trenton, New Jersey

JANUARY 23, 1956

MEMORANDUM OPINION—P-3

DEAR MR. BORDEN:

You have asked our opinion to whether a member of the Public Employees' Retirement System who was granted a six months leave of absence from his position as Senior Clerk in the Division of Employment Security on December 1, 1955 in order to assume temporary duties as Economist with the Department of Conservation

and Economic Development must continue to make contributions to the Public Employees' Retirement System during the time he served temporarily with the Department of Conservation and Economic Development. We understand that the member in question has requested that he be allowed to discontinue contributions during the period for which he is on leave of absence and holding a temporary position with the Department of Conservation and Economic Development.

N.J.S.A. 43:15A-39 provides as follows:

“. . . In computing the service or in computing final compensation, no time during which a member was absent on leave without pay shall be credited, unless such leave of absence was for 3 months or less, or unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State. Any such member shall be required to contribute, either in a lump sum or by installment payments, an amount calculated, in accordance with the rules and regulations of the board of trustees, to cover the contributions he would have paid for any service or compensation credited for the period of such official leave of absence without pay, unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State.”

The above quoted section indicates that a member who is “absent on leave without pay” is not obliged to continue to contribute to the Public Employees' Retirement System during the period of such leave of absence. However, it is our opinion that it does not apply to the case under consideration. N.J.S.A. 43:15A-39 contemplates a situation in which a member of the Public Employees' Retirement System actually discontinues his public employment and forfeits his public remuneration. It does not encompass a situation, such as the one under consideration, in which a member of the Public Employees' Retirement System is granted a so-called “leave of absence” from one department of the State so that he may be free to assume temporary duties with another department of the State.

It might be argued that the member in question is not obligated to continue his contributions to the Public Employees' Retirement System because N.J.S.A. 43:15A-7b limits membership in the Public Employees' Retirement System to “permanent employees”, and because N.J.S.A. 43:15A-11 provides that a person in temporary employment by the State whose temporary employment results in permanent employment “shall be permitted to make contributions covering this temporary service in accordance with the rules and regulations of the board of trustees and receive the same annuity and pension credits as if he had been a member during the temporary service.” However, rather than being regarded as a temporary employee of the Department of Conservation and Economic Development, the member in question must be regarded as a permanent State employee inasmuch as he has previously been employed by the State in the Division of Employment Security, is now employed by the State in the Department of Conservation and Economic Development, and will continue employment by the State in the Division of Employment Security at such time as his duties with the Department of Conservation and Economic Development may be terminated.

As such a permanent State employee, this person's continued membership in the Public Employees' Retirement System is required by N.J.S.A. 43:15A-7, which defines the membership of the Public Employees' Retirement System. Consequently,

deductions from his salary by way of contributions to the Public Employees' Retirement System are required by N.J.S.A. 43:15A-25, which provides that "Every employee to whom this act applies shall be deemed to consent and agree to any deduction from his compensation required by this act and to all other provisions of this act."

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHARLES S. JOELSON
Deputy Attorney General

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JANUARY 23, 1956

MR. GEORGE M. BORDEN, *Secretary*
Public Employees' Retirement System of New Jersey
48 West State Street
Trenton 25, New Jersey

MEMORANDUM OPINION—P-4

DEAR MR. BORDEN :

You have asked our opinion as to whether a person receiving retirement benefits from the Public Employees' Retirement System would be eligible to hold the position of Councilman of the Borough of Oceanport if he fills such a position by virtue of appointment by the Mayor and Council to fill an existing vacancy rather than by actual election.

R.S. 43:3-1, as amended, provides as follows :

"Any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State, shall be ineligible to hold any public position or employment other than elective in the State or in any county, municipality or school district, unless he shall have previously notified and authorized the proper authorities of said State, county, municipality or school district, from which he is receiving or entitled to receive the pension that, for the duration of the term of office of his public position or employment he elects to receive (1) his pension or (2) the salary or compensation allotted to his office or employment. Nothing in this chapter shall be construed to affect any pension status or the renewal of payments of the pension after the expiration of such term of office except that such person shall not accept both such pension or subsidy and salary or compensation for the time he held such position or employment."

In the case under consideration, the pensioner's position as Councilman would be based upon N.J.S.A. 40:87-13, as amended by Chapter 19, P.L. 1955. This statute provides that "all vacancies occurring in any elective office . . . shall be filled by appointment until January first . . . following the next annual election and until the election and qualification of a successor." Since the position of Councilman is an

elective office, it is our opinion that a person receiving benefits from the Public Employees' Retirement System would be eligible to hold such position since R.S. 43:3-1, as amended, specifically exempts elective office from the disability from holding public office which it establishes for a person receiving a public pension.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHARLES S. JOELSON
Deputy Attorney General

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JANUARY 26, 1956

HONORABLE JOSEPH E. MCLEAN
*Commissioner, Department of Conservation
and Economic Development*
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-5

DEAR COMMISSIONER:

You have requested our opinion as to whether or not the Water Policy and Supply Council, in granting applications for permission to divert water for water supply purposes, pursuant to R.S. 58:1-17 et seq., may limit the amount of diversion so permitted in accordance with regional distribution quotas. Also involved in your inquiry is the power of the Council to establish a master plan for the conservation and development of the principal watersheds of the State.

In our opinion, the Council has the power both to adopt a master plan for the foregoing purpose and to limit diversion permits either in accordance with that plan or in the light of other regional needs even if a comprehensive plan has not been adopted.

Chapter 22 of the Laws of 1945, section 10 (N.J.S.A. 13:1A-10) makes the following provision regarding the functions of the Water Policy and Supply Council:

"The council, in addition to other powers and duties vested in it by this act, shall, subject to the approval of the commissioner:

a. Formulate comprehensive policies for the preservation and improvement of the water supply facilities of the State.

b. Survey the needs of the State for additional water supply facilities and formulate plans for the development of such facilities."

R.S. 58:1-11 likewise directs the Water Policy Commission (the predecessor of the Council) to "continue and extend investigations of the water resources of the state * * * so as to complete a comprehensive study for the entire state, for the conservation, development, regulation and use of the waters in each of the principal watersheds of the state." R.S. 58:1-12 requires the commission "to report to the