

## OPINIONS

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*

csj ;b

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*

csj ;b

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