For the foregoing reasons it is our opinion and you are advised that the Department of Defense is not affected by and therefore need not comply with Section 13 of the Municipal Planning Act of 1953,*L.* 1953, *c.* 433, *sec.* 13, N.J.S.A. 40:55-1.13.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

CB:MG

MAY 23, 1957

HONORABLE AARON K. NEELD
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 4

Re: P. L. 1955, c. 261, § 5 (N.J.S.A. 43:15A-7c)

DEAR MR. NEELD:

Former Deputy State Treasurer Finley requested our opinion as to (1) whether an employee who earns a combination of salaries aggregating $500 or more can be permitted to join the Public Employees' Retirement System if no single salary amounts to $500 and (2) whether an employee who earns an annual salary of $500 or more in one employment, office or position and less than $500 in another shall contribute on the basis of both salaries or only upon the salary of $500 or more.

P.L. 1955, c. 261, § 5, provides in part:

> ". . . No person in employment, office or position, for which the annual salary or remuneration is fixed at less than $500.00 shall be eligible to become a member of the retirement system". (N.J.S.A. 43:15A-7c).

An examination of the legislative history of this particular provision discloses that prior to the enactment of P.L. 1955, c. 261, the Board of Trustees of the Public Employees' Retirement System, pursuant to the authority of N.J.S.A. 43:15A-17, had adopted Rule E-5, which is still in effect and provides in part:

> "In the case of a public employee who is employed by one or more public employers, membership shall be optional with the employee . . . provided he received an annual salary of at least $500 *from any one participating employer* . . ." (emphasis supplied).

The plain and unambiguous terms of P.L. 1955, c. 261, § 5 restrict eligibility in the Public Employees' Retirement System to persons in an employment, office or position for which the annual salary is $500 or more. It is our opinion that public employees earning an aggregate of $500 or more but less than $500 in any single public employment, office or position are not eligible to join the Public Employees' Retirement System.

With regard to your second question, namely, whether an employee who earns an annual salary of $500 or more in one employment, office or position and less than $500 in another shall contribute on the basis of both salaries or only upon the salary of $500 or more, the statute is silent. However, with regard to *computing for retirement purposes* the total service of a member or in *computing final compensation,* P.L. 1954, c. 84, § 39 (N.J.S.A. 43:15A-39) provides:

> ". . . no time during which a member was in employment, office or position, for which the annual salary or remuneration was fixed at less than $500 shall be credited, except that in the case of a veteran member credit shall be given for service rendered prior to January 2, 1955 in an employment, office or position if the annual salary or remuneration therefor was fixed at less than $300. . ."

In replying to your second question, the interpretation to be placed upon the Public Employees' Retirement-Social Security Integration Act must be one which is consistent with the above quoted statutory language and with the section of the act dealing with eligibility.

Accordingly, it is our opinion that an employee may not contribute on the basis of any position where the salary is less than $500.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DONALD M. ALTMAN
Legal Assistant

JUNE 7, 1957

HONORABLE WILLIAM F. KELLY, JR.
President, Civil Service Commission
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 5

Re: Determination of Status of Disabled Veteran of World War II

DEAR MR. KELLY:

You have asked whether any changes in Attorney General Formal Opinion 1954, No. 11 are necessitated by Chapter 21 of the Laws of 1957. In that opinion you were advised *inter alia* that under R.S. 11:27-1, where an applicant was inducted into the Armed Forces within 90 days prior to September 2, 1945 and continued in such service for over a year thereafter, and at an unascertained time suffered a disability, such person was not a disabled veteran of World War II because he had not presented "full and convincing evidence" of disability *between* September 16, 1940 and September 2, 1945.

You were further advised that in order for a person to be qualified either as a "veteran" of World War II or "veteran with a record of disability incurred in line of duty" of World War II, it would be necessary for that person to have served at least 90 days between September 15, 1940 and September 2, 1945 or to have incurred a service-connected disability at any point during that time.