

experience, it is outside the operation of the advertising and competitive bidding statutes or ordinances, whether that service is to be rendered by an individual, partnership, association, or corporation. To say that *N.J.S.A.* 52:34-9(a) created an exception with respect to individuals without the intent similarly to except associations, partnerships or corporations flies in the face of the plain legislative purpose in creating the exception. The Supreme Court said in *In re Roche*, 16 *N.J.* 579, 587 (1954) :

"The meaning of the statute is not to be ruled by the strict letter, but rather by the sense and meaning fairly deducible from the context. The reason of the provision prevails over the literal sense of the words; the obvious policy is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. The spirit gives character and meaning to the particular symbols of expression. The evident policy is the true key to open the understanding of the act." [*emphasis supplied*]

Other recent expressions of the judicial attitude on liberal statutory construction include *Morss v. Forbes*, 24 *N.J.* 341, 357 (1957) and *Lane v. Holderman*, 23 *N.J.* 304 (1957).

It is our opinion that the word "personally" as used in *N.J.S.A.* 52:34-9(a) connotes a performance that is without the intervention of another, *i.e.* direct from the contractor, himself or itself, to the State; it matters not whether the contractor be an individual, association, partnership or corporation. Accordingly you are advised that a waiver may be properly executed with respect to the pending contracts between the Department of Health and various private hospitals for technical professional services.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD J. ASHBY
Legal Assistant

HJA :tb

AUGUST 7, 1957

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

FORMAL OPINION, 1957—No. 12

DEAR MR. NEELD:

You have requested an opinion on the following two questions:

(1) Can a war veteran member of the Police and Firemen's Retirement System resign from public employment upon attaining the age of 62 and having 20 years of service and thereby receive a refund of his contributions to the Retirement System, and subsequently, retire under the provisions of the free Veterans' Retirement Act, R.S. 43:4-1 et seq.?

(2) Can a war veteran member of the Consolidated Police and Firemen's Pension Fund, upon attaining the age of 62 and having 20 years of service, retire under the provisions of the free Veterans' Retirement Act rather than under the provisions of the Consolidated Police and Firemen's Fund?

We wish to advise you that N.J.S.A. 43:16A-3 governing the Police and Firemen's Retirement System provides:

"(1) After the date of the establishment of this retirement system, any person becoming a full time policeman or fireman in a county or municipality or fire district located in a township where prior to the date of this act takes effect, a pension under chapter 16 of Title 43 or article 4 of chapter 10 of Title 43 of the Revised Statutes for policemen or firemen has been established, shall become a member of this retirement system as a condition of his employment; provided, that his age at becoming such full time policeman or fireman is not over 30 years; and further provided, that he shall furnish such evidence of good health at the time of becoming a member as the board of trustees shall require.

"Any person who became a policeman or fireman in any such county, municipality or fire district after June 30, 1944, and prior to April 11, 1945, and who at the time of becoming such policeman or fireman was over 30 years and not more than 35 years of age, shall become a member of this retirement system as a condition of his employment; provided, that he shall furnish such evidence of good health at the time of his becoming a policeman or fireman as the board of trustees shall require.

"(2) After the date upon which this act becomes effective in any county, municipality or political subdivision thereof, pursuant to a referendum as hereinafter provided (a) Any person becoming a full time policeman or fireman in any such county, municipality or political subdivision shall become a member of this retirement system as a condition of his employment; provided, that his age at becoming such full time policeman or fireman is not over 30 years; and provided further, that he shall furnish such evidence of good health at the time of becoming a member as the board of trustees shall require; and (b) any person in service as a full time policeman or fireman in any such county, municipality or political subdivision on the date this act becomes effective therein who, within the time and in the manner permitted by this act, elects to become a member of this retirement system, shall become such member . . ."

It is apparent, from a reading of the foregoing statutes, that policemen and firemen, as a condition of employment, must join the retirement system and become members thereof.

The Police and Firemen's Retirement Act further provides in N.J.S.A. 43:16A-11:

"If a member should cease to be a fireman or policeman, except by death or retirement as provided in this act, he shall be paid the amount of his aggregate contributions."

R.S. 43:4-1 provides that veterans who shall have attained the age of 62 or become incapacitated after twenty years of continuous or aggregate service for the duties of their office or position or employment may be retired.

R.S. 43:4-2 states:

"When an honorably discharged soldier, sailor or marine has or shall have been for twenty years continuously or in the aggregate in office, position or employment of this State or of a county, municipality or school district . . . he shall be retired . . ."

The Supreme Court has held that it is mandatory for policemen to become members of the Police and Firemen's Retirement System as a condition of employment. In the case of *Seire v. Police & Firemen's Pension Fund of Orange*, 6 N.J. 586 (1951), the Court held in accordance with N.J.S.A. 43:16A-19 that persons becoming members of the State fund are deprived of benefits under any other pension fund established by statute which provides wholly or in part at the expense of a municipality for a policemen's retirement fund.

The option of retiring under the free Veterans' Retirement Act (R.S. 43:4-1 et seq.) is nevertheless available to policemen and firemen; *Kelly v. Kearins*, 132 N.J.L. 308 (Sup. Ct. 1944) so ruled under a related statute (R.S. 43:16-1 et seq.). The relator in that action failed to secure a non-contributory veterans' pension because he lacked the statutory qualifications, but the Court recognized that the Veterans' Retirement Act and the Police & Firemen's Retirement Act were cognate statutes in pari materia. An eligible policeman or fireman is put to a choice, namely, retirement under the free Act or under the Police & Firemen's Retirement Act. He can not have the benefit of both, and upon retirement under either system is obliged to waive all retirement benefits under the other system. See *Kelly v. Kearins*, 132 N.J.L. 308, 311 (Sup. Ct. 1944).

The question now arises as to whether having resigned for the purpose of retirement, could the said policeman or fireman receive a refund of his contributions. We must then, of necessity, refer to N.J.S.A. 43:16A-11. Under this provision of the statute, he cannot receive a return of the contribution that he made to the pension fund if he ceases to be a fireman or policeman for the purpose of retirement. He is eligible for the return of his accumulated contributions only upon his ceasing to be an employee otherwise than for that purpose.

Once having left employment as a policeman or fireman and having received a refund of his contributions, the individual is ineligible for retirement under the Veterans' Retirement Act. The specific terms of that statute require retirement as a condition for the accrual of the right to pension benefits. An employee must retire under that act in order to qualify; a former employee who attains the age of 62 years can not claim a free Veterans' Pension unless he returns to public employment or service. See *Salz v. State House Commission*, 18 N.J. 106 (1955), which affirmed the denial of retirement benefits to a State employee on leave of absence in active military service.

A police or fireman member of the Police and Firemen's Retirement System may resign from said System upon attaining the age of 62 and having 20 years of service, and retire under the free Veterans' Act, R.S. 43:4-1 et seq. However, he cannot receive a return of his contributions.

With reference to the second question, N.J.S.A. 43:16-5 sets forth that for the purpose of paying the pensions provided by that chapter, all pension funds heretofore created and in existence pursuant to the provisions of an act entitled "An act providing for the retirement of policemen and firemen of the police and fire departments

in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments, shall, from and after July 1, 1953, be consolidated." Section A of this particular section of the statute provides that there shall be deducted from every payment of salary to each member, as defined in the supplement to this chapter, five per cent of the amount thereof if he entered the service on or before attaining the age of thirty-five years, and if he entered the service after attaining the age of thirty-five years, the percentage shall be increased to such an amount as to correspond to the risk arising by his additional age.

It must be stated that members of the Consolidated Police and Firemen Pension Fund may, if they desire, retire under the provisions of the free Veterans' Act.

Our courts have held that compulsory contributions by members of the City Police Department paid into the Police & Firemen's Pension Fund of the City, were, in effect, but a reduction of salary, and contributions did not become the property of the member but remained the property of the City. In the absence of statutory provisions for return of deductions, members of the City Police Department from whose salary semi-monthly installments were deducted and paid into city police and firemen's pension fund was not entitled on resignation to return of contributions. *Mc-Feely v. Pension Commission of City of Hoboken*, 8 N.J. Super. 575, 73 A. 2d 757. There is no provision in the statute for a return of contributions in the event of resignation from the System.

We are of the opinion that members of the Consolidated Police and Firemen's Pension Fund may, upon attaining the age of 62 and having 20 years of service, retire under the provisions of the free Veterans' Act rather than the provisions of the Consolidated Police and Firemen's Pension Fund. However, upon so retiring, they must waive their pension under the Consolidated Police and Firemen's Pension Fund and cannot receive their return of the contributions made by them to the Pension Fund.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

FAV :ccm

AUGUST 14, 1957

HONORABLE CHARLES F. SULLIVAN, *Director*
Division of Purchase and Property
State House
Trenton, New Jersey

FORMAL OPINION. 1957—No. 13

DEAR DIRECTOR SULLIVAN :

Our opinion has been requested as to the authority of the Division of Purchase and Property in the Department of the Treasury to purchase automobiles for the New