

An examination of the entire statute reveals that the benefits thereunder—those which arise by reason of death as well as those which mature upon the retirement of an employee (whether such retirement is brought about by accidents, disability or age)—are generally not payable unless the event upon which they are based has occurred during employment or retirement. An apparent exception to this rule is found in N.J.S.A. 43:15A-41b whereby annuity, pension and death benefits are payable in lieu of a return of accumulated deductions to members who, having completed 25 years of service, resign from service before attaining retirement age. See also N.J.S.A. 43:15A-38 by which similar benefits are conferred upon members who have completed 20 years of service and who have been separated from service under similar circumstances. Even in such cases, however, the quantum of benefits payable is measured by membership credit and prior service credit which was earned or purchased during service, as is the situation with respect to ordinary death and retirement benefits. When considered in this context, the requirement of N.J.S.A. 43:15A-24a, *supra*, that employer contributions are to be expressed as a proportion of the compensation paid to all employees acquires added significance and it becomes clear that such contributions should not be made on behalf of former employees whose membership in the system has not terminated.

It is pointed out that the total amount of employer contributions paid into the contingent reserve fund will not be affected by having such contributions made on behalf of employee members only. The actuary, in computing the contribution under N.J.S.A. 43:15A-24, is required in the words of the statute, to base his calculations on a sum which is "sufficient to provide for the pension reserves . . . and to provide for the amount of the death benefits payable . . . by the State . . ." This sum will not vary whether contributions are made on behalf of all members of the system or only on behalf of employee members, since in the latter situation the contribution per member will be proportionately larger.

For the foregoing reasons it is our opinion and you are advised that employer contributions pursuant to N.J.S.A. 43:15A-24a are to be made only on behalf of members who are in service.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: FRANK A. VERGA  
*Deputy Attorney General*

FAV:ccm

OCTOBER 21, 1957

HON. AARON K. NEELD  
*State Treasurer*  
Trenton, New Jersey

FORMAL OPINION, 1957—No. 18

DEAR MR. NEELD:

You have asked our opinion as to the date of commencement of the contributory and non-contributory death benefit coverage under Public Employees' Retirement-

Social Security Integration Act (L. 1954, C. 84) for public employees for whom membership in the Public Employees' Retirement System is mandatory.

Several classes of public employees became members of the Public Employees' Retirement System by force of the Act on its effective date of January 2, 1955: (1) members of the former State Employees' Retirement System enrolled as such as of December 30, 1954 (N.J.S.A. 43:15A-7); (2) State employee veterans not members of any other retirement system supported wholly or partly by the State (N.J.S.A. 43:15A-7) and (3) public employee veterans of governmental subdivisions of the State in positions not covered by a contributory pension system, other than Federal social security, on January 2, 1955 (N.J.S.A. 43:15A-63).

After the effective date of the act, membership is compulsory for persons becoming permanent State employees (N.J.S.A. 43:15A-7), veterans becoming employees of governmental subdivisions (N.J.S.A. 43:15A-62) and new employees of governmental subdivisions brought within the Public Employees' Retirement System by referendum (N.J.S.A. 43:15A-75).

Eligibility for optional death benefit coverage to which the members contribute is limited by Section 57 of the Act (N.J.S.A. 43:15A-57) :

"Each member who is a member on the date this amendment takes effect and each person who thereafter becomes a member, will be eligible to purchase the additional death benefit coverage hereinafter described, provided that he selects such coverage within 1 year after the effective date of this section as amended or after the effective date of membership, whichever date is later."

Members of the Public Employees' Retirement System automatically enrolled on January 2, 1955 thus had one year from that date within which to purchase the optional death benefit coverage.

We advise you that the effective date of membership of a permanent employee for whom membership is mandatory pursuant to Section 7 (N.J.S.A. 43:15A-7) is the date upon which the member acquires status as a permanent employee of the State. He is therefore eligible to purchase the optional death benefit coverage within one year after becoming a permanent employee of the State under the explicit provisions of Section 57.

The same ruling holds for the other classes of public employees for whom membership in the system is compulsory at some date subsequent to January 2, 1955. The effective date of membership is the date of membership by force of Chapter 84 of the Laws of 1954, without regard to the date of filing of an application form for membership with the Board of Trustees.

N.J.S.A. 43:15A-109 governs eligibility for non-contributory death benefit coverage for persons for whom membership in the Public Employees' Retirement System is optional but not mandatory under Section 7. You have not raised any inquiry concerning the date of death benefit coverage for such optional members, but we refer to the limitation in N.J.S.A. 43:15A-109 that persons entitled but not required to become members of the Public Employees' Retirement System must apply for membership within one year after the effective date of the act or within one year after first becoming eligible for membership in the system, whichever date is later, or in the alternative must furnish satisfactory evidence of insurability in order to receive death benefits.

By its terms N.J.S.A. 43:15A-109 is without application to persons for whom membership in the system is compulsory and who are entitled to the non-contributory death benefits provided in Sections 41, 45, 46 and 48 (N.J.S.A. 43:15A-41, 45, 46 and 48) upon the effective date of membership. We accordingly advise you that non-contributory death benefit coverage commences on the date upon which such employee becomes a member of the Public Employees' Retirement System by force of Chapter 84 of the Laws of 1954, as amended.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: FRANK A. VERGA  
*Deputy Attorney General*

FAV:gd

OCTOBER 21, 1957

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

FORMAL OPINION, 1957—No. 19

DEAR MR. NEELD:

We have your request for an opinion as to the extent of accrued liability of municipalities under the Public Employees' Retirement-Social Security Integration Act (L. 1954, c. 84) on behalf of elected officials who as veterans became members of the Public Employees' Retirement System on January 2, 1955 but who were defeated for reelection or did not stand for reelection thereafter.

Public employee veterans within the State who were in office on January 2, 1955 were enrolled automatically as members of the Public Employees' Retirement System on that date by force of N.J.S.A. 43:15A-62 and 63, with exceptions not pertinent here.

N.J.S.A. 43:15A-62:

"\* \* \* every public employee veteran in the employ of [a county or municipality covered by the former State Employees' Retirement System] on the effective date of this section who shall not have notified the board of trustees, within 30 days of such date that he does not desire to become a member, shall become a member of the Public Employees' Retirement System."

N.J.S.A. 43:15A-63:

"Any public employee veteran of a county, municipality or school district or board of education who on the effective date of this section is in a position not covered by a retirement system to which both he and his employer make monetary contributions, other than the old-age and survivors insurance provisions of Title II of the Federal Social Security Act, unless he shall have notified the board of trustees that he does not desire to become a member,