

MAY 1, 1957

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

MEMORANDUM OPINION—P-16

*Re: The Board of Education Employees' Pension Fund
of Hudson County, Inc.*

DEAR MR. NEELD:

We have your request for an opinion concerning a recent resolution adopted by the Board of Education of the City of Hoboken which stated:

"WHEREAS, Chapter 169, P.L. 1956 approved December 3, 1956 makes the Public Employees' Retirement System available to members of other contributory pension funds, and

WHEREAS, the new Act becomes operative sixty days after the members of any plan have successfully secured Social Security coverage, which coverage is made possible after a majority of the membership vote in favor of its adoption in a referendum called by the Governor, and

WHEREAS, Chapter 169 requires a request to the Governor by the political subdivision maintaining a contributory pension fund that he issue a proclamation calling for the holding of a referendum among the eligible members of the local plan, therefore, be it

RESOLVED, that we hereby request Governor Robert B. Meyner to issue a proclamation calling for the holding of a referendum among the eligible members of the local plan known as 'The Board of Education Employees' Pension Fund of Hudson County, Inc.'
January 21, 1957"

Your inquiry is essentially two-fold, namely: (1) may the Governor pursuant to P.L. 1955, c. 38 authorize among the employees of the *Hoboken* Board of Education a referendum on the question of extending "social security coverage" to such employees? and (2) if by referendum such employees elected social security coverage, would they then become members of the Public Employees' Retirement System pursuant to P.L. 1956, c. 169?

We understand that "Hudson County Fund" is not supported in whole or in part by the State and includes within its membership employees of several political subdivisions, including the City of Hoboken. With regard to extending social security coverage to the *Hoboken* employees, P.L. 1955, c. 38 (N.J.S.A. 43:22-12) provides in part:

" . . . With respect to the employees of a political subdivision covered by a retirement system which is not supported in whole or in part by the State and which is applicable to more than 1 political subdivision, the Governor is *empowered* to authorize . . . a referendum [on the question of whether such employees should be extended social security coverage]"
(emphasis supplied).

Where the system covers but 1 political subdivision the Governor "*shall* authorize such a referendum upon the request of the governing body of such subdivision" and any such referendum is conducted pursuant to the requirements of 42 U.S.C.A. § 418. *Id.* (emphasis supplied).

42 U.S.C.A. § 418(d)(6) provides in part:

"If a retirement system . . . covers positions of employees of two or more political subdivision of the State, then, for the purposes of [social security coverage,] there shall, *if the State desires*, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned . . ." (emphasis supplied).

We must assume that our legislature acted with knowledge of the existing provisions of the related federal statute. *Goldberg v. Division of Employment Security*, 21 N.J. 107, 113 (1956). Read in conjunction with 42 U.S.C.A. § 418(d)(6) the meaning of P.L. 1955, c. 38 is clear, i.e., the Governor *may* authorize the requested referendum among the employees of the Hoboken Board of Education and such authority is permissive rather than imperative.

With regard to your second question, P.L. 1956, c. 169 (N.J.S.A. 43:15A-111) provides:

"[The Public Employees' Retirement System] shall become operative with regard to a *pension* fund . . . supported in whole or in part . . . by 1 or more . . . municipalities, 60 days after a majority of the membership of *such pension fund* qualified to vote in a referendum as required by [42 U.S.C.A. § 418] shall have voted to be covered under the terms of [The Social Security Act] provided that the terms and conditions for holding such referendum as set forth in [N.J.S.A. 43:22-12] have been met." (emphasis supplied).

N.J. S.A. 43:15A-112 provides:

"When this act becomes operative with regard to a *pension fund*, such *pension fund* shall terminate. Upon the termination of such *pension fund*, all securities, assets and records of *such fund* shall be transferred to the board of trustees of the Public Employees' Retirement System". (emphasis supplied).

In our opinion, the extension of the Public Employees' Retirement System to the members of another fund upon the election of such members to be covered by the Social Security Act and the termination of such other fund is limited to the situation where a referendum is had among the membership of the *entire* pension fund, i.e., the *Hudson County Fund* and, not as in this case, among the membership of but one segment of such fund. To decide otherwise would result in a county-wide fund being terminated upon the election of one municipality only (Hoboken) within that fund. Nor is there a partial termination of the County Fund to the extent that the *Hoboken* employees are admitted to the State system. Such a partial termination of the County Fund is necessarily precluded by the clear and unambiguous language of N.J.S.A. 43:15A-111, 112.

As previously stated, the holding of a referendum under the circumstances herein lies within the *discretion* of the Governor and thus, is essentially a matter of policy. You have informed us that if the referendum is held and the Hoboken employees

elect to be covered by Social Security, such coverage would be extended to them as a benefit in addition to any benefits payable by the County Fund. Such employees would be required, however, to pay the Social Security tax in addition to the full contribution to the County Fund since there is no offset arrangement as provided for members of the *integrated* State retirement programs such as the Public Employees' Retirement System, N.J.S.A. 43:15A-59.

Accordingly it is our opinion and you are so advised that the Governor may authorize a referendum among the Hoboken members of the Hudson County Fund and that such referendum should be conducted pursuant to the provisions of N.J.S.A. 43:22-12 and 42 U.S.C.A. 418 §(d)(3) and that if the Hoboken members elect to be covered by Social Security, such election will not terminate the Hudson County Fund either in whole or in part nor bring the Hoboken employees into the Public Employees' Retirement System.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DONALD M. ALTMAN
Legal Assistant

DMA:ccm

MAY 17, 1957

WATER POLICY AND SUPPLY COUNCIL
Division of Water Policy and Supply
Department of Conservation and Economic Development
520 East State Street
Trenton, New Jersey

MEMORANDUM OPINION—P-17

GENTLEMEN:

You have requested our opinion as to whether diversions from the Delaware and Raritan Canal within the Delaware River watershed should be charged against the 100 m.g.d. which the State of New Jersey may withdraw from the Delaware River pursuant to the recent United State Supreme Court decree.

In our opinion the answer is no.

The question arises because the canal conveys water from the Delaware River to the Raritan River, crossing from one watershed to the other in the vicinity south of Princeton, so that water may be withdrawn from the canal and thereafter discharged in either watershed.

Diversions *outside* the Delaware River watershed are limited to one hundred million gallons per day by the decree of the United States Supreme Court in *New Jersey v. New York, et al.*, 347 U.S. 995 (1954); but we can find in the decree no quantitative limitation on the amount that may be taken from the river through the canal for use *within* the Delaware watershed.

Section V of the decree authorizes the State of New Jersey, upon the occurrence of certain conditions, to "divert outside the Delaware River watershed, from the