

MAY 17, 1957

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

MEMORANDUM OPINION—P-18

DEAR MR. NEELD:

Former Deputy Treasurer Finley has requested a Memorandum Opinion as to the eligibility of a public employee for membership in the Public Employees' Retirement System after retirement at age 70 and reemployment by a political subdivision of the State.

Section 75 of L. 1954, c. 84 (N.J.S.A. 43:15A-75) governs membership of employees of counties or municipalities in the Public Employees' Retirement System. By its specific terms:

"Membership shall be compulsory for all employees entering the service of the county or municipality after the date this act becomes effective."

The Public Employees' Retirement-Social Security Integration Act (L. 1954, c. 84) became effective in counties and municipalities which were covered by the former State Employees' Retirement System on January 2, 1955 and in all counties and municipalities subsequently approving it by referendum on June 30 of the year following such referendum.

We understand that the Public Employees' Retirement System was effective in the political subdivision which reemployed this retired public employee, upon the date of his reemployment. Accordingly, his membership in the Public Employees' Retirement System is mandatory under Section 75 of the Public Employees' Retirement-Social Security Integration Act.

We refer to several legal consequences of the resumption of public employment and membership in the Public Employees' Retirement System by an individual over age 70. He is immediately subject to the provisions of Section 47 of the Act (N.J.S.A. 43:15A-47). His retirement is mandatory except upon written notice of his continuation in employment to the Board of Trustees of the Public Employees' Retirement System from the head of the department or other employing unit. We suggest that such written notice should be presented to the Board of Trustees at the time of reemployment and reenrollment as a member in the Public Employees' Retirement System.

In accordance with R.S. 43:3-1, a retired member of the Public Employees' Retirement System who reenters public employment must elect to receive either his pension or the salary or compensation allotted to his employment. Since the ultimate retirement allowance will be based upon his final compensation, reemployment at a lower salary or compensation may be disadvantageous to the employee. In addition, the death benefits available after attainment of age 70 are only 3/16 of the compensation received by the member in the last year of creditable service instead of 1½ times such compensation (N.J.S.A. 43:15A-57). The employer must make the death benefit contribution on behalf of the employee over age 70, pursuant to subsection (g) of this section:

"* * * provided, however, that no contribution shall be required after June 30, 1956, while a member remains in service after attaining age 70 but that his employer shall be required to pay into the fund on his behalf in such case an amount equal to the contribution otherwise required by the board of trustees in accordance with this section."

We point out finally that this opinion applies equally to retired members over age 70 of the Public Employees' Retirement System who reenter public employment with the State. Section 7 of L. 1954, c. 84 (N.J.S.A. 43:15A-7) makes membership mandatory in the Public Employees' Retirement System for all persons who become permanent employees' of the State after January 2, 1955.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

MAY 31, 1957

HONORABLE EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-19

DEAR MR. PATTEN :

You have submitted to us for advice the question of whether an amendment to the certificate of incorporation of a non-profit association can be filed in the office of the Secretary of State without first being recorded in the respective county clerk's office.

The statute dealing with this subject is contained in R.S. 15:1-14. Prior to 1955 this statute after providing for the method of amending the certificate of incorporation of a non-profit association provided that:

"* * * The amended certificate, duly signed and acknowledged by the trustees as required for certificates of incorporation under this title, shall be recorded by the trustees of the association in the office of the clerk of the county in which its original certificate was recorded, and filed with the secretary of state. * * *"

By Chapter 206 of the Laws of 1955 this section was changed and the pertinent provisions thereof now provide as follows:

"* * * If 2/3 of the members having voting powers present at such meeting and voting shall vote in favor of such amendment, change or alteration, the corporation shall make a certificate thereof under its seal and the hands of its president or vice-president and secretary or assistant secretary, which