

attainment of the age of sixty years. According to the definitions in R.S. 43:16-17, active members are members of the Pension System subject to call for active service or duty, and employee members are all other contributing members.

In our opinion the recent decision of the Supreme Court in *Salz v. State House Commission*, 18 N.J. 106 (1955) is decisive. That case held that a person in military service was ineligible for retirement under the State Police Pension System despite his entry into military service directly from State employment. As the Court pointed out, under the express terms of R.S. 38:23-4, the plaintiff was not entitled to compensation, whether pay or pension, until the termination of his leave of absence by separation from military service. Justice Heher wrote further for the Court:

"The civil servant absent on leave for military service may on separation return to his department of government for active service, or if barred from service by age, for retirement on pension if he fills the statutory prerequisites."

It is significant and it must be pointed out that the Court also went on to say that "the judgment be without prejudice to a reconsideration of the applicant's rights 'either in the event an application is made upon his separation from active service in the Army or in the event of his disability or death.' The issue of abandonment and forfeiture of office by continued absence from State service may then be litigated and determined."

We therefore advise you that a member of the Consolidated Police and Firemen's Pension Fund is not eligible for retirement while on military leave of absence but must return to State service to qualify for retirement. Upon reemployment and application for retirement at that time, the Board of Trustees must determine whether he has abandoned or forfeited his State office or employment by continued voluntary absence in military service.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

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JUNE 19, 1957

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

MEMORANDUM OPINION—P-22

DEAR MR. NEELD:

Former Deputy State Treasurer Robert L. Finley requested our advice on a claim by Mr. E'tienne O'Brian for the repayment of an escheated unclaimed bank deposit in the amount of \$329.06 in the Cranford Trust Company, Cranford, New Jersey, which had been paid over to the State Treasurer.