

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*

P

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. Etienne 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.

The facts we have been advised are as follows: In 1934 a group of property owners in a neighborhood in Cranford, New Jersey, each contributed a small sum of money to be used for the protection of their properties. The money collected was deposited in the Cranford Trust Company (now the Suburban Trust Company) of Cranford, New Jersey as a savings account in the name of Home Owners Association. One of the members who was authorized to sign for withdrawals has since departed this life. The Home Owners Association never adopted any charter, articles of association, by-laws or other type of formal organization or regulations. The aforesaid deposit, having been inactive for more than twenty successive years, became an unclaimed bank deposit, escheated to the State of New Jersey and was paid over to the State Treasurer, all pursuant to L. 1947, c. 92.

The claim of Mr. O'Brian for repayment is submitted in writing and signed by him "for Home Owners Association". In support of said claim there is submitted signed mimeographed statements by Mr. O'Brian and six other persons wherein it is stated that they are former members of the Home Owners Association and they consent and agree to the appointment of L. E. O'Brian to act for them in recovering the said deposit and directing Mr. O'Brian to deliver same to the Building Fund of the Cranford Historical Society. These persons and one other, who it is represented will also sign a like statement of appointment of Mr. O'Brian, are the only surviving contributors known to Mr. O'Brian although he indicates he cannot be sure this is a complete list of the surviving members and it is clear that some of the members have died.

The Suburban Trust Company of Cranford has indicated to your Department, by letter dated January 8, 1957, that they would have permitted the withdrawal of these funds on the strength of the authorizations to Mr. O'Brian if said funds were still on deposit in their bank.

More particularly Mr. Finley inquired:

"In these circumstances where it is impossible to determine who constituted the original contributors and where in addition some of the contributors have died and the identification of their heirs is quite impossible, may the State apply the escheated funds to the purpose which the known survivors of the funds wish them applied to, namely the Cranford Historical Society."

It is our opinion and you are so advised that the authority of the State Treasurer to repay an unclaimed bank deposit which has escheated under the provisions of L. 1947, c. 92 is contained in Section 13 of L. 1947, c. 92 (N.J.S.A. 17:9-39) wherein it is provided as follows:

"Any claimant who or which in any capacity has or asserts any right, title or interest in or to any such moneys escheated under this act, or to any part of any such moneys, may file claim therefor with the State Treasurer who is authorized to pass upon and determine the claimant's claim; if the State Treasurer shall determine the claimant's proofs of title thereto to be sufficient he shall pay the escheated unclaimed bank deposit or such part thereof to which he may determine the claimant is entitled, without interest, \* \* \*."

We believe the administrative discretion conferred upon the State Treasurer is clearly set forth. Repayment of an escheated unclaimed bank deposit shall be made

where the claimant's "proofs of title" are sufficient. It is not possible to make out any fair implication or intendment of the Legislature that repayment of escheated unclaimed bank deposits may be based upon the purpose for which the money is to be applied or upon the fact that the bank where the money was deposited indicates that it would assume the risk of double liability by making payment of the deposit on the authorizations presented by a claimant. These factors can be of no consequence in determining whether the claimant's proofs of title are sufficient. *Swede v. City of Clifton*, 22 N.J. 303, 312 (1956).

Accordingly, the State Treasurer is without authority to apply the escheated funds here involved to the purpose which the known survivors desire. The funds can be repaid only upon sufficient proof of title.

Our review of this case indicates a marked absence of evidence upon which factual findings can be made to support a determination of the sufficiency or insufficiency of the proofs of title of this claimant. We also observe that while this claimant visited your office he was not granted a hearing, on notice, at which time he could have witnesses testify and present other evidence on the many questions existing in this matter.

Under the available facts the Home Owners Association can be most accurately classified as a voluntary unincorporated association. Such an association is not a legal entity separate and distinct from the persons who comprise it and the ownership of the association's property is vested in the individual members. 7 C.J.S. *Associations* § 27, p. 69; *Harker v. McKissock*, 12 N.J. 310 (1953); Wrightington, *The Law of Unincorporated Associations and Business Trusts* (2d Ed. 1923) § 60, p. 351.

For Mr. O'Brian to prove title to the property of the Home Owners Association, it will be necessary for him to present evidence on at least the following questions, which are not intended to be an exclusive list of possible questions involved but are suggested for the purpose of providing a starting point:

- (a) Is the Home Owners Association a continuing association?
- (b) If a continuing association, who is the person authorized to receive money for the association?
- (c) If this association has dissolved who were the members in good standing at the time of dissolution?
- (d) What was the amount contributed by each member?

So that adequate findings of fact may be made concerning this claim, we suggest that Mr. O'Brian be granted an opportunity to submit additional evidence by affidavit or affidavits or that he be granted an opportunity to submit such additional evidence at a hearing, on notice, so that thereby a complete record will be created, for the basis of your findings and determination and also for judicial review should such review be sought. *Metropolitan Motors v. State*, 39 N.J. Super. 208 (App. Div. 1956).

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: CHARLES J. KEHOE  
*Deputy Attorney General*