

graph (e) of N.J.S.A. 34:6-136.2. Thus, the work described in your fourth question likewise constitutes manufacturing in a home under sections (c) and (e) of N.J.S.A. 34:6-136.2 and is, therefore, also industrial homework under the act.

Very truly yours,

HAROLD KOLOVSKY  
*Acting Attorney General*

By: MARTIN L. GREENBERG  
*Legal Assistant*

FEBRUARY 19, 1958

HON. AARON K. NEED  
*State Treasurer*  
State House  
Trenton, New Jersey

FORMAL OPINION 1958—No. 4

DEAR MR. NEED:

You have sought the opinion of the Attorney General as to the construction of certain provisions of Chapter 145 of the Laws of 1957 amending R.S. 43:3-5, the statute granting exemptions from R.S. 43:3-1, which prohibits public pensioners from holding public employment in this State except upon waiver of the pension or the salary or compensation allotted to the office or employment.

The enactment of 1957 was intended to make public pensioners eligible for part-time public employment at salaries not exceeding \$1,200.00 per year, according to its introductory statement. The specific language of the amendment is as follows:

"The provisions of this Chapter shall not apply \* \* \* to the employment, by the State or by any county, municipality or school district in any position or employment, to the duties of which the holder thereof is not required to devote his full time, at a salary or compensation of not more than \$1,200.00 per calendar year, of any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State \* \* \*. The provisions of this section shall not authorize the employment as a policeman or fireman of any person who is receiving or shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State as a result of services as a member of a police department or a fire department."

You ask first for a definition of "full time" as applied in the foregoing Chapter 157. We advise you that "full time" signifies the normal and customary period of employment per day, per week and per year in the government service, i.e., 7 to 8 hours per day in a 5-day work week throughout the year, with vacation and sick leave privileges. The definition of "full time" in *Beaver Dam Co. v. Hocker*, 202 Ky. 398,

259 S.W. 1010, 1011 (Ct. of App. 1924) may be followed, with an adaptation to the current 5-day week and paid vacation:

"One who works only part of the day, or only two or three days out of a week, or only a few weeks out of the year, cannot be said to be working at full time. We therefore conclude that the words 'full time' necessarily mean a full working day for six days in every week of the year."

You ask secondly for a definition of "employment as a policeman or fireman." The definition of "policeman or fireman" in the Police and Firemen's Retirement System Act (N.J.S.A. 43:16A-1 *et seq.*) is not suitable because of its limitation to permanent and full time employees; the definition is obviously inapplicable in a statute permitting part-time employees to earn up to \$1,200.00 in any calendar year, without sacrificing their pension, in employments other than as policemen or firemen. We advise you that "employment as a policeman or fireman" includes, however, employment in the categories enumerated in N.J.S.A. 43:16A-1 (2): active uniformed employee and active employee who is a detective, lineman, fire alarm operator or inspector of combustibles of any police or fire department of a municipality or a fire department of a fire district located in a township or a county police department.

Your third inquiry goes to the fundamental operation of R.S. 43:3-1, without relation to the amendment of 1957. That inquiry seeks our advice on the construction of the term "pension" in the waiver provision of R.S. 43:3-1. Public pensioners are barred from receiving any salary or compensation for holding a public office or employment except upon waiver of their "pension." You ask whether R.S. 43:3-1 requires a waiver of the full retirement allowance or merely the pension portion of the retirement allowance.

You refer undoubtedly to the general statutory scheme in this State for making up retirement allowances for public pensioners from (1) an annuity which is the actuarial equivalent of the member's accumulated deductions at the time of retirement together with regular interest and (2) a pension which, when added to the annuity, will produce the full retirement allowance. See N.J.S.A. 43:15A-48; N.J.S.A. 43:16A-5; N.J.S.A. 18:13-112.46.

We nevertheless are of the opinion that the purpose of R.S. 43:3-1 is to prevent double compensation of public salary plus public pension. The word "pension" in the waiver section should be construed as "retirement allowance." This construction does not work an unconstitutional impairment of contract. The former Supreme Court stated in *Turner v. Passaic Pension Commission*, 112 N.J.L. 476 (Sup. Ct. 1933);

"The pensioner (in this case, the prosecutor of this writ) has his election. He is enjoying a pension. He does hold a public position such as is contemplated by the statute and from which he receives a salary. He cannot receive both his salary as a public officer and his annuity as a beneficiary of the pension fund."

Your fourth and sixth questions deal with the effect of so-called temporary full time employment under Chapter 145. The term "temporary full time employment" is a misnomer. As analyzed in answer to your first question, part time public employees, i.e., those working less than a full work day, week or year and earning less than \$1,200.00 within a calendar year, are exempted by the new amendment from the general prohibition of R.S. 43:3-1. Such public pensioners need not waive, in the alternative, their pension or the salary or compensation allotted to their public office

or employment. Upon earning the total of \$1,200.00 in any calendar year, the public pensioner must forego double compensation and make the election, under R.S. 43:3-1, if he decides to continue in part time employment during the remainder of the calendar year. The plain intention of Chapter 145 is to grant public pensioners the right to engage in part time public employment at a compensation of not more than \$1,200.00 per year, without sacrifice of their retirement allowance. Any earnings in excess of \$1,200.00 per year may not be retained by them except upon waiver of their pension pursuant to R.S. 43:3-1. The waiver requirement of R.S. 43:3-1 does not apply, however, except "during the duration of the term of office of his [the pensioner's] public position or employment."

You raise the additional question as to whether the amendment of 1957 has a retroactive effect. Chapter 145 was effective on July 15, 1957. We advise you that its effect is prospective only in accordance with the established law in this State that legislative enactments are not retroactive unless so provided by clear, strong and imperative terms. See *Lascari v. Bd. of Education of Borough of Lodi*, 36 N.J. Super. 426 (App. Div. 1955).

Yours very truly,

HAROLD KOLOVSKY  
*Acting Attorney General*

By: FRANK A. VERGA  
*Deputy Attorney General*

APRIL 9, 1958

DANIEL BERGSMA, M.D., M.P.H.  
*State Commissioner of Health*  
Department of Health  
State House  
Trenton, New Jersey

FORMAL OPINION 1958—No. 5

DEAR DR. BERGSMA:

We have been asked whether sterilized whole milk in hermetically sealed containers "is permitted to be sold in New Jersey without permit therefor" from the Department of Health.

R.S. 24:10-2 forbids the distribution of "any milk" in New Jersey unless the person who collected or assembled the milk into plants has obtained a "permit from the \* \* \* department to engage in such business in the manner \* \* \* set forth [in the statutes]."

Sterilized milk in hermetically sealed containers, if intended for human consumption, may therefore not be imported into New Jersey unless the plants into which the milk is assembled hold permits.

Since the context of the request for an opinion presents an additional inquiry as to whether the department has an obligation to inspect the plants involved in States hundreds of miles from New Jersey, this matter will be discussed.

R.S. 24:10-6 makes it mandatory that the department be satisfied that the milk is of the standard and quality required by the statutes, see R.S. 24:10-15, 16, and by regulations of the department, before a permit is issued. This section does not demand inspection of any milk or plants.

R.S. 24:10-11 makes all milk imported into New Jersey "subject to inspection at its source of supply" and all plants handling it "likewise \* \* \* subject to inspection to determine if \* \* \* they meet the minimum requirements set forth in [R.S. 24:10-15, supra]." This section does not require that the department inspect, but is a grant of discretionary power to the department to inspect the milk and plants involved. If the department can fulfill its duty under R.S. 24:10-6 in some other manner, satisfying itself that the milk meets the prescribed standards, it need not inspect.

R.S. 24:10-9 authorizes the department to place reasonable reliance in fulfilling its duty under R.S. 24:10-6 on information supplied to it on reports of applicants. R.S. 24:10-9 permits the department to require reports which "may be necessary to ascertain \* \* \* that \* \* \* milk \* \* \* is of the standard and quality required \* \* \*."

The department may also take into consideration facts obtained from other sources including tests of random samples of the finished product.

R.S. 24:10-12 permits the State department to rely on inspections by health authorities in other States. *Cf. Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951).

In summary, sterilized whole milk in hermetically sealed containers may not be imported into New Jersey except where the plants into which the milk was assembled or collected hold permits issued by the department. The department has power to inspect such plants through its own personnel but need not if it can be satisfied by some other adequate method of inspection that the milk meets the prescribed standards.

Very truly yours,

DAVID D. FURMAN  
*Acting Attorney General*

By: WILLIAM L. BOYAN  
*Deputy Attorney General*

APRIL 16, 1958

MR. FREDERICK J. GASSERT, JR.  
*Director, Division of Motor Vehicles*  
State House  
Trenton, New Jersey

FORMAL OPINION 1958—No. 6

DEAR DIRECTOR:

We have been asked whether, consistent with the rule of *State v. Laird*, 25 N.J. 298 (1957), a magistrate may resentence a motor vehicle offender in a case where he has previously prescribed a fine that is less than a mandatory minimum. If the magistrate has such power, and the Directors of the Division of Motor Vehicles becomes aware of the need for its exercise, either as a result of N.J.S.A. 39:5-42 or otherwise, it would seem appropriate in cases involving the Director's function under