

MAY 29, 1959

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-9

DEAR MR. KERVICK:

You have requested our opinion as to the proper interpretation to be placed on specific sections of c. 143, P.L. 1958. N.J.S.A. 43:3B-1 et seq. P.L. 1958, c. 143 provides for an increase in the retirement allowance of certain retired public employees according to a legislative formula which is based on percentages determined by the calendar year in which the retirement became effective. The questions will be answered in the order asked.

1. In computing the years of service, may the Division base its computation on whole years of service and consider a fractional portion of six months or more equivalent to a full year of service, while disregarding any fractional portion of less than six months? [i.e. May twenty-four years and four months be considered twenty-four years of service, while twenty-four years and six months be considered twenty-five years service?]

In computing years of service the retirant should be credited with the same credit which he has received from the system from which he is receiving his regular retirement allowance. In most systems the board of trustees is specifically empowered with the authority to fix and determine by appropriate rules and regulations how much service in any year shall equal a year of service and part of a year of service, e.g., N.J.S.A. 43:15-39 (Public Employees' Retirement System); N.J.S.A. 18:13-112.17 (Teachers' Pension and Annuity Fund). Since this increase is an increase in the regular retirement allowance, there is no reason to treat it in a manner different from that used to compute regular retirement credit.

2. If an individual who is eligible for an increased pension under this statute dies during the month, is the accrued portion of the increase payable to his estate or beneficiary? It should be noted that the procedure followed by the retirement system with respect to the regular retirement allowance is to pay such accrued portion.

You have advised that with respect to regular retirement allowances the accrued portion of an allowance of an individual who dies during the month is paid to the estate of the decedent. Therefore, it is our opinion that the accrued portion of this increase should be paid to the estate of the decedent. As stated above, the increase provided for by Chapter 143, P.L. 1958 is an increase in the regular retirement allowance and consequently the same procedures should be followed in making payment of this increase as are followed in making payment of the regular retirement allowance.

3. May the Division of Pensions include the increase under Chapter 143 in the regular retirement check or must a separate check be issued for the increased amount? In the event the Division of Pensions decides to continue the issuance of separate checks for the increased amount, would its action be proper?

The question of whether one check or two should be issued is an administrative decision which should be made by the Director of the Division of Pensions with the approval of the board of trustees of the retirement system involved. The general administration and responsibility for the proper operation of each pension system is vested in its board of trustees. N.J.S.A. 43:15A-16; N.J.S.A. 43:16A-13; N.J.S.A. 18:13-112.58; N.J.S.A. 43:8A-5; N.J.S.A. 43:7-18; N.J.S.A. 43:16-7. N.J.S.A. 52:18-95 established a Division of Pensions within the Department of the Treasury. N.J.S.A. 52:18-96 transferred the various pension systems to the Division of Pensions together with all of their respective functions, powers and duties. Pursuant to N.J.S.A. 52:18-99 the Division of Pensions is headed, directed and supervised by a Director. It, therefore, follows that administrative decisions should be made by the Director of the Division of Pensions with the approval of the board of trustees of the pension system or systems involved.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: JUNE STRELECKI
Deputy Attorney General

MAY 29, 1959

HON. JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-10

DEAR MR. KERVICK:

You have requested our opinion as to whether Levitt and Sons, Incorporated, a New York corporation (hereinafter called Levitt), is liable for taxes under the Corporation Business Tax Act (1945), Laws of 1945, c. 162, N.J.S.A. 54:10A-1 et seq., for the years 1954, 1955 and 1956. In 1954 and 1955 two agents of Levitt commenced purchase of certain property in New Jersey. Payment for the property was made by the agents and although Levitt supplied the funds title was taken in their names. Levitt was authorized to do business in New Jersey on March 22, 1956 and thereafter received conveyances of the properties previously purchased with its funds. Levitt filed its first return under the Corporation Business Tax Act in 1957 for the fiscal year ending February 28, 1957.

N.J.S.A. 54:10A-2 provides in part:

"Every domestic or foreign corporation which is not hereinafter exempted shall pay in annual franchise tax for the year one thousand nine hundred and forty-six and each year thereafter, as hereinafter provided, for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State. And such franchise tax shall be in lieu