relates to the needs and concerns of the assessor as well as individual taxpayers and your board.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

October 17, 1960.

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

FORMAL OPINION 1960—No. 27

DEAR MR. KERVICK:

You have requested our interpretation of N.J.S.A. 18:13–112.70(e) of the Teachers' Pension and Annuity Fund-Social Security Integration Act (P. L. 1955, c. 37) in applying the Social Security offset ceiling of December 31, 1959. *See also* N.J.S.A. 43:15A–59(d).

N.J.S.A. 18:13–112.70 provides:

> "When a member who retires reaches age 65 or upon retirement of a member after the attainment of age 65, the board of trustees shall reduce the retirement allowance by the amount of the old age insurance benefit under Title II of the Social Security Act paid or payable to him whether received or not. Membership in the retirement system shall presume the member's acceptance of and consent to such reduction. However, such reduction shall be subject to the following limitations:
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> * * *
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> "(e) *Any increase in the amount of the old age insurance benefit under Title II of the Social Security Act to take effect after December 31, 1959, shall be disregarded* in determining the amount of such reduction from the retirement allowance." (Emphasis supplied.)

We are concerned in this opinion with the maximum offset to be made from state employees' retirement allowances by reason of the 1958 increase in federal Social Security benefits. The act of August 28, 1958; P.L. 85-840; 72 Stat. 1013, 1020. This federal legislation provided for an across-the-board increase in Social Security benefits and in addition thereto, it also increased the maximum eligible average monthly salary of all insured individuals from $350 per month to $400 per month, as of January 1, 1959.

It is clear that the new federal benefits provided in the 1958 table took effect in January of 1959. Section 101(g) of P.L. 85-840.

There is no question that by December 31, 1959 the 1958 schedule of benefits was fully effective, both legally and factually, as to all employees with an average monthly

earning of $350 or less. It is also clear that the 1958 schedule of benefits was fully effective by reason of federal law in January of 1959. But by December 31, 1959, because the new maximum eligible monthly salary, $400, had only been in effect for a year, the highest amount of monthly primary insurance payable to an insured individual who became eligible as of that date was $119. Such a person had not had sufficient time since the passage of the increase to earn a $400 average for the total salary period considered by the federal government. 42 U.S.C.A. § 415b.

The essence of the question asked in interpreting N.J.S.A. 18:13–112.70(e) is whether the offset freeze concerned increases in the schedule of federal benefits legislated after December 31, 1959 or whether it concerned increases in eligibility for benefits to an employee based upon his salary experience comparatively, before and after December 31, 1959. For the reasons hereinafter stated, it is our opinion that the Legislature intended the offset ceiling to be determined by the federal table of benefits in effect prior to December 31, 1959 and not the maximum benefits as of that date because of salary experience.

To assure that Social Security integration was equitable to all public employees in view of the possibility of increased federal benefits at a later date, the Legislature imposed a limitation upon the state offset of federal benefits from retirement allowances, to the effect that increases in the amount of old age benefits after 1959 are disregarded in determining the offset, N.J.S.A. 18:13–112.70(e).

We must determine whether the benefit increases corresponding to that portion of the $50 increase in eligible monthly salary are to be disregarded insofar as they could not have been earned prior to December 31, 1959. Because the increase was not in effect long enough for employees to aggregate sufficient months at such higher rate, they could not earn the full average by that date. We have a situation where the schedule of benefits is most definitely in effect but the maximum amount of increases thereunder cannot be earned until a date subsequent to January 1, 1959.

An employee who was making over $400 a month for many years prior to 1958 only received credit for $350. He cannot take advantage of the maximum $127 primary insurance benefit unless he works sufficient years after 1958 at the new eligible salary maximum to reach a maximum average. Thus, as his salary average increases, and benefits, accordingly, he argues that all benefits for which he became eligible after December 31, 1959, are truly an "increase." Accordingly, for an employee who begins service after January 1, 1960, or for an employee whose salary is far below the $400 per month average until after December 31, 1959, Social Security benefits are based upon the 1958 table and upon his total earning experience, even if it be zero, from the date of January 1, 1951 or his twenty-first birthday. Since these employees were either not entitled to any benefits on December 31, 1959, or, a small benefit based upon prior earnings, they, too, can argue that the benefits received at Social Security age based upon salary after December 31, 1959 are an "increase" over the insurance benefit payable prior thereto. It can thus be seen that if the Legislature were intending to exclude increases as determined by an individual's eligibility, as opposed to legislative increases in the table of benefits in effect, virtually every employee retiring in the future could seek to avoid a major portion of the Social Security offset by this argument. The mere fact that certain, or all, employees do not earn the maximum benefit by the cutoff date, December 31, 1959, does not make the federal increase ineffective.

There is no question that the intent of this law was not to disregard all offset merely because Social Security benefits had not become effective or capable of com-

putation prior to December 31, 1959. Such would be an unreasonable result that would nullify the law virtually to all public employees. *Cf. Dvorkin* v. *Dover Tp.*, 29 N.J. 303, 315 (1959); *Schierstead* v. *City of Brigantine*, 29 N.J. 220, 230 (1959). It is more reasonable to construe the law in a manner that gives it reason, and consistency in its application to all employees. *Robson* v. *Rodriguez*, 26 N.J. 517, 528 (1958). In 1958 the schedule became completely effective to all employees with an average earning of $350 or less. It further became effective, prior to December 31, 1959, for that class of employees with an average eligible salary of $400. The federal law, in creating a new class of benefits, i.e., for those with an average eligible monthly salary of between $350 and $400, increased such benefits at that time. The benefits of this class have not been increased or changed since the cutoff date. There were persons eligible for benefits in that new class prior to December 31, 1959, and even though none in the class had attained the full maximum average, the class nevertheless existed.

There is no legislative reason to discriminate between employees with an average salary of $350 or less and those with a higher eligible average salary. The 1958 table became fully effective as to both. Such obvious difference of treatment would have to be spelled out by the Legislature in order to view the federal table as effective as to some but not as to others.

Legislative interpretation and logic support the conclusion we have reached independently of an historical analysis of this statutory formula. However, the consistent administrative interpretation and practice under N.J.S.A. 18:13–112.70(e) and N.J.S.A. 43:15A–59(d) are also a supporting aid in construing the legislative intent with the conclusion we have reached. *Lane* v. *Holderman*, 23 N.J. 304, 322 (1957). The State Treasurer as general administrator of the Social Security provisions and the integrated retirement laws, N.J.S.A. 43:15A–1, N.J.S.A. 43:22–2(e), 8, and the actuary for the respective boards of trustees, N.J.S.A. 43:15A–18, 19, N.J.S.A. 18:13–112.59, .60, have both interpreted this legislation to include all increased benefits pursuant to the 1958 federal table as subject to offset. The actuary has actually projected the cost for maintaining the retirement systems on an actuarily sound basis by treating the 1958 schedule of benefits as fully effective prior to December 31, 1959. Any change would result in a severe impact on the retirement system threatening its actuarial soundness. The strong administrative interpretation thus supports the legal analysis hereinabove set forth.

Therefore, we advise you that N.J.S.A. 18:13–112.70(e) and N.J.S.A. 43:15A–59(d) should be construed to compute the offset from retirement allowance on the basis of the federal benefit table in effect prior to December 31, 1959 based upon the eligible monthly earning experience of an employee at the time of Social Security eligibility even though such experience includes an average monthly salary increase after December 31, 1959. In view of the identity of language and purpose, the same result follows as to N.J.S.A. 43:15A–59(d).

Very truly yours,

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