

JANUARY 25, 1960

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

MEMORANDUM OPINION—P-1

DEAR SIR :

You have requested our opinion as to whether an individual who is presently employed by the County of Mercer and who, a number of years prior to his county employment, was employed by the City of Trenton is entitled to prior service credit under the Public Employees' Retirement System for this service with the City of Trenton.

The prior service for which credit is sought was rendered between February 1, 1941 and June 30, 1943. You advise that this individual's service with the County of Mercer did not begin until approximately seven years thereafter, February 1, 1950. The Public Employees' Retirement System became effective in Mercer County on July 1, 1955. At that time pursuant to *N.J.S.A. 43:15A-75*, he exercised his option and joined the system. He was given a prior service certificate covering service rendered to the county prior to the date the act became effective as required by *N.J.S.A. 43:15A-75*.

The employee in question now takes the position that he is also entitled to prior service credit for his service with the City of Trenton. He cites in support of his position *R.S. 40:11-5* which reads in pertinent part as follows :

"Whenever heretofore there has been or hereafter there may be effected by appointment, transfer, assignment or promotion, of a municipal *employee*, to any other department or position in the municipal employ, or to a position or department of the county government; . . . in counties of the first or second class, the period of such prior service in said county or municipal employment, for any purpose, whatsoever, shall be computed as if the whole period of employment of such employee had been in the service of the department, or in the position, to which the said employee had been appointed, transferred, assigned or promoted." (Emphasis supplied.)

It is our opinion that said employee's request for prior service credit for service with the municipality should be denied. At the time of his appointment to a position in county government, he was not a municipal employee and, in fact, had not been for a number of years, hence he does not come within the class of persons protected by *R.S. 40:11-5*. Had the service been continuous, he would be entitled to prior service credit for his service with the municipality. See Memorandum Opinion, January 6, 1956 by Charles S. Joelson, Deputy Attorney General, addressed to George Borden, holding that an individual who had resigned from his position with a municipality to take a county position and who entered into the service of the county the day following the termination of his municipal employment was entitled to prior service credit for his municipal service. In so holding, it was specifically noted that "there was no hiatus in time between his municipal employment . . . and his county employment . . ." Further, where the Legislature sought to provide service credit

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for all service regardless of whether continuous or intermittent, it so stated. See R.S. 43:15A-61 which provides service credit for veterans based on years of public employment "in the aggregate."

You are accordingly advised that no prior service credit should be given for the service rendered by this individual to the City of Trenton prior to his employment by the County of Mercer.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: JUNE STRELECKI
Deputy Attorney General

JANUARY 29, 1960

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

MEMORANDUM OPINION—P-2

DEAR MR. KERVICK:

You have requested our opinion as to whether the estate of a deceased member of the Public Employees' Retirement System who transferred from the Consolidated Police and Firemen's Retirement System to the Public Employees' Retirement System, and who died while in service would be entitled to a return of contributions made while he was a member of the Consolidated Police and Fireman's Retirement System in view of the language of N.J.S.A. 43:15A-41c(1) which provides for a return of the accumulated deductions of a member who dies while in service. This question must be answered in the negative.

N.J.S.A. 43:15A-41c(1) reads as follows:

"Upon the receipt of proper proof of the death of a member in service on account of which no accidental death benefit is payable under section 49 there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate:

"(1) His accumulated deductions at the time of death together with regular interest; . . ."

Accumulated deductions are defined in N.J.S.A. 43:15A-6a as the "sum of all the amounts, deducted from the compensation of a member or contributed by him, standing to the credit of his individual account in the annuity savings fund." You have advised that the amount standing to the credit of this individual's account at the time of his death consisted of deductions from his compensation while he was a member of the Public Employees' Retirement System. This amount has been paid to the executor of said member's estate. It is contended, however, on behalf of said