

OPINIONS

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

member's estate that there should also have been credited to the member's individual account the contributions made by him when he was a member of the Consolidated Police and Firemen's Retirement System.

At the time of transfer the Actuary stated that the reserve necessary to transfer full credit from the Consolidated Fund to the Public Employees' Retirement Fund was \$6,202.00 which would establish 21 years, 6 months and 15 days of service credit. In keeping with your regular administrative practice this entire amount was transferred to the Contingent Reserve Fund in which Fund are credited contributions made by the employer. N.J.S.A. 43:15A-24. This procedure of crediting the entire amount transferred to the employer's account with no credit to the individual's account is followed because the Consolidated Police and Fireman's Retirement System has no provision for the return of contributions to a member upon his withdrawal from that fund. Thus, if this member had resigned from public employment, he would have been entitled to no benefits. However, since he transferred to other public employment he was permitted to transfer his retirement credits pursuant to R.S. 43:2-1 et seq.

R.S. 43:2-2 deals with pension credits upon transfer and reads in pertinent part as follows:

" . . . Upon his entry into the other system or fund he shall be admitted with the credit for prior service to which he was entitled in the system or fund from which he shall have withdrawn and he shall be permitted to deposit in the second retirement system or pension fund the total amount of his contributions so withdrawn from the first retirement system, and the board or administrative head of the first retirement system may transfer to the second retirement system or fund the funds or credit to which the withdrawing member was entitled. He shall, thereupon, as a member of the second retirement system, be entitled to such credit in the way of pension and annuity as is provided by law in the second retirement system or fund, with the prior service credit to which he was originally entitled in the first retirement system."

Thus it is clearly indicated that upon transfer from one fund to another, a member is to receive credit as an individual for only the funds which he was entitled to withdraw. Here he was not entitled to withdraw any funds, so no credit could be given to him in his individual account. The \$6,202.00 transferred from the Consolidated Police and Fireman's Retirement System to the Public Employees' Retirement System was merely the actuarial computation of the value at that time of all payments to be made on account of any pension or benefit.

It should be noted that Assembly Bill No. 539 of 1959, which would have allowed members of the Consolidated Police and Fireman's Retirement System to withdraw all of the accumulated deductions credited to their individual accounts in case of withdrawal, was vetoed by the Governor on January 12, 1960. The Governor stated in his Veto Message:

" . . . this fund had become so hopelessly insolvent that from 1944 no new members have been allowed to join it, and since 1952 a very expensive salvage program has been under way, calling for payments by municipalities and the state for 30 years to get this fund out of the red.

"The reason for the fund's insolvency is that annual contributions were too small to accumulate the reserves needed to pay benefits. It is these in-

adequate contributions which this bill would allow a member to withdraw. The proposal is unsound. The best simple analogy would be a bill to allow a policy holder to obtain repayment of his fire insurance premiums because his house did not burn down. No pension or insurance system can operate on that basis unless the right of withdrawal were taken into account in computing the premium, which would have to be higher.

"The fact that the law does not allow withdrawal was one of the factors entering into the computation of the deficit now being made up, and this bill would destroy the validity of that computation. Besides, the records of contributions were hopelessly incomplete when the fund was salvaged in 1952, and it would probably be impossible to establish the facts for individual members."

When the individual in question was a member of the Consolidated Police and Firemen's Retirement System he had no right to a withdrawal of his contributions. His transfer to the Public Employees' Retirement System did not give him any greater rights in the System from which he transferred. You are accordingly advised that the estate of the deceased member is not entitled to a return of any contributions made by him while he was a member of the Consolidated Police and Firemen's Retirement System.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: JUNE STRELECKI
Deputy Attorney General

FEBRUARY 29, 1960

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

MEMORANDUM OPINION—P-3

DEAR MR. KERVICK:

You have requested our opinion as to the taxability under the Corporation Business Tax Act of the Farmers' Cooperative Association of New Jersey, Inc. No. 3821-2750.

In your request for an opinion, you have stated the facts as follows: The above named corporation was incorporated in New Jersey in 1915 under an act to incorporate associations not for pecuniary profit. In 1936 the corporation by resolution of its members became subject to the 1924 Act entitled "An act to Provide for the Incorporation and Regulation of Cooperative Agricultural Associations, either with or without Capital Stock" (R.S. 4:13-1 et seq.) and it incorporated thereunder (R.S. 4:13-13). Until 1952 the corporation operated without capital stock; thereafter, it issued capital stock which is now outstanding. The Cooperative claims that it is not