

## OPINIONS

insurance, loan or other financial business and which, pursuant to specific statute, are under the active supervision of the Department of Banking and Insurance, are exempt from the requirements of N.J.S.A. 14:6-2. All other domestic corporations and all other foreign corporations doing business in this State must file annual reports with the Secretary of State pursuant to N.J.S.A. 14:6-2.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: MURRY BROCHIN  
*Deputy Attorney General*

June 9, 1960.

HONORABLE JOHN A. KERVICK  
*State Treasurer of New Jersey*  
State House  
Trenton 25, New Jersey

## MEMORANDUM OPINION—P-13

DEAR MR. KERVICK:

The Board of Trustees of the Public Employees' Retirement System has inquired as to their authority to enroll certain local employees in the Retirement System.

After a request by certain employees of the school board, on September 25, 1958, at a special meeting of the Township Committee of Brick, the following question was ordered to be placed upon the ballots in the 1958 general election:

"Shall the Public Employees' Retirement System (R.S. 43:15A-1 to 86) be adopted and put into effect in the Township of Brick as to the employees of the Board of Education of the Township of Brick who are not members of or eligible to join the Teachers' Pension and Annuity Fund?"

This referendum received an affirmative vote.

You ask whether the above question may be treated as a vote upon the adoption of the Retirement System for all municipal employees in Brick Township. Obviously, by its express language, the referendum appeared to deal solely with "employees of the Board of Education" and not employees of the Township. To give the referendum a broader effect, by including all municipal employees, through a process of implication, would violate the provisions of N.J.S.A. 19:3-6, would tend to mislead the voters and would therefore become legally ineffectual. See also: *Botkin v. Westwood*, 52 N.J. Super. 416 (App. Div. 1958), appeal dismissed 28 N.J. 218 (1958). In view of the conclusions reached herein the referendum in question was of no force or effect and, at most the only effect that it could have is that of determining the sentiment of the voters, as set forth in the preamble of the resolution authorizing the referendum. Non-binding referenda under certain circumstances are permitted by N.J.S.A. 19:37-1 *et seq.*

Municipal employees of the Township of Brick, Ocean County, were not previously covered by the State Employees' Retirement System, Title 43, chapters 14 and 15, nor has the governing body of that municipality directed that the question of the adoption of the Public Employees' Retirement-Social Security Integration Act, N.J.S.A.

43:15A-1 to 86, for *all* employees therein be submitted to the qualified voters at a general election. N.J.S.A. 43:15A-74. Thus, municipal employees generally in Brick Township are not covered by or entitled to the benefits of the Retirement System unless the 1958 referendum accomplished this. N.J.S.A. 43:15A-7; N.J.S.A. 43:15A-75.

In the Township of Brick all teachers are eligible for membership in the Teachers' Pension and Annuity Fund. N.J.S.A. 18:13-112.6; N.J.S.A. 18:13-112.12. The Legislature has declared that not only those persons employed in usual positions classified as the teaching profession, i.e., regular, special and helping teachers, principals, supervisors, superintendents and other professional staff members, are eligible for membership in the Fund, but also allowed membership to custodians, janitors and janitresses, engineers, firemen and other janitorial employees of a school district or school employer. N.J.S.A. 18:13-112.4(p). However, clerical and non-professional employees other than the above-specified were not afforded this privilege of membership in the Teachers' Fund.

In order to eliminate a "no-man's land" of pension and insurance coverage, the Legislature provided in N.J.S.A. 43:15A-77 in pertinent part:

"Every employee of any school district \* \* \* the boundaries of which are coterminous with those of a municipality \* \* \* in which chapter 15 of Title 43 of the Revised Statutes [43:15-1 to 43:15-6] has been adopted, or in which this act [43:15A-1 to 43:15A-86] is adopted, who is not a member of or eligible to join the Teachers' Pension and Annuity Fund \* \* \* shall be entitled to receive the same benefits as employees of such municipality \* \* \* are entitled to receive and the school district shall have the same obligations with respect to such employees as the municipality has to its own employees under this act \* \* \*."

By the express terms of the statute, the benefits of the Public Employees' Retirement System are available to Board of Education employees only where they are available to employees of the municipality in which the school district is located. Therefore, in these circumstances, the referendum in question cannot effectively make eligible for enrollment in the Public Employees' Retirement System employees of the Board of Education. The governing body must first invoke the proper statutory machinery to permit all qualified employees to join the system before school board employees can become eligible.

Very truly yours,

DAVID D. FURMAN

*Attorney General*

By: LEE A. HOLLEY

*Deputy Attorney General*