

The case of *Eiselman v. Burlington County Board of Freeholders* dealt with employees having protection of tenure under the Civil Service Act. Because it lacks a specific provision for removal of employees other than for cause, the Civil Service Act was construed by Judge Drenk as precluding any mandatory retirement program except according to the terms of the Public Employees' Retirement-Social Security Integration Act. The reasoning is inapplicable to employees not within the classified service of Civil Service or not otherwise protected by tenure, who are subject to removal according to a uniform administrative policy determined by the employer. See R.S. 11:21-1 *et seq.*; *Connors v. City of Bayonne*, 36 N.J. Super. 390 (App. Div. 1955); and *Gordon v. State Board of Education*, 132 N.J.L. 356 (E. & A. 1945), among others.

Messano v. Board of Education of Jersey City, 32 N.J. 561 (1960) established a parallel principle to the *Eiselman* case in striking down an administrative rule fixing mandatory retirement at age 65 for non-instructional employees even though some enjoyed tenure rights under the Education Law.

It has been the consistent policy of the State not to interfere with the retirement requirements imposed by the various employers who come within its retirement requirements. Employees of Rutgers, The State University who serve until age 70 are subject to mandatory retirement by the Board of Trustees of the Public Employees' Retirement System.

My conclusion is that N.J.S.A. 43:15A-47 does not afford the employees at Rutgers, The State University a vested right to remain employed until reaching the age of 70 and that the administrative regulation of the Board of Governors fixing a mandatory retirement age of 65 is a valid exercise of the Board's discretionary authority to determine administrative and personnel policy for Rutgers, The State University.

Very truly yours,

DAVID D. FURMAN
Attorney General

AUGUST 2, 1961

SUPERINTENDENT JOSEPH D. RUTTER
New Jersey State Police
State Police Headquarters
West Trenton, New Jersey

FORMAL OPINION 1961—No. 20

DEAR SUPERINTENDENT RUTTER:

You have requested our opinion on the meaning of N.J.S. 2A:151-43(n). That statute provides certain exceptions to N.J.S. 2A:151-41, which prohibits carrying concealed weapons on the person or in a vehicle. Excepted by the statute in question are "persons having a hunter's license in going to or from places of hunting." You have asked two questions:

1. "Is a New Jersey resident having a valid New Jersey hunting license permitted to carry a pistol or revolver while enroute to or coming from places of hunting in this state?"
2. "Are New Jersey or out-of-state residents having a valid hunting license excepted from the Carrying Concealed Weapons Law while traveling

through New Jersey to another state and having weapons, (i.e., pistols or revolvers) in their possession that are allowed for hunting purposes in that particular State?"

The answer to the first question is in the negative. Anyone hunting in this State is not exempted by the statute in question. The reason is this: the current fish and game regulations do not allow any hunting with a pistol. N.J.S.A. 23:4-13. It would be contrary to common sense and good public order to suppose that the statute under consideration, which seeks to prevent the carrying of concealed weapons except when in the public interest, would exempt one whose purpose for carrying the weapon is of necessity illegal. Impliedly in the statute is a requirement that there be a pistol season open during the time the gun is carried.

It could be argued that the statute contemplated the carrying of pistols for self-protection. This would be a strained interpretation since (1) the hunter already has a legal weapon at his disposal, (2) realistically there is no danger on the roads, fields and woods of New Jersey which would require the carrying of a concealed weapon for protection. Besides, it would be illegal to have pistol bullets "in possession in the woods or fields at any time." N.J.S.A. 23:4-13.

We therefore advise you that a hunter going to or returning from a place of hunting in New Jersey is not exempted by N.J.S. 2A:151-43(n).

The answer to the second question is in the affirmative, provided that certain requirements are met. To come within the exception of the statute, a person with a concealed weapon (1) must have a valid hunting license in his possession from the state of his destination, (2) there must be a pistol season open in that state at the time or reasonably close in point of time, (3) he must be traveling the most expeditious route to or from the foreign state, and (4) he must be going to the foreign state with intent to hunt, or if he is returning, then in fact have hunted.

The reasons for this conclusion are as follows. The first requirement, hunting license, is called for by the statute. It does not specify from which state the license must be obtained, but since the holder may not hunt with pistol in New Jersey, the requirement is reasonably interpreted to mean that the license must be from the state of destination. The second prerequisite, that there be a pistol season open or reasonably close in point of time, is grounded on the same rock of public policy as is the similar requirement with regard to New Jersey. Requiring travel by the most expeditious route, the third prerequisite, is consistent with the purpose of the statute, which is to permit the carrying of concealed weapons only when really necessary. If one is not traveling the most expeditious route, then he is sightseeing, visiting, shopping, or something else—but he is not "going to or from places of hunting" as required. Without the requirement of intent, the fourth prerequisite, the statute would be a mockery. For it would provide a license to carry concealed weapons to anyone who said he was going to another state to hunt, even though in fact he had no such intention.

We therefore advise you that a hunter going to or from a place of hunting outside of New Jersey is exempted by N.J.S. 2A:151-43(n) only if he fulfills the four requirements detailed above.

Very truly yours,

DAVID D. FURMAN
Attorney General

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