

This construction of Section 5 of the statute is supported by the provision of Section 9 that the fare tariffs fixed by the Commissioner prior to the execution of the contract "shall remain in effect for the duration of the contract only unless modified by future contracts or determinations." Future contracts or determinations, as referred to in this section, must embrace approvals by the Commissioner, during the term of the contract, for the increase of rates of fare because of hardship or other justification arising subsequent to its execution. Again the procedure by notice and an opportunity for a hearing should be adopted and followed.

The whole thrust of several sections of L. 1960, c. 66 is to avoid rigidity and to provide adaptability to changing circumstances in passenger service subsidy contracts. Section 7 permits waivers in the event of circumstances beyond the control of the carrier as conditions of the contract. Section 8 is specific authority for mutually agreed to amendments during the life of the contract with respect to the manner in which service is to operate. Under Section 10 the Commissioner is directed, within his discretion, to re-evaluate passenger service which was initially determined not to be essential in the public interest and to reach a determination that it is required for the balance of the contract. Finally, Section 14 declares that the entire act is subject to a liberal construction to obtain its objectives of maintaining and preventing discontinuances in commuter and suburban railroad passenger service.

You have asked also as to your authority to authorize the railroad carrier, both prior to and during the term of a commuter subsidy contract, to apply to the Interstate Commerce Commission for interstate railroad passenger fare increases.

Any exercise of authority by the Commissioner over interstate rates would infringe the Interstate Commerce Act. 49 U.S.C.A. § 15(1). The Commissioner, however, retains the statutory authority to withhold subsidy payments upon a breach of an essential provision of the contract. The contract includes in Section 5, as noted *supra*, an undertaking not to charge passenger fares at rates exceeding those incorporated therein. Accordingly, the Commissioner, on behalf of the State, need not enter into a commuter subsidy contract except at interstate fares which are fair and not excessive in his judgment and may upon notice and hearing approve in writing the application for and prosecution of a proceeding for an interstate railroad passenger fare increase before the Interstate Commerce Commission before execution and during the term of the contract.

Sincerely yours,

DAVID D. FURMAN
Attorney General

AUGUST 11, 1961

COLONEL JOSEPH D. RUTTER
Superintendent, Division of State Police
Department of Law and Public Safety
West Trenton, New Jersey

FORMAL OPINION 1961—No. 23

DEAR COLONEL RUTTER:

You have sought my opinion as to whether a member of the State Police who has reached the fourth anniversary of his enlistment may be denied reappointment

without preference of charges, an opportunity for a hearing and a determination of cause.

My answer is that you as Superintendent may deny reappointment summarily under such circumstances. The fourth anniversary trooper has not attained tenure under R.S. 53:1-8.1. He is one year short of the requisite five years' continuous service to qualify.

The State Police Act (L. 1921, c. 102) provides protection to members of the State Police against removal except for cause during two year enlistment terms. That section, now R.S. 53:1-8, is as follows:

"All the officers and troopers enumerated in section 53:1-5 of this title shall be appointed or reappointed by the superintendent for a period of two years, and shall be removable by him after charges have been preferred and a hearing granted. Any one so removed from the state police for cause after a hearing shall be ineligible for reappointment."

Pursuant to R.S. 53:1-8, a member of the State Police is entitled to a preference of charges, an opportunity for a hearing and a determination of cause prior to his removal during the two year period after his first appointment, during the two year period after his reappointment, if he is reappointed on his second anniversary, and during the one year period after a second reappointment on his fourth anniversary, until he qualifies for statutory tenure under R.S. 53:1-8.1.

R.S. 53:1-8 fixes no requirement that the Superintendent reappoint members of the force at the termination of two year enlistment periods except upon a determination of cause for their removal and ancillary procedural safeguards. *McQuillin, Municipal Corporations*, Sec. 12,269, p. 424 sets forth the general rule applicable to public employment:

"So, if the term of office is fixed and has expired, mandamus to compel re-appointment will be denied, for, in such case, the officer is not removed."

I recommend as head of the Department of Law and Public Safety an administrative policy favoring reappointments to second and fourth anniversary troopers in the absence of substantial grounds to question their fitness to serve as members of the State Police.

Very truly yours,

DAVID D. FURMAN
Attorney General

AUGUST 16, 1961

HONORABLE KATHARINE E. WHITE
Acting State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1961—No. 24

DEAR MRS. WHITE:

We have been asked to render an opinion on the relationship between N.J.S.A. 43:15A-50 and N.J.S.A. 43:15A-59 (Public Employees' Retirement System) as well