SEPTEMBER 29, 1961

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

FORMAL OPINION 1961—No. 28

DEAR MRS. WHITE:

You have requested our opinion concerning the operative date of retirement for members of the Public Employees' Retirement System and of the Teachers' Pension and Annuity Fund who elect to receive benefits pursuant to N.J.S.A. 43:15A-38 and N.J.S.A. 18:13-112.38, respectively.

Specifically, you desire to know whether the aforesaid members fall within the provisions of Chapters 123 and 124 of the Laws of 1960 which provide that the Social Security offset required by P.L. 1954, c. 84, § 59 and P.L. 1955, c. 37, § 68 "shall not be made in the case of retired members who retired after August 1, 1956 or prior to October 1, 1960 and who at the time of their retirement had not attained a fully insured status under the provisions of the Social Security Act as those provisions obtained on December 31, 1959 * * *."

In short, the question is whether members who took advantage of the "vesting" privilege between the operative dates above-mentioned are considered to be "retired" for purposes of Chapters 123 and 124 of the Laws of 1960.

We are of the opinion that this question must be answered in the affirmative. The evident intention of the Legislature in enacting the above laws was to protect those people who took advantage of the opportunity to avoid the Social Security offset but who were suddenly deprived of their choice by an unforeseen change in the Social Security Act made in 1956. The statement appended to Assembly Bill No. 332 which subsequently became Chapter 123 of the Laws of 1960 makes this clear. It reads as follows:

> "When teachers voted (in October, 1955) to accept the new teacher retirement plan contained in chapter 37, P.L. 1955, they clearly understood that for a few years, while adjusting to the new law, a limited group of older teachers had an opportunity of avoiding the social security offset.
>
> "Some teachers were suddenly deprived of this 'choice' by an unforeseen change in the Federal Social Security Act made in 1956. Attempts to enact corrective legislation to eliminate this discrimination have not been successful thus far.
>
> "A second group of teachers could be deprived of this 'choice' by some future amendment to the Federal Social Security Act. This bill is designed to prevent such an occurrence. It requires that the Federal Act in effect on December 31, 1959 be the basis for determining the eligibility to a social security benefit. This would preserve the 'status quo' as far as the ability to avoid a social security offset is concerned.
>
> "There is no cost to this bill since its purpose is to preserve conditions as they exist now. This bill does not touch any provisions written in chapter 37, P.L. 1955 on contributions to social security or the amounts of social security benefits to be 'offset.'"

It would surely be unfair to members who have vested their pension rights in reliance upon the present status of the law to be deprived of substantial benefits by reason of a subsequent change in the legislation. This the Legislature tried to avoid by enacting Chapters 123 and 124.

It is clear, therefore, that to hold that Chapters 123 and 124 do not apply to members who vest would be to defeat the legislative intent, a result which should be avoided.

It should be observed, moreover, that when a member vests his benefits after having completed 20 years of service, all administrative steps applicable to retirement are taken, except for the pro forma approval of the retirement by the Board upon the member's attaining age 60. The contributions of members and employers are determined; both noncontributory and contributory death benefits are accumulated; and the right to monthly retirement allowances at the service retirement age of 60 accrues.

Therefore, we advise you that for purposes of Chapters 123 and 124 of the Laws of 1960 members who vested their benefits pursuant to N.J.S.A. 43:15A-38 and N.J.S.A. 18:13-112.38 are considered to be "retired."

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ROBERT S. MILLER
Deputy Attorney General

OCTOBER 20, 1961

ELMER J. HERRMANN, *Clerk*
Essex County Board of Elections
Hall of Records
Newark 2, New Jersey

FORMAL OPINION 1961—No. 29

DEAR MR. HERRMANN:

Our opinion has been asked as to whether or not the members of district election boards are casual employees as that term is used in the Workmen's Compensation Act and consequently whether or not they are excluded from coverage under the provisions of that Act.

The members of the district boards of election are appointed by the various County Boards of Election, N.J.S.A. 19:6-1, to serve for a period of one year, N.J.S.A. 19:6-8. The County Board specifies the municipalities and districts in which the members shall serve, N.J.S.A. 19:6-3 and 19:6-7; the time and place of any meeting that the district board members must attend is fixed by the County Board, N.J.S.A. 19:6-9; and the County Board may remove with or without cause any member of the district board, N.J.S.A. 19:6-4 and 19:6-5. The members of the district boards ordinarily perform their duties only on primary and general election days. The salary of the members of the district boards of election is paid by the county in which they perform their services, N.J.S.A. 19:45-4.

Casual employment is defined by N.J.S.A. 34:15-36. Under the provisions of this section of the statute if the work is done ". . . in connection with the employer's