

MAY 15, 1961

HONORABLE DONALD M. ALTMAN
Deputy State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-7

DEAR MR. ALTMAN :

You have requested our advice as to the eligibility of George D. Ziegler, a disabled public employee, for compensation pursuant to R.S. 43:5-1 et seq., known as the Heath Act. Mr. Ziegler was appointed an assistant court reporter in the 5th Judicial District of New Jersey in 1907. In 1912 he was appointed by a Justice of the New Jersey Supreme Court as shorthand reporter for the circuit in Union and Middlesex Counties (P.L. 1900, c. 149). In 1948 he was appointed by the present New Jersey Supreme Court as supervising shorthand reporter for the same counties and has continued in such position to the present day.

We are informed that Mr. Ziegler's employment from 1912 to the present date has been on a full-time basis. In other words, he has not been merely certified to appear before the courts, but his main labor has been to be in attendance before the New Jersey Courts while they were in session.

Mr. Ziegler seeks a pension under P.L. 1921, c. 134, R.S. 43:5-1 et seq. The purpose of that legislation as stated in the Statement attached to Senate Bill No. 152 was :

"To provide for the payment of 50 per centum of the salary of those who have or shall have been *in the service of the State* 25 years and have become incapacitated, who have or shall have reached the age of 60 years. It applies only to employees who have no fixed term * * *." (Emphasis supplied.)

The Heath Act also provided that its benefits did not have application

"* * * to any officer or employee of the State drawing a pension or who shall be entitled to do so under any law enacted prior to March thirty-first, one thousand nine hundred and twenty-one, which specifically names any class or classes of such officers or employees." N.J.S.A. 43:5-1.

Your question is basically two-fold: (1) whether Mr. Ziegler qualifies for 25 years of State service in his capacity as court reporter, and (2) whether any other law entitling him to benefits precludes application of the Heath Act to him.

The question of whether Mr. Ziegler's service as a court reporter had sufficient State characteristics to qualify him for pension rights under the Heath Act must be answered affirmatively. One of the principal tests is the degree of control and supervision exercised by the particular branch, department or agency of the State. See *Memorandum Opinion—P-27, 1954-55 Opinions of the Attorney General of New Jersey*, p. 254. Judicial control and supervision of court reporters have always existed. See P.L. 1900, c. 149; P.L. 1928, c. 249; P.L. 1929, c. 291; R.S. 2:16-20 et seq. In P.L. 1948, c. 376 the present basis of the court reporter system for the New Jersey judiciary was established (N.J.S. 2A :11-11 et seq.). The Legislature expressly declared that court reporters, except those theretofore belonging to a county retirement

system under P.L. 1943, c. 160, N.J.S.A. 43:10-18.1, are to be considered State employees for pension purposes.

For the sake of future clarity, we emphasize at this time that N.J.S. 2A:11-16(i) expresses an intent that court reporters be treated as State employees for the purpose of membership in the then existing State Employees' Retirement System. *Cf.* R.S. 43:14-1, 2(b). Prior to 1943, stenographic reporters had been treated under an independent statutory basis for the granting of pensions. *Cf.* P.L. 1922, c. 15 (later codified as part of the general pension plan for judicial officers in the State of New Jersey, see Chapter 6 of Title 43 of the Revised Statutes of 1937).

However, in 1943 the Legislature authorized counties of over 800,000 inhabitants to create a separate pension fund apart from those generally provided for county employees in the State of New Jersey. *Cf.* P.L. 1943, c. 160 *with* R.S. 43:10-1. Under this new legislation a county employee was defined as "including the official stenographic reporters and proxies of such official stenographic reporters of such county." R.S. 43:10-18.1. This legislation allowed, in addition to court reporters, county pension fund membership to county detectives, probation officers, sheriff's employees, sergeants at arms and court criers, also generally classified as State employees. R.S. 43:10-18.6(c). Stenographic reporters were given special consideration to join this pension fund, regardless of age (R.S. 43:10-18.1).

Because of his advanced age Mr. Ziegler until 1943 was generally ineligible to join any pension fund. *Cf.* R.S. 43:1-1. We are informed that Mr. Ziegler was not devoting his services for, or being directly compensated by, any county of a population in excess of 800,000 inhabitants. He did not or could not have become a member of any county retirement system under P.L. 1943, c. 160, and thus, would remain within the legislative direction for consideration as a State employee for pension purposes. N.J.S. 2A:11-16(i). This latter statutory provision is merely cumulative evidence of the legislative intent that court reporters working for the State judiciary be considered State employees. *1955 Memorandum Opinion P-27, supra.*

The Heath Act forecloses application to any State employees for whom pension benefits were already provided "prior to March 31, 1921." It may be seen that the first pension system "which specifically names" the class of State employees consisting of court stenographers and reporters was enacted by P.L. 1922, c. 15 and amended by P.L. 1923, c. 129. Therefore, the prohibition of R.S. 43:5-1 does not apply to Mr. Ziegler.

It should be noted that Mr. Ziegler was entitled, at least from 1948, to membership in the State Employees' Retirement System. *Cf.* N.J.S. 2A:11-16(i). In such a case the Legislature has since provided for beneficial treatment in joining the present Public Employees' Retirement System. N.J.S.A. 43:15A-9. In view of Mr. Ziegler's 53 years of honorable State employment, it may be that economic considerations may favor his consideration of utilizing this benefit for former State employees, in lieu of application under the Heath Act.

Very truly yours,

DAVID D. FURMAN
Attorney General

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