

JULY 19, 1961

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

MEMORANDUM OPINION—P-10

DEAR MRS. WHITE:

You have sought our interpretation of the following statutory language found both in the Teachers' Pension Law, N.J.S.A. 18:13-112.44 and the Public Employees' Retirement Law, N.J.S.A. 43:15A-46:

"A member upon retirement for accident disability shall receive * * * a retirement allowance which shall consist of:

* * *

"(b) a pension, in addition to the annuity, of two-thirds of his actual *annual compensation* for which contributions were being made at the time of the occurrence of the accident." (Emphasis supplied.)

You have asked what interpretation should be given to the phrase "annual compensation" contained in the above provision on the basis of which accident disability retirement allowance is computed.

In the Teachers' Law, compensation is defined as "the contractual salary for services," N.J.S.A. 18:13-112.4(d). No comparable definition is contained in the Public Employees' Retirement Law. However, various benefits under the respective laws are based upon the phrase "final compensation" which is expressly defined (N.J.S.A. 43:15A-6(e) and N.J.S.A. 18:13-112.4(f)) or upon the phrase "compensation upon which * * * contributions are based or received by the member in the last year of creditable service" (N.J.S.A. 18:13-112.40(b) and N.J.S.A. 43:15A-41(c)(2)).

The term "final compensation" is defined in both acts on the basis of the average annual compensation for which contributions are made by a member during a five year period. Ordinary disability retirement allowances and retirement allowances for age and service are computed in both systems upon a percentage of "final compensation." N.J.S.A. 18:13-112.43, .46(b); N.J.S.A. 43:15A-45(b), 48(b) and (c). However, if a member dies during ordinary disability retirement or retirement for service and age, death benefits are paid upon the basis of "compensation received by the member in the last year of creditable service." N.J.S.A. 18:13-112.43, .46(b); N.J.S.A. 43:15A-45(c), 48(d). Accidental death benefits, on the other hand, are based upon a percentage of "final compensation." N.J.S.A. 18:13-112.48; N.J.S.A. 43:15A-49.

Thus it is apparent that for each type of benefit the Legislature has expressly defined the basis for determining compensation.

As to accident disability retirement allowances, the Legislature has in clear terms defined annual compensation as "actual annual compensation for which contributions were being made *at the time of the occurrence of the accident.*" (Emphasis added.) We see no reason to incorporate for this type of benefit the definition given to the phrase "final compensation" because the word "final" does not appear in N.J.S.A. 18:13-112.44 and N.J.S.A. 43:15A-46. The phrase used is "*actual* annual

compensation" for which contributions were "*being* made at the time of the occurrence of the accident." Here, the phrase "were being made" imports the sense of current payments. This sense is also distinguishable from the concept of "last year of creditable service" referred to above for other types of benefits.

It is our opinion, therefore, that accident disability retirement allowances should be based upon the rate of compensation actually being paid to an employee at the time of the accident.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ROBERT S. MILLER
Deputy Attorney General

AUGUST 1, 1961

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

MEMORANDUM OPINION—P-11

DEAR COLONEL RUTTER :

You have sought my opinion as to whether independent insurance investigators and adjustors are subject to the licensing provisions of the Private Detective Act of 1939, R.S. 45:19-8 et seq.

The statutory definition of private detective business, insofar as pertinent, is as follows:

"(a) The term 'private detective business' shall mean the business of conducting a private detective agency or for the purpose of making for hire or reward any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed by the same person, firm, association or corporation for fee, hire or reward, to wit: * * * (6) the causes and origin of, or responsibility for, fires, libels, accidents, damage, injuries or losses to persons, firms, associations or corporations, or to real or personal property; * * * provided, however, that the term shall not include * * * any person, firm, association or corporation engaged in the business of making reports for insurance or credit purposes. * * * The term shall not include and nothing in this act shall apply to any lawful activity of * * * any person, firm, association or corporation licensed to do a business of insurance of any nature under the insurance laws of this State, nor to any employee or licensed agent thereof; nor to any person, firm, association or corporation conducting any investigation solely for its own account."