

"As used in this chapter, the term 'pension,' when applied to a retirement allowance, shall include only that portion of the retirement allowance which is derived from appropriations made by the employer or by the State."

The question arises because only certain of the various statutory retirement systems distinguish between "pension," "annuity," and "retirement allowance." Under the Public Employees' Retirement System, Teachers' Pension and Annuity Fund, and the Police and Firemen's Retirement System, such a distinction is expressly made. See N.J.S.A. 43:15A-6(b), (g) and (k); N.J.S.A. 43:16A-1(11), (12) and (13); and N.J.S.A. 18:13-112.4(b), (h) and (n).

On the contrary, in the statutes establishing the Consolidated Police and Firemen's Pension Fund (R.S. 43:16-1 to 16-21), the Prison Officers' Pension Fund (R.S. 43:7-7 to 7-27), and the State Police Retirement and Benevolent Fund (R.S. 53:5-1 to 5-7) there is no distinction made between "retirement allowance," "pension," and "annuity." Indeed, where reference is made to "pension" it is used in a broad, generic sense rather than in the technical sense of the first three statutes above-mentioned. For example, in R.S. 43:16-17(8), "pension" is defined as meaning "the amount payable to a member or his beneficiary under the provisions of this act." Furthermore, we are informed that with reference to the administration of the latter three systems there has never been a distinction made between that portion of the member's allowance which is derived from his own contributions ("annuity") and that portion which is derived from employer contributions ("pension").

In sum, prior to the advent of the modern annuity-type retirement systems, all payments to retired employees were generally denominated "pensions." The terms "retirement allowance" and "annuity" have been utilized only in the more modern pension systems. By the very wording of the 1959 amendment "the term 'pension'" is only involved "when applied to a retirement allowance."

Thus, the effect of Chapter 101 of P.L. 1959 is limited to those retirement systems—namely, the Public Employees' Retirement System, Teachers' Pension and Annuity Fund, and the Police and Firemen's Retirement System—where the terms "retirement allowance," "pension," and "annuity" are differentiated by statutory definition.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: ROBERT S. MILLER  
*Deputy Attorney General*

AUGUST 16, 1961

HONORABLE ROSCOE P. KANDLE, M.D.  
*State Commissioner of Health*  
129 East Hanover Street  
Trenton, New Jersey

MEMORANDUM OPINION—P-20

DEAR DOCTOR KANDLE:

You have requested our opinion as to the proper interpretation to be given to R.S. 58:11-18.13 and R.S. 58:11-18.19, insofar as they apply to the renewal of li-

censes for operators of public water treatment plants, public sewerage treatment plants and public water supply systems which are privately owned or maintained. The pertinent portions of these statutes provide:

R.S. 58:11-18.13:

"\* \* \* Licensees shall apply for renewal on or before the thirtieth day of September of each year. *Renewal may be effected at any time during the month of September by the payment of a fee of five dollars (\$5.00) \* \* \*.*" (Emphasis added.)

R.S. 58:11-18.19:

"Licensees employed in the operation of public water treatment plants, public sewerage treatment plants, or public water supply systems, *privately owned or maintained by any person or corporation*, shall be exempt from the payment of the annual renewal fee provided in this act except the fee of one dollar (\$1.00) for every three months or fraction thereof that the application for renewal be delinquent; *provided, however, that all licenses issued without the payment of the renewal fee shall be valid only at the utility at which the licensee is employed at the time of the issuance of the license. \* \* \**" (Emphasis added.)

Specifically, you ask how the above-mentioned statutes apply to the following situation:

A licensee applies to the department for a renewal of his license. The application form provides a section for the applicant to indicate whether he is presently employed at a facility which is publicly owned or maintained, or one which is privately owned or maintained. At the bottom of the application it is stated that a person employed at a facility which is publicly owned or maintained is required to pay a five dollar renewal fee. The applicant indicates on the form that presently he is employed at a facility which is privately owned or maintained. Nevertheless, with his application he submits five dollars.

The exemption granted in R.S. 58:11-18.19, while excluding the operators of privately owned or maintained facilities from the payment of the renewal fee also provides that all licenses issued without the payment of the renewal fee shall be valid *only* at the utility at which the licensee is employed at the time of the issuance of the license. Therefore, while benefiting a licensee to the extent that he is not required to pay a fee, it also restricts him in the use he can make of the license. A licensee realizing the restriction inherent in such a renewal may desire to have an unrestricted license although this requires the payment of a fee. For example, a licensee, although presently employed privately, may anticipate working at a publicly owned or maintained facility or he may anticipate operating two plants. It would be to his advantage to have an unrestricted license, although he is not required under those circumstances to take a new examination.

Our opinion is, therefore, that when a licensee employed at a privately owned or maintained public water treatment plant, public sewerage treatment plant or public water supply system files an application for renewal of his license and pays a five-

dollar fee, the State Department of Health may issue him an unrestricted license valid for any publicly or privately owned facility.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: THOMAS F. TANSEY  
*Deputy Attorney General*

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AUGUST 17, 1961

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

MEMORANDUM OPINION—P-21

DEAR MRS. WHITE:

You have asked our opinion as to the amount of funds a member may borrow from the Teachers' Retirement System pursuant to N.J.S.A. 18:13-112.37. That section allows a member with over three years of creditable service to borrow from the system "an amount equal to not more than 50% of the amount of his accumulated deductions." Specifically, you desire to know whether the term "accumulated deductions" for the purpose of making loans includes contributions on behalf of an employee by an employer during a term of military service.

The case of *Bruder v. Teachers' Pension and Annuity Fund*, 27 N.J. 266, 274-277 (1958) has already determined this question. Such employer contributions may not be considered as a part of a member's accumulated deductions.

The New Jersey Supreme Court distinguished between the contributions for an employee as opposed to contributions by such an individual. It should be noted that the loan provision utilizing the term "accumulated deductions" does not encompass the broader definition in N.J.S.A. 18:13-112.36 applicable to funds subject to withdrawal, i.e., accumulated deductions standing to the credit of a member's individual account in the annuity savings fund. The additional phrase "standing to his credit" was considered a decisive distinction by the Supreme Court in the *Bruder* case in holding as follows:

"If the Legislature intended to include contributions by employers during wartime service within the term 'accumulated deductions' as utilized in N.J.S.A. 18:13-112.72(a), it had only to so specify in language comparable to that utilized in N.J.S.A. 18:13-112.36."

The aforesaid loans, it is noted further, may be made to a member from either of two sources: (1) from the annuity savings fund (N.J.S.A. 18:13-112.21), or (2) from moneys which have been set aside by the Board of Trustees for this purpose in the contingent reserve fund (N.J.S.A. 18:13-112.20). See the final paragraph in N.J.S.A. 18:13-112.37. In either event, however, members of the system may borrow