

or overweight (R.S. 39:3-84) statutes, under the circumstance that it is on loan from a motor vehicle dealer, the title owner, for demonstration purposes and not for hire.

My opinion is that the use of dealer's plates is lawful and that no motor vehicle violation exists on the facts stated. Formal Opinion 1960—No. 15 is squarely in point and its statutory analysis of R.S. 39:3-18 is incorporated herein.

A truck cannot be reliably tested for performance without a load. Whether a truck on trial or demonstration run hauls a dummy load or a commercial load is immaterial. A truck which is hired or purchased from a dealer, however, must display commercial plates, and its operation on a public highway with dealer plates would constitute a motor vehicle violation. Similarly, use by a dealer or his employee in another commercial enterprise of the dealer has been held by the courts to require commercial, not dealer, plates. *State v. Tucker*, 61 N.J. Super. 161 (App. Div. 1960).

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

SEPTEMBER 20, 1961

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

MEMORANDUM OPINION—P-25

DEAR MRS. WHITE:

You have asked our opinion with respect to the effect of N.J.S.A. 18:13-112.51 on N.J.S.A. 18:13-112.70 and R.S. 43:3-1 et seq.

N.J.S.A. 18:13-112.51 describes the benefits payable to members of the former Teachers' Retirement Fund. It reads:

"Any member or beneficiary of the Teachers' Pension and Annuity Fund who was a member of the Teachers' Retirement Fund as created by L. 1896, c. 32; L. 1899, c. 178; L. 1900, c. 96; L. 1902, c. 36; L. 1903 (2nd Sp. Sess.), c. 1; L. 1905, c. 95; L. 1906, c. 314; L. 1907, c. 139; and the amendments thereof and supplements thereto, prior to his becoming a member of the Teachers' Pension and Annuity Fund, shall receive in addition to his retirement allowance otherwise payable a pension which shall be the actuarial equivalent of the contributions, without interest, which he paid to the Teachers' Retirement Fund prior to September 1, 1919, which he has not otherwise received."

N.J.S.A. 18:13-112.70 requires that the retirement allowance of a member who reaches 65 years of age shall be reduced "by the amount of the old age insurance benefit under Title II of the Social Security Act paid or payable to him whether received or not." It provides, however, that "the retirement allowance shall not be reduced below the amount of the annuity portion of the retirement allowance fixed at the time of the member's retirement \* \* \*." In short, when the Social Security

offset is applicable, it can be applied only against the "pension" part of the member's retirement allowance.

The question, therefore, can be phrased as follows: should the Social Security offset be applied against the "pension" benefits payable under N.J.S.A. 18:13-112.51? We are of the opinion that it should not. The word "pension" in the latter statute is not used in a technical sense. It is expressly made to mean "the actuarial equivalent of the contributions, without interest, which he [the member] paid to the Teachers' Retirement Fund \* \* \*." Cf. the definition of "pension" found in N.J.S.A. 18:13-112.4(h):

"'Pension' means payments for life derived from appropriations made by the State to the Teachers' Pension and Annuity Fund."

In sum, the word "pension" in N.J.S.A. 18:13-112.51 is equivalent to "the annuity portion of the retirement allowance" found in N.J.S.A. 18:13-112.70. Thus, the Social Security offset should not apply to it. The offset should be applied only to the pension portion of the retirement allowance otherwise payable to the member.

For the reasons expressed above, we also hold that R.S. 43:3-1 et seq. does not require that the benefits payable under N.J.S.A. 18:13-112.51 be suspended on account of earnings in public employment. R.S. 43:3-1 provides that a person who receives a governmental pension is ineligible to hold any public position or employment other than elective and receive both the "pension" and the salary or compensation allotted to his office or employment; if he wishes to retain the salary of the position, he must waive his "pension." The statute, however, expressly provides that:

"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."

Since the benefits payable under N.J.S.A. 18:13-112.51 clearly do not come within this definition, R.S. 43:3-1 is not applicable.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: ROBERT S. MILLER  
*Deputy Attorney General*

SEPTEMBER 20, 1961

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

MEMORANDUM OPINION—P-26

DEAR MRS. WHITE:

You have asked our opinion with respect to the amount of the disability retirement allowance, if any, payable to an individual who retired on a disability retirement allowance under N.J.S.A. 43:15A-44 but subsequently returned to public employment.