

reached. R.S. 43:3-1.1, R.S. 43:3-5, R.S. 43:3-5.1 and R.S. 43:3-5.2 expressly exclude from the operation of R.S. 43:3-1 various employees, offices and positions. By so doing the Legislature has indicated its intention to make R.S. 43:3-1 applicable to all other people. *Expressio unius est exclusio alterius.*

R.S. 43:3-2 further manifests this intention: "The pensions from or the public positions or employment with the state referred to in section 43:3-1 of this title shall affect *all* officers, employees or persons under the government of this state, even though they may not be paid directly from the state treasury, but are paid from proceeds derived from appropriations, license fees or other sources." (Emphasis supplied.)

Additionally, it must be observed that R.S. 43:3-1 has been amended as recently as 1959 (*See: Laws of 1959, c. 101*), whereas N.J.S.A. 43:15A-44 has not been amended at all since its original enactment and N.J.S.A. 18:13-112.42 was last amended in 1956 (*See: Laws of 1956, c. 145, §10*). It is a fundamental rule of statutory construction that the later expression of legislative will prevails over the former to the extent of any inconsistency. *Two Guys from Harrison, Inc. v. Furman*, 32 N.J. 199, 223, 225 (1960).

In sum, the particular employee in question, and all members of the Teachers' Pension and Annuity Fund and Public Employees' Retirement System who retire on a disability retirement allowance are subject to the provisions of R.S. 43:3-1 upon securing public reemployment except as permitted by R.S. 43:3-1.1, R.S. 43:3-5, R.S. 43:3-5.1 and R.S. 43:3-5.2. Upon a return to private employment, R.S. 43:15A-44 is specifically applicable and must be enforced.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ROBERT S. MILLER
Deputy Attorney General

SEPTEMBER 29, 1961

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

MEMORANDUM OPINION—P-27

DEAR MRS. WHITE:

We have been asked to determine whether the Pension Increase Act, L. 1958, c. 143, N.J.S.A. 43:3B-1 et seq., applies to employees of terminated pension funds (such as the Board of Education Employees' Pension Fund of Hudson County, and the Municipal Employees' Pension Fund of the Village of South Orange) who retired between 1915 and 1951, inclusive, and are now receiving their pension allowances from the Public Employees' Retirement System (*see* N.J.S.A. 43:15A-111).

In applicable part (N.J.S.A. 43:3B-1) Chapter 143 reads as follows:

"As used in this act 'retirant' means any person who was employed by the State of New Jersey, any of its instrumentalities, any of its political subdivisions or any of the instrumentalities of its political subdivisions, retired from such employment in any of the calendar years set forth in this act and, as a result of such employment, is receiving a retirement allowance from a retirement system or pension fund supported in part or in whole by the State of New Jersey, or is receiving a retirement allowance under any law, the financial support of which comes solely from the State of New Jersey."

The Act then provides generally for increases in the amount of pensions payable to "retirants," the increases being calculated in accordance with a stated list of percentages for the years 1915 through 1951, inclusive.

The individuals in question fall within the aforesaid Act and are entitled to the increases stated therein. These persons fit the definition of "retirant" mentioned above: they have been employed by an instrumentality of one of the State's political subdivisions; they have retired from such employment in the calendar years 1915 through 1951; and, as a result of such employment, they are receiving a retirement allowance through the Public Employees' Retirement System. Additionally, the statement of purpose appended to the bill which subsequently became L. 1958, c. 143, provides: "This bill is intended to meet in some part the situation that exists for certain former public employees who, having retired on pensions based on the salary levels of many years ago, now face varying degrees of hardship because of serious increases in the cost of living since their retirement. * * *" The Legislature clearly intended to help these persons if they are receiving a retirement allowance from the Public Employees' Retirement System or any other pension fund supported in part or in whole by the State of New Jersey. It is immaterial that these persons were not paid their retirement allowances through the Public Employees' Retirement System prior to the effective date of the Pension Increase Act of 1958 so long as they are receiving such allowances now. Upon the assumption of the pension obligation by the Public Employees' Retirement System such retirants qualified for the pension increases provided by L. 1958, c. 143. We are constrained to interpret the pension laws in the light of the goals of the humane social legislation of which they are a part. *Roth v. Board of Trustees, etc.*, 49 N.J. Super. 309, 320 (App. Div. 1958).

Therefore, we advise you that the individuals in question are entitled to the benefit of L. 1958, c. 143 as of the time when they first began receiving their pensions from the Public Employees' Retirement System.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ROBERT S. MILLER
Deputy Attorney General