

SEPTEMBER 29, 1961

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

MEMORANDUM OPINION—P-28

DEAR MRS. WHITE:

You have asked our opinion as to the eligibility of persons serving part-time and on an hourly salary as municipal special policemen, school crossing guards and parking violations officers to participate in either the Public Employees' Retirement System or the Police and Firemen's Retirement System.

We are informed that some of the employees in question are veterans, while others are not, and that some of the employees are in the classified service of the Civil Service while others are unclassified. All of them, however, are considered hourly, part-time employees.

It is our opinion that none of these employees are eligible to participate in the Police and Firemen's Retirement System inasmuch as they do not come within the definition of "policeman or fireman" found in N.J.S.A. 43:16A-1(2). The latter reads as follows:

"'Policeman or fireman' shall mean any *permanent and full time* active uniformed employee, and any active permanent and full time employee who is a detective, lineman, fire alarm operator or inspector of combustibles, of any police or fire department of a municipality or a fire department of a fire district located in a township or a county police department." (Emphasis supplied.)

See also N.J.S.A. 43:16A-3(3) which provides in pertinent part that:

"The board of trustees * * * shall deny it [the right to become members] to those who are serving in a temporary or other than a per annum basis * * *"

With respect to membership in the Public Employees' Retirement System, however, a different result must be reached. Under N.J.S.A. 43:15A-7 the membership of the Public Employees' Retirement System is established. In applicable part the statute reads:

"The membership of the retirement system shall include:

* * *

"(b) Any person becoming a permanent employee of the State after the effective date of this section; and

"(c) Every State employee veteran in the employ of the State on the effective date of this section who is not a member of any other retirement system supported wholly or partly by the State; * * *"

"The board may deny the right to become members of the retirement system to any class of elected officials or to any class of persons other than veterans not within the classified civil service * * *. Notwithstanding any

other law to the contrary all other persons accepting permanent employment in the classified service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age. No person in employment, office or position, for which the annual salary or remuneration is fixed at less than \$500, shall be eligible to become a member of the retirement system."

The above statute, taken in conjunction with N.J.S.A. 43:15A-62 and N.J.S.A. 43:15A-63 (requiring that veteran employees of a county or municipality, among others, must become members of the Public Employees' Retirement System unless they are in a position covered by another contributory pension system) manifestly requires that all of the veteran employees in question must be accepted into the Public Employees' Retirement System, except those in positions covered by a contributory pension system other than the Public Employees' Retirement System.

The nonveteran employees fall into two categories: those in the classified service of the Civil Service and those in the unclassified service or without Civil Service status at all. Under N.J.S.A. 43:15A-7, the Board of Trustees may deny the right of membership to the latter, for by the express terms of the statute the Board may deny this right "to any class of persons other than veterans not within the classified Civil Service." In short, in the case of nonveterans in the unclassified service or employed in municipalities not covered by Civil Service, the Board has the discretion to deny membership under regulations in accordance with the statute, based upon administrative and actuarial consideration.

With respect to the nonveteran employees who are in the classified service, however, a different situation prevails. N.J.S.A. 43:15A-7 provides that any person who becomes a permanent employee of the State after the effective date of the section must become a member of the Public Employees' Retirement System. N.J.S.A. 43:15A-62 confers the same obligation upon employees of any county or municipality of the State which has been previously covered by the former State Employees' Retirement System. Furthermore, N.J.S.A. 43:15A-74 and 43:15A-75 state that membership in the Public Employees' Retirement System is compulsory for all employees entering the service of a municipality or a county after the act becomes effective provided that, by referendum, a majority of the voters have voted in favor of the adoption of the provisions of the Public Employees' Retirement-Social Security Integration Act so as to cover its employees. Thus, if the above conditions are met, those employees in the classified service must become members of the Public Employees' Retirement System.

The foregoing discussion presupposes the fact that the employee in question has been earning an annual salary or remuneration of \$500 or more. See N.J.S.A. 43:15A-7 ("* * * no person in employment, office or position, for which the annual salary or remuneration is fixed at less than \$500, shall be eligible to become a member of the retirement system.").

Very truly yours,

DAVID D. FURMAN
Attorney General

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Deputy Attorney General