

We conclude that upon conviction of the crimes charged the incumbent immediately forfeited his position and from that date a vacancy existed.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: PATRICK J. MCGANN, JR.
Deputy Attorney General

NOVEMBER 8, 1961

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

MEMORANDUM OPINION—P-31

DEAR MRS. WHITE:

You have asked whether a widow of a deceased member of the Prison Officers' Pension Fund may receive a refund of contributions when the deceased member had less than five years' service in the employ of the State and where his death resulted from injuries incurred in other than the performance of his duties.

We are of the opinion that the statute does not authorize a refund of contributions and therefore none can be paid. R.S. 43:7-9 covers the situation where a prison officer dies in the performance of his duties. Clearly this section is not applicable to the instant situation where the prison officer died in an activity other than the performance of his duties.

R.S. 43:7-10 states that in the event of the death of a prison officer from causes other than those received or incurred in the performance of his duties, a pension shall be paid to his beneficiaries provided that the deceased had served in the employ of the State for five years. This section is also not applicable to the present situation where the prison officer had served less than five years in the employment of the State.

R.S. 43:7-15 provides for refunds whenever a prison officer is suspended, resigned, dropped or discharged from his employment. However, the statute specifically provides that "No other refund of assessments collected from the salaries of such pension [sic] officers shall be made."

Consistent with this opinion is the Attorney General's opinion of August 10, 1961, which held that where a refund of contributions to the administrator of an estate was not provided for in the Prison Officers' Pension Fund statutes, the Board may not authorize payment.

This result differs from the result in the Public Employees' Retirement System, where under N.J.S.A. 43:15A-41(c), express provision is made for payment to the widow under these circumstances. The Prison Officers' Pension Fund Commission, however, has no authority to refund contributions to a widow where the deceased

member had less than five years' membership in the Fund and where his death resulted from injuries incurred in other than the performance of his duties.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: STEVEN S. RADIN
Deputy Attorney General

NOVEMBER 29, 1961

HONORABLE KATHARINE ELKUS WHITE
Acting State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-32

DEAR MRS. WHITE:

You have requested our opinion as to whether the United States Coast Guard Exchange in Cape May, New Jersey, which sells beer, wine and liquor to officers and enlisted men of the Coast Guard for on-premises consumption, is entitled to an exemption from payment of the New Jersey alcoholic beverage tax, imposed by Chapter 43 of Title 54 of the Revised Statutes. The Exchange is situated on property owned by the United States.

The alcoholic beverage tax is imposed upon any sale of alcoholic beverages made within this State or upon any delivery of alcoholic beverages made within or into this State. N.J.S.A. 54:43-1. Beer is an alcoholic beverage within the meaning of this statute. N.J.S.A. 54:43-1(a).

In order to be entitled to an exemption from this tax, the United States Coast Guard Exchange must come within the purview of N.J.S.A. 54:43-2.1. This statute states:

"No tax imposed by chapter forty-three of Title 54 of the Revised Statutes shall be payable on any sale of alcoholic beverages by any person holding a valid and unrevoked license to sell alcoholic beverages, issued pursuant to the provisions of section 33:1-10 or section 33:1-11 of the Revised Statutes, to a voluntary unincorporated organization of army, air force or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the Secretary of the Army, the Secretary of the Air Force or the Secretary of the Navy, or, if the consent of the State Department of Defense shall have been obtained, under the State National Guard regulations, when said sale is accompanied by the delivery of such beverages to any such organization."

In accordance with the quoted section, the Coast Guard Exchange would be entitled to an exemption if it were (1) "a voluntary unincorporated organization of army, air force or navy personnel" and (2) "operating a place for the sale of goods pursuant to regulations promulgated by the Secretary of the Army, the Secretary