

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

of the Air Force or the Secretary of the Navy" or regulations of the State National Guard.

The status of the United States Coast Guard is determined by Federal law. The pertinent Federal statute provides that :

"The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times. The Coast Guard shall be a service in the Treasury Department, except when operating as a service in the Navy." 14 U.S.C. § 1, Aug. 4, 1949, c. 393, § 1, 63 Stat. 496.

It is to be observed, that while the above-quoted section provides that the United States Coast Guard "shall be a military service and a branch of the armed forces of the United States at all times," it "shall be a service in the Treasury Department, except when operating as a service in the Navy."

It is further provided by Federal statute that :

"Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by executive order, transfers the Coast Guard back to the Treasury Department. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy who may order changes in Coast Guard operations to render them uniform, to the extent he deems advisable, with Navy operations." 14 U.S.C. § 3, Aug. 4, 1949, c. 393, § 1, 63 Stat. 496.

On November 1, 1941, by Executive Order No. 8929, 6 F.R. 5581, the United States Coast Guard commenced to operate as a service in the Navy, subject to the Secretary of the Navy. On December 29, 1945, this Executive Order was revoked by Executive Order No. 9666, 11 F.R. 1, which provided that the United States Coast Guard should resume operations under the Treasury Department on and after January 1, 1946. The status of the United States Coast Guard as a service in the Treasury Department has not been disturbed since the issuance of Executive Order No. 9666, and the United States Coast Guard at the present time operates under the jurisdiction of the Secretary of the Treasury. It should be noted parenthetically that all functions and officers of the Department of the Treasury and all functions of all agencies and employees of the Department of the Treasury, including the United States Coast Guard, were transferred to the Secretary of the Treasury by the 1950 Reorganization Plan No. 26, §§ 1, 2, effective July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 5 U.S.C. § 241, note.

The United States Coast Guard at the present time is not a service or organizational part of either the Army, Air Force or Navy. Consequently it follows that the Coast Guard Exchange cannot be considered "a voluntary unincorporated organization of army, air force or navy personnel" within the language of N.J.S.A. 54:43-2.1. Moreover, it is equally clear that the Coast Guard Exchange is not presently "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," nor "under the State National Guard regulations."

The distinction between the United States Coast Guard, when operated under the jurisdiction of the Secretary of the Treasury, and the United States Coast Guard

when serving under the Secretary of the Navy in time of war was drawn sharply in the case of *Louisville & N.R. Co. v. United States*, 258 U.S. 374, 42 S. Ct. 337 (1922). There the United States Supreme Court held that the United States Coast Guard, while serving under the Secretary of Navy in time of war, were troops within the meaning of a railroad land grant requiring the transportation of troops without charge, but were not troops while operating under the jurisdiction of the Secretary of the Treasury in time of peace. The court stated at page 375 of 258 U.S. and 337 and 338 of 42 Sup. Ct. :

"The Coast Guard was established by Act of January 28, 1915, c. 20, 38 Stat. 800 (Comp. St. § 8459 $\frac{1}{2}$ a [$\frac{1}{6}$]), in lieu of the then existing Revenue Cutter Service and Life-Saving Service, and was composed of those organizations. The Revenue Cutter Service had been considered a civil service. 15 Op. Attys. Gen. 396; 16 Op. Attys. Gen. 288; 8 Comp. Dec. 852; 15 Comp. Dec. 807. But to its primary function of an armed police force some characteristics of a military force had always been attached; and from time to time Congress had conferred upon it additional incidents of the military service. See 28 Op. Attys. Gen. 543, 547; 30 Op. Attys. Gen. 75. When the Coast Guard was established it was constituted 'a part of the military forces of the United States'; and section 1 provides that—It 'shall operate under the Treasury Department in time of peace and operate as a part of the Navy, * * * in time of war or when the President shall so direct. When subject to the Secretary of the Navy in time of war the expense of the Coast Guard shall be paid by the Navy Department.'

"Congress further manifested its intention to class the Coast Guard with the Army, Navy and Marine Corps by the provisions in the Acts of August 29, 1916, c. 417, 39 Stat. 556, 600, 601 (Comp. St. § 8459 $\frac{1}{2}$ a [7-14]), and chapter 418, § 1, 39 Stat. 619, 639.

"The military force of the United States is, and always has been, a unit, although divided for purposes of administration into several branches; and there is nothing in the land grant acts to indicate an intention on the part of Congress to differentiate between the several branches in respect to transportation charges. We are of the opinion that the term 'troops' is not confined to land forces, and that it includes men and officers in every branch. Since those in the Navy and Marine Corps are to be deemed troops within the meaning of those acts, members of the Coast Guard should also be deemed such when serving as part of the Navy. *But at other times members of the Coast Guard are not troops; for then it operates under, and at the expense of, the Treasury Department.*" (Emphasis added.)

We conclude, therefore, that the Legislature has not by the enactment of N.J.S.A. 54:43-2.1 provided for the United States Coast Guard Exchange an exemption from the taxes imposed by Chapter 43 of Title 54 of the Revised Statutes while it is operating as a service of the Treasury Department. While we are cognizant that there may exist adequate policy reasons for providing the United States Coast Guard Exchange the same exemption now accorded to such organizations of the Army, Air Force or Navy under N.J.S.A. 54:43-2.1, we are also mindful that N.J.S.A. 54:43-2.1 is an exemption statute to be construed strictly and not expanded beyond its clear terms. *Princeton Univ. Press v. Princeton*, 35 N.J. 209, 214 (1961); *Township of Teaneck v. Lutheran Bible Institute*, 20 N.J. 86, 90 (1955); *Julius Roehrs Co. v. Divi-*

sion of Tax Appeals, 16 N.J. 493, 497-98 (1954) ; *Trenton v. State Bd. of Tax Appeals*, 127 N.J.L. 105, 106 (Sup. Ct. 1941), *affirmed sub nom. Trenton v. Rider College*, 128 N.J.L. 320 (E. & A. 1942).

We advise you, therefore, that the United States Coast Guard Exchange is not entitled to an exemption from the payment of the New Jersey alcoholic beverage tax at the present time.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ALAN B. HANDLER
Deputy Attorney General

NOVEMBER 29, 1961

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

MEMORANDUM OPINION—P-33

DEAR MRS. WHITE:

You have asked my opinion whether a State employee veteran, who was in public employment on January 2, 1955, may purchase prior service credit from the Public Employees' Retirement System under the terms of Chapter 188, L. 1960 for years during which he earned (1) \$300 or more per year and (2) less than \$300 per year. The significance of the minimum salary of \$300 per year is that veteran members were not granted free prior service credit under Chapter 84, L. 1954, for years during which their annual salary was less than the figure of \$300.

Chapter 188, L. 1960 provides in pertinent part as follows:

"Notwithstanding any other provision of law, a member of the Public Employees' Retirement System of New Jersey, who is in the State service and who, prior to entering the State service, was the holder of office, position or employment in the service of a county or of a municipality, or both, shall be entitled to purchase prior service credit for the years of such county and municipal service or either thereof; but the said county or municipality shall not be liable for any payment to the system by reason of the said member's purchase of benefits under this act and any and all contributions required hereunder shall be made by the member. Proof of such prior county and municipal service shall be furnished by the affidavit of the member, supported by other evidence if required by the board of trustees of the said retirement system, and the said board may prescribe rules and regulations to effectuate the purposes of this act. Any such member desiring to acquire such credits for prior service shall be required to contribute either in a lump sum or by installment payments an amount calculated in accordance with the rules and regulations of the board of trustees to cover the required contribution for his acquisition of such prior service credits."