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."

My conclusion to the first inquiry is that a State employee with veteran status may purchase prior service credit for years of county or municipal service or both in which he earned a minimum salary of $300 under the circumstance that he did not receive free prior service credit under Chapter 84, L. 1954, for such years (N.J.S.A. 43:15A–60). The failure to grant such prior service credit to a State employee veteran in public employment on January 2, 1955, who did not waive membership in the new system, was presumably attributable to his not having presented evidence of such prior service to the Board of Trustees within six months after January 2, 1955 (N.J.S.A. 43:15A–60). The 1960 enactment is obviously intended *inter alia* to enable the State employee veteran to rectify such omission by purchasing at his own expense the prior service credit.

While you have not raised this specific question, I presume that the State employee veteran in this situation has purchased prior service credit for State employment starting January 2, 1955 or is chargeable with such obligation to the system upon his enrolling formally as a member. Chapter 188, L. 1960 has no applicability to the purchase of prior service credit for State service.

I likewise conclude that the State employee veteran may purchase prior service credit for years of county or municipal service during which his annual salary was less than $300. By its express terms Chapter 188, L. 1960 is to prevail "notwithstanding any other provision of law." The statutory provision in Chapter 84, L. 1954 (N.J.S.A. 43:15A–39) fixing a $300 minimum salary for service credit for veterans is thus superseded. The statutory scheme of Chapter 188, L. 1960 is unique among the pension laws in imposing the entire liability for the purchase of prior service credit upon the employee. Compare the free prior service credit provision in N.J.S.A. 43:15A–60 and the provision for full pension credit without expense to a non-veteran who enrolls and pays arrearages into the annuity savings fund in N.J.S.A. 43:15A–9.

I am advised that the consulting actuary of the Board of Trustees has ruled that the lump sum payment required to be paid by the member under Chapter 188, L. 1960 should be computed on the basis of salary and age at the time of purchase and double in amount the arrearage obligation payable to the annuity savings fund pursuant to N.J.S.A. 43:15A–9. This is a valid determination in the exercise of the discretion vested in the Board of Trustees to fix the amount of required contributions for the acquisition of prior service credits, under the specific terms of the 1960 enactment.

This result is in no way inconsistent with the holding in *Watt* v. *Mayor & Council of Borough of Franklin*, 21 N.J. 274 (1956). In the latter case the plaintiff was denied a pension under the Veterans Pension Act (R.S. 43:4–1 *et seq.*), which requires 20 years' service, since the plaintiff included as part of his 20 years, six years of service as an unpaid member of the Borough Common Council. The Court said that R.S. 43:4–1 *et seq.*, particularly R.S. 43:4–3, which states that an eligible veteran shall receive "one-half of the compensation then being received by him," contemplates a *paid* position; to hold otherwise would result in gross inequity and unfairness. The Court stated, at 21 N.J. page 278, that a literal interpretation of R.S. 43:4–1 *et seq.* would create "a manifestly absurd result, contrary to public policy, which the Legislature could not have reasonably intended." Therefore, the Court construed the statute to require that the prior service be "paid career service."

The literal construction of Chapter 188, L. 1960, however, produces no manifestly absurd result, nor is there anything in its terms which contravenes public policy or which the Legislature could not have reasonably intended. Under these circumstances

the statute "is not open to construction or interpretation. . . . Such a statute is clear in its meaning and no one need look beyond the literal dictates of the words and phrases used for the true intent and purpose in its creation." *Watt* v. *Mayor & Council of Borough of Franklin, supra,* 21 N.J. at 277.

Very truly yours,

DAVID D. FURMAN
Attorney General

DECEMBER 12, 1961

HONORABLE CLYDE C. JEFFERSON
Prosecutor, Hunterdon County
Court House
Flemington, New Jersey

MEMORANDUM OPINION—P-34

DEAR PROSECUTOR:

You have asked for a further clarification of the recent supplement to the Lottery Law (Chapter 39, L. 1961; N.J.S. 2A:121-1 *et seq.*). Formal Opinion 1961—No. 17 rules that box top contests and contests open to patrons of a theater or store are not exempted from the lottery law by the 1961 enactment but that contests open to all members of the public through general distribution of entry blanks may be legal under circumstances specified in the formal opinion.

As you realize, the State Constitution prohibits gambling unless approved by a majority of the voters at a referendum. The construction of Chapter 39, L. 1961 must be such as to render it constitutional if possible, in accordance with a settled principle of statutory construction. The conclusion of Formal Opinion 1961—No. 17, therefore, is that Chapter 39, L. 1961 exempts from the lottery law only giveaway contests without consideration or actual inconvenience. Such giveaway contests constituted statutory offenses and not common law gambling offenses. See *Lucky Calendar* v. *Cohen,* 19 N.J. 399, 412 (1955).

The particular facts you inquire about are the following. A contest is open to all members of the public through a general distribution of entry blanks. The contestant need not be present at the drawing to win but he must deposit his entry in a "jackpot box" which is in the store.

It is obvious that the requirement of depositing an entry blank in the store constitutes an actual inconvenience to the contestant. Although unnecessary for this opinion, such requirement may in addition be construed to constitute consideration in view of the benefit derived by the merchant from attendance at his store. Extra trade is foreseeable when a participant is brought to the store and exposed there to the display of merchandise and notices of bargains and other advertising appeals. *Cf. Lucky Calendar* v. *Cohen, supra,* at p. 416; cases cited in Formal Opinion 1961, No. 17.

I advise you, therefore, that the contest described in your opinion request is illegal as a violation of the Lottery Law, N.J.S. 2A:121-1 *et seq.*

Very truly yours,

DAVID D. FURMAN
Attorney General