

FORMAL OPINION

December 29, 1964

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1964—NO. 5

Dear Mr. Kervick:

You have requested our opinion as to whether veterans in the employ of the bi-state commissions, the Delaware River Basin Commission and the Delaware River Joint Toll Bridge Commission, and who are members of the Public Employees' Retirement System, are entitled to the benefits provided war veterans by Chapter 15A of Title 43.

It is our opinion for the reasons stated herein that such veteran members are entitled to the same benefits from the retirement system as other State employees who are war veterans.

N.J.S.A. 43:15A-60 and N.J.S.A. 43:15A-61 grant certain special credit and retirement privileges to veteran public employees. N.J.S.A. 43:15A-60(a) provides in part:

"Each public employee veteran member shall have returned to him his accumulated deductions as of the effective date of this section. All service rendered in office, position or employment of this State by such veteran member previous to the effective date of this section . . . shall be credited to him as a 'Class B' member . . ."

N.J.S.A. 43:15A-61 gives special retirement privileges on varying conditions to (a) "any public employee veteran member in office, position or employment of this State . . . on January 2, 1955 . . .", (b) "Any veteran becoming a member after January 2, 1955 who shall be in office, position or employment of this State . . .", and (c) "any public employee veteran member who has been for 20 years in the aggregate in office, position or employment of this State . . ."

Since employees of the Delaware River Basin Commission and the Delaware River Joint Toll Bridge Commission are not strictly in the employment of this State alone, the question posed is whether veteran employees of these agencies are eligible for the benefits provided in Sections 60 and 61 for service rendered "in . . . employment of this State."

P.L. 1953, c. 84, N.J.S.A. 43:15A-73 authorized and directed the Board of Trustees of the Public Employees' Retirement System to enroll in the Public Employees' Retirement System established by that statute those employees of the New Jersey Turnpike Authority, the New Jersey Highway Authority, the Palisades Interstate Park Commission, the Interstate Sanitation Commission and the Delaware River Joint Toll Bridge Commission who consented and filed application for membership. In the case of the Delaware River Joint Toll Bridge Commission, the employees were to be only those who were employed on the free bridges across the Delaware River under the control of said commission. In a 1963 amendment to N.J.S.A. 43:15A-73, employees of the Delaware River Basin Commission, created in 1961, were permitted to enroll. P.L. 1963, c. 19.

ATTORNEY GENERAL

From the initial enactment of Section 73 and without any change or qualification on amendment, the statute provided that "upon such enrollment, the said employees shall be subject to the same contribution and benefit provisions of the retirement systems as State employees." The sweeping language of section 73 demonstrates that the Legislature intended to put employees of these interstate instrumentalities on a parity with State employees. Moreover, by tracing the origin of these agencies and the roles they play in fulfilling the functions of government, the legislative intent to provide equality of benefits between employees of interstate instrumentalities and State employees is made abundantly clear.

The Delaware River Joint Toll Bridge Commission and the Delaware River Basin Commission are bodies corporate and politic and perform governmental functions which project beyond State lines. The former was created because additional bridge facilities were needed between New Jersey and Pennsylvania "for the accommodation of the public and the development of both states," and it was thought that such facilities "should be developed without the expenditure of large sums from the public revenues" and "that there be a single agency for both states." See Preamble to the Compact Creating the Delaware River Joint Toll Bridge Commission, N.J. S.A. 32:8-1. Article I of the interstate compact provides in part:

"The commission shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and shall be deemed to be exercising an essential governmental function in effectuating such purposes, . . ." N.J. S.A. 32:8-2.

The Delaware River Basin Commission was also created "as a body politic and corporate" and "as an agency and instrumentality of the governments of the respective signatory parties." N.J.S.A. 32:11D-7. New Jersey had joined with New York and Pennsylvania, with the consent of Congress, and formed the Commission because this State realized that "the water resources of the basin are affected with a local, state, regional and national interest and their planning, conservation, utilization, development, management and control, under appropriate arrangements for inter-governmental cooperation, are public purposes of the respective signatory parties . . . The water resources of the basin are functionally inter-related, and the uses of these resources are interdependent. A single administrative agency is therefore essential . . ." N.J.S.A. 32:11D-3.

Every state is expected to carry out certain basic governmental functions. The construction, maintenance and operation of highways, bridges and tunnels is one of these functions. *Miller v. The Port of New York Authority*, 18 N.J. Misc. 601 (Sup. Ct. 1939). Control over the use and the conservation of a state's water resources is another and should be exercised in the general public interest and for public benefit. *McCarter v. Hudson County Water Co.*, 209 U.S. 349 (1907); *City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923). Each one of the multi-state authorities and commissions listed in Section 73 performs an essential governmental function. Adequate handling of such governmental functions requires multi-state cooperation and the formation of a distinct instrumentality to act in behalf of sovereign states involved. These joint governmental corporations enabled comprehensive treatment of common problems and the better performance of governmental functions through coordinated effort. See generally Delaware River Basin Compact, P.L. 1961, c. 13,

FORMAL OPINION

N.J.S.A. 32:11D-1, *et seq.*; Palisades Interstate Park Compact, P.L. 1937, c. 148, N.J.S.A. 32:17-1 *et seq.*; Tri-State Compact Creating Interstate Sanitation Commission, P.L. 1935, c. 321, N.J.S.A. 32:18-1, *et seq.*; Compact Creating the Delaware River Joint Toll Bridge Commission, P.L. 1934, c. 215; P.L. 1947, c. 283; P.L. 1952, c. 333; N.J.S.A. 32:8-1 *et seq.* When the adequate handling of a governmental function requires multi-state action and a distinct entity acting on behalf of two or more sovereign states is created to perform that function, such entity's work is that of the state itself; for the entity "is undoubtedly a direct state agency, exercising an essential governmental function and is, therefore, an alter ego of the state . . ." *Miller v. The Port of New York Authority, supra*, at 607.

It is clear that the employees of the interstate authorities and commissions discussed above render vital and important public services to the states affected by them. The Legislature in Section 73 gave the employees of these instrumentalities the opportunity to be covered by the Public Employees' Retirement System. We can infer that this opportunity was granted in recognition of the fact that these employees render important public services to the State comparable to the services of ordinary State employees. It was this consideration that led the Legislature to provide in N.J.S.A. 43:15A-73 that "upon such enrollment, the said employees shall be subject to the same contribution and benefit provisions of the retirement system as State employees." If employees of the agencies enumerated in Section 73 are entitled to the "same contribution and benefit provisions of the retirement system as State employees," they should be entitled to the special veterans credit and retirement privileges of Sections 60 and 61. Although Sections 60 and 61 both use the phrases "public employee veteran member . . . in . . . employment of this State," while Section 73 equates the employees of the enumerated instrumentalities with "State employees," this slight difference in phraseology should not be construed to effect disparate results. Nothing in Sections 60 and 61 imply that the services rendered must be rendered "within the State," i.e., within the geographical limits of the State, as long as they are rendered by one "in office, position or employment of this State." In fact, a rationale based on the geographical locale where the services are rendered would be antithetical to the Legislature's explicit creation of interstate bodies to handle multi-state problems. Additionally, all permanent employees of the State are State employees and members of the System. N.J.S.A. 43:15A-7(b). When Sections 60 and 61 refer to "public employee veteran members . . . in . . . employment of this State," they include "State employees." The drafters used the phrases interchangeably. This is further evidenced by the language of Section 60(b) which begins "The accrued liability on behalf of State employee veteran members . . ."

If veteran employees of the Delaware River Joint Toll Bridge Commission, the Delaware River Basin Commission and the other agencies listed in Section 73 are denied the retirement credit and privileges of Sections 60 and 61, the phrase "subject to the same . . . benefit provisions . . . as State employees" is emasculated. No proviso or condition is attached to the mandate in Section 73 that "said employees shall be subject to the same . . . benefit provisions . . . as State employees." This means that *all* "the said employees" of these agencies who are members of the Public Employees' Retirement System are to be considered "State employees." If a member of one of these interstate instrumentalities can meet the specific qualification requirements for special credit or privileges under Chapter 15A of Title 43, such member is entitled to such "benefit provisions of the retirement system as [other] State employees." No exception is made for "veteran employees" of these agencies. If the Legislature had intended to confer only partial or limited benefits on such veteran employees, (i.e.,

ATTORNEY GENERAL

all benefits of the system except the special veteran benefits of Sections 60 and 61) it would have been a simple matter to have expressed that purpose by directly appending a qualifying phrase. See *Transcontinental Gas Pipe Line Corporation v. The Department of Conservation and Economic Development of the State of New Jersey*, 43 N.J. 135, 146 (1964). The fact that the Legislature did not qualify the benefits to be received by the employees of these agencies manifests an intent that these employees have the same benefits accorded to State employees, including all the veterans benefits.

For the foregoing reasons, we conclude that war veterans in the employ of the bi-state commissions, the Delaware River Basin Commission and the Delaware River Joint Toll Bridge Commission, who are members of the Public Employees' Retirement System, are entitled to the benefits provided war veterans in Sections 60 and 61 of Chapter 15A of Title 43.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: RICHARD NEWMAN
Deputy Attorney General

December 29, 1964

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1964—NO.6

Dear Mr. Kervick:

You have requested our opinion whether the Issuing Officials, being the Governor, yourself as the State Treasurer, and the Comptroller of the Treasury, may lawfully issue bonds known as "State Higher Education Construction Bonds of 1964" pursuant to the provisions of the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended, L. 1964, c. 143, (herein sometimes referred to as the Act).

For the reasons hereinafter set forth, we are of the opinion that the Issuing Officials may lawfully and properly issue the aforesaid bonds.

In reaching our conclusion we have considered the following facts, viz.: On May 18, 1964, the Legislature passed Senate Bill No. 371. This bill became L. 1964, c. 142. This Act authorized the creation of a debt of the State of New Jersey through the issuance of bonds as direct obligations of the State in the sum of \$40.1 million for public higher education facilities. Specifically, it authorized capital expenditures in that amount for Rutgers, the State University, the State Colleges and the Newark College of Engineering. The Act contained the usual provisions with respect