

FORMAL OPINION

board of education has the further powers to: "purchase, lease, receive, hold, and sell property, real and personal, and to take and condemn land and other property for school purposes . . ." N.J.S.A. 18:6-24.

Although it may seem that the Act creates an anomalous situation when a sewerage authority or school district in a municipality of less than 45,000 persons is within the Act, while the municipality itself is not, the Legislature so prescribed the law. Remedial legislation of this type must be given a broad interpretation to effect the public policy of this State.

For the foregoing reasons, it is our opinion that both a sewerage authority and a school district with a population of less than 45,000 persons come within the meaning of a "public body" as defined in N.J.S.A. 34:11-56.26(4) and are therefore subject to the provisions of the Prevailing Wage Act.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: MORRIS YAMNER
Deputy Attorney General

December 29, 1964

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

FORMAL OPINION 1964—NO. 11

Dear Mr. Kervick:

You have asked for our opinion as to the effect of N.J.S.A. 43:10-18.6a on the eligibility for membership in the Public Employees' Retirement System of those persons employed by Essex County subsequent to March 26, 1961 and those persons in the employment of Essex County prior to the aforesaid date.

The statute, N.J.S.A. 43:10-18.6a, reads as follows:

"Any person employed by a county of the first class after the effective date of this act having a population of over 800,000 shall become a member of the Public Employees' Retirement System of New Jersey as a condition of employment and shall be entitled to all the rights and benefits and subject to all obligations of other members of said system, provided that the board of chosen freeholders of such county has adopted and submitted to the Public Employees' Retirement System a resolution providing for such membership and agreeing that said county shall be subject to the same liabilities with respect to such members as all other counties participating in the Public Employees' Retirement System. Such employees shall not be

ATTORNEY GENERAL

eligible to be members of any pension fund maintained by said county for persons employed by the county prior to the effective date of the resolution adopted by said county.”

N.J.S.A. 43:10-18.6a was designed to close the membership of the Essex County Employees' Retirement System to all new employees as of the effective date of a resolution to be adopted by the Board of Chosen Freeholders. Pursuant to this section, the resolution was adopted effective March 26, 1961.

For the reasons stated herein, it is our conclusion that the interpretation to be given to N.J.S.A. 43:10-18.6a is that those persons employed by the county subsequent to March 26, 1961 shall become members of the Public Employees' Retirement System.

It is axiomatic that the ability to enroll in the State retirement system is a statutorily conferred privilege. With regard to the Public Employees' Retirement System, county employees who were not previously covered by the former "State Employees' Retirement System" were not eligible for enrollment in the Public Employees' Retirement System until a referendum adopting such coverage was acted upon favorably by a majority of the voters voting on the question at a general election. N.J.S.A. 43:15A-74. No such referendum has ever been submitted to the voters in Essex County. In the absence of the passage of a referendum extending the coverage of the State-administered system to the county employees, they would not be eligible for membership in said system.

N.J.S.A. 43:10-18.6a, in effect, qualifies N.J.S.A. 43:15A-74 to the extent that it permits certain county employees to be enrolled in the State retirement system upon the adoption of an appropriate resolution without submission of a referendum to the people on a county level. However, the scope of any resolution adopted pursuant to N.J.S.A. 43:10-18.6a could not extend the coverage of the State system to any county employees who were not included within the ambit of the statutory section. The focus, therefore, must be on those employees of the county who were statutorily contemplated by N.J.S.A. 43:10-18.6a to be enrolled in the Public Employees' Retirement System.

N.J.S.A. 43:10-18.6a requires membership in the Public Employees' Retirement System as a condition of employment for any person employed by a first class county having a population of over 800,000 after the effective date of this act. The word "employed" is the key to the construction of this statute. Ordinarily, words in statutes are given their everyday, commonly accepted meaning unless the context clearly indicates otherwise. *Lane v. Holderman*, 23 N.J. 304, 313 (1957); *State v. Sperry & Hutchinson Co.*, 23 N.J. 38, 46 (1956). The word "employed" in the present context does not require a deviation from its normal, everyday definition. "Employed" means ". . .to make use of the services of; to give employment to; to entrust with some duty or behest. . . ." *Webster's New International Dictionary*, (2d ed.) Unabridged (1943), p. 839. The synonym associated with "employ" is "hire".

“EMPLOY is used to emphasize the idea of service to be rendered, HIRE, of wages to be paid; as, to *employ* an expert accountant, to *hire* a drayman. But the words are often interchangeable.” *Webster's New International Dictionary*, (2d ed.) Unabridged, *supra*.

The interchangeability of the words "employed" and "hired" would be most

FORMAL OPINION

appropriate in the context of N.J.S.A. 43:10-18.6a. Essentially, N.J.S.A. 43:10-18.6a is addressed to the "hiring" of a person after a certain date and requires that such person become a member of the Public Employees' Retirement System *as a condition of employment*. In such a case, the person is "entitled to all the rights and benefits and subject to all obligations of other members of said system."

The closing of membership in the Essex County Employees' Retirement System, however, was conditioned on the adoption of a resolution by the Board of Chosen Freeholders of such county "providing for such membership and agreeing that said county shall be subject to the same liabilities with respect to such members as all other counties participating in the Public Employees' Retirement System." The effect of the qualifying proviso is to make the cutoff date coincide with the date of adoption of the resolution by the county freeholders. The second sentence of N.J.S.A. 43:10-18.6a dovetails into the aforesaid proviso to underscore the cutoff date to be effective date of the freeholders' resolution. That sentence reads:

"Such employees shall not be eligible to be members of any pension fund maintained by said county for persons employed by the county prior to the effective date of the resolution adopted by said county."

"Such employees" in the above section refers to those persons hired by the county for the first time subsequent to the effective date of the resolution adopted by the county freeholders. The language clearly renders these newly hired employees ineligible for membership in the county system. The necessity for spelling out that these employees are ineligible for the county system is occasioned by the requirements of the Public Employees' Retirement System and Social Security Law. In order for these newly-hired employees to be eligible for membership in the Public Employees' Retirement System, Social Security coverage has to be extended to them. N.J.S.A. 43:15A-1, 2. To qualify for Social Security coverage under the Social Security Law, 42 U.S.C. 418(d) (1), they cannot be eligible for membership in another retirement system for the same employment. By specifically barring their membership in the county system, the Federal law is satisfied.

The line of demarcation for eligibility for membership in the Public Employees' Retirement System is March 26, 1961. Those persons hired by Essex County subsequent to March 26, 1961 are eligible for membership in the Public Employees' Retirement System. Those persons in the employment of Essex County prior to said date are not eligible for membership in the statewide system. As to the ineligibility of the pre-March 26, 1961 group, there has been no referendum adopted by the voters of the county to extend coverage to these employees in accordance with N.J.S.A. 43:15A-74, and the resolution adopted by the Board of Freeholders on March 26, 1961 pursuant to N.J.S.A. 43:10-18.6a did not contemplate their inclusion. Moreover, it should be noted that the actual members of an existing retirement system and those who would be eligible for membership in the existing retirement system could not qualify for Social Security coverage under the Social Security Law. Without being able to extend Social Security coverage to them, they could not be eligible for membership in the Public Employees' Retirement System. N.J.S.A. 43:15A-1, 2.

The Legislature, in its enactment of N.J.S.A. 43:10-18.6a, sought to seal off the enrollment of newly-hired persons in the county pension fund after March 26, 1961 and require such persons to become members in the Public Employees' Re-

ATTORNEY GENERAL

tirement System as a condition of employment. Accordingly, it is our conclusion that the interpretation to be given to N.J.S.A. 43:10-18.6a is that only those persons employed by the county subsequent to March 26, 1961, the effective date of the resolution, shall be eligible for membership in the Public Employees' Retirement System.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: Richard Newman
Deputy Attorney General

December 31, 1964

HONORABLE CHARLES R. HOWELL
Commissioner, Department of Banking & Insurance
State House Annex
Trenton, New Jersey

FORMAL OPINION, 1964 - No. 12

Dear Commissioner Howell:

You have requested our advice as to whether savings banks and banks may, for investment purposes, acquire by assignment from the Administrator of Veterans Affairs an installment sale contract of real property.

It is our opinion, for the reasons stated hereinafter, that savings banks and banks may hold as such investments installment sale contracts of real property.

In reaching our opinion we have considered the following facts which you have furnished. The installment sale contract, VA Form 26-169 (3009), is a result of the mortgage loan guarantee program of the Veterans Administration. Under this program, title to a parcel of real property is conveyed to the Administrator following a default in an obligation which has been guaranteed by the Administration under the aforementioned mortgage loan guarantee program. 38 U.S.C. 1820 (a). The underlying obligation is cancelled. The policy of the Administrator is to sell the real property so acquired as soon as possible. If a purchaser cannot make a sufficient down payment, the Administrator will enter into an installment sale contract, this being in lieu of the conventional deed and bond and purchase money mortgage. The term of this agreement provides that title to the real property, which is the subject matter of the sale, will remain in the Administrator or his assignee until there is a performance of the payment schedule specified in the agreement. In the event that the buyer is in default for 30 days or more, the Administrator has the right to declare the entire unpaid balance due, and, if this balance is not paid, he may terminate all of the buyer's rights under the agreement. Any payments made under the agreement and all improvements constructed in or on the property are retained by the Administrator or his assignee as compensation for the use and occupancy by the buyer. Under the terms of this agreement, no foreclosure proceedings are necessary to divest the buyer of his interest in the property. *Dorman v. Fisher*, 31 N.J.