

ATTORNEY GENERAL

November 24, 1964

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

MEMORANDUM OPINION - NO. 8

Dear Mr. Kervick:

You have asked us whether Mrs. Alice E. Shay, widow of Judge Samuel M. Shay, is entitled to a pension under the provisions of N.J.S.A. 43:6-6.8. It is our opinion that Mrs. Alice E. Shay is not entitled to pension benefits by reason of her husband's death.

Judge Shay served on the Common Pleas Court of Camden County from 1922 to 1934 and on the Circuit Court from 1934 until his death on March 24, 1947. He was born July 22, 1885 and married Alice Shay, the present claimant, on July 8, 1927. His marriage was solemnized before he attained the age of 50 years.

N.J.S.A. 43:6-6.8 provides for pensions to surviving widows of certain enumerated judges, and reads as follows:

"Whenever any person holding the office of Chancellor, Chief Justice of the old Supreme Court, Associate Justice of the old Supreme Court, judge of the circuit court, Vice-Chancellor, Chief Justice of the new Supreme Court, Associate Justice of the new Supreme Court, or Judge of the Superior Court shall die while in office or shall die after retirement on a pension payable under the provisions of this act and, in either case, shall leave a widow surviving him whom he married before he had attained the age of fifty years, an annual pension shall be paid thereafter to such surviving widow, so long as she lives and remains unmarried, in an amount equal to one-fourth of the annual salary received by her deceased husband at the time of his death or retirement, as the case may be."

The quoted section was section 5 of the Laws of 1948, c. 391, and was approved and became effective on September 13, 1948. As the facts indicate, Judge Shay predeceased the enactment of the statutory authority for granting pension benefits to surviving widows of judges of the circuit court. The question, therefore, which must be resolved is whether N.J.S.A. 43:6-6.8 is to be given a retrospective application.

Ordinarily, it is presumed that a statute operates prospectively and not retroactively unless the Legislature otherwise specifies. *In re Borough of Glen Rock*, 25 N.J. 241 (1957); *Nichols v. Board of Education, Jersey City*, 9 N.J. 241 (1952); *Kopczynski v. County of Camden*, 2 N.J. 419 (1949). In judicial construction of statutes, statutory terms are not to be given retroactive operation unless such application is clear, strong and imperative and no other meaning can be given to the statutory language or unless the legislative intent cannot otherwise be satisfied. *LaParre v. Young Men's Christian Ass'n of the Oranges*, 30 N.J. 225 (1959); *Burdett v. Municipal Employees, &c. Newark*, 129 N.J.L. 70 (E. & A. 1942).

The pertinent phraseology in N.J.S.A. 43:6-6.8 is "whenever any person holding the office of etc. * * * shall die while in office * * * and shall leave a widow surviving

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him etc." There is nothing in this language which of itself suggests that it was intended to have retroactive effect. If the language of the statute read "shall have died or shall hereafter die while in office," a retroactive intent could readily be discerned and a retroactive application would appear reasonable. The exact language of the statute, however, is explicitly in the present and future tenses, i.e., "any person holding the office *** who shall die while in office or shall die after retirement ***." Such language strongly militates against a retrospective application.

N.J.S.A. 43:6-6.8 by its terms purported to provide pension benefits for widows of judges and justices holding judicial offices existing prior to the court system which was created as a result of the adoption of the New Jersey Constitution of 1947. The statute also provided for comparable pension benefits for widows of judges holding judicial office under the present court structure.

It must be noted and emphasized that the former court system did not terminate *eo instante* upon the adoption of the New Jersey Constitution of 1947. The Judicial Article of the 1947 Constitution, Article XI, Section IV, par. 3, provided that the Court of Errors and Appeals, the former Supreme Court, the Court of Chancery, the Prerogative Court and the Circuit Courts be abolished and that the jurisdiction, functions, powers and duties previously vested in each of the aforementioned courts be transferred to and divided between the new Supreme Court and the Superior Court. The abolition of these former courts was to be effective prospectively on September 15, 1948, the date when the Judicial Article of the Constitution became effective. The Judges and Justices and Chancellors of the former courts were to become the new judiciary by virtue of Article XI, Section IV, par. 1 which reads as follows:

"1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to the practice of law in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the Superior Court. The Justices of the new Supreme Court and the Judges of the Superior Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the Superior Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted."

The Chancellors, Chief Justice and the Associate Justices of the old Supreme Court, the Vice Chancellors and Circuit Court Judges who were not nominated and appointed to the new Supreme Court, and the Judges of the Court of Errors and Appeals who had been admitted to the practice of law in this State for at least ten years, were constitutionally assured of becoming the Judges of the Superior Court.

Thus, the entire Judicial Article of the Constitution (Art. XI, Sec. IV, par. 14) was not to take effect until September 15, 1948. It is to be noted, however, that N.J.

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S.A. 43:6-6.8 was originally introduced prior thereto, on March 31, 1948, as Assembly Bill No. 39. It passed the Assembly on April 26, 1948 and the Senate on September 8, 1948. Obviously if the bill had been enacted and had become effective during this time, it would have afforded the widows of the justices and judges of those enumerated pre-1948 courts with pension protection prior to the September 15th effective date of the Judicial Article, since these former courts would have still been in existence. Thus, any hiatus which might have occurred had the bill been enacted prior to the effective date of the Judicial Article of the Constitution was avoided by including those enumerated pre-1948 judges and justices who "shall die while in office." The practical effect of the enactment of the bill on September 13, 1948, the same date on which the Judges of the Superior Court were sworn into office (71 N.J.L.J. 332 (1948)), was to provide coverage for the pre-1948 judiciary who were then holding office and "shall die while in office" during such period of time between the effective date of the statute and the date upon which the Judicial Article of the 1947 Constitution became operative.

Judge Shay died while in office and not after retirement. He died on March 24, 1947, prior to the adoption of the 1947 Constitution on November 4, 1947, prior to the introduction of the Assembly Bill No. 39 on March 31, 1948, and prior to the enactment of the bill on September 13, 1948. Viewed in this chronological order, and in light of the interpretation of the statutory language discussed herein, the presumption of prospective application must stand. The elements of clarity, strength and imperativeness that would justify reading a retroactive effect into the statute so as to afford pension benefits to Judge Shay's widow are clearly lacking here. *Burdett v. Municipal Employees &c. Newark, supra*, at p. 73.

For the foregoing reasons, it is our conclusion that Mrs. Alice E. Shay, widow of Judge Samuel M. Shay, is not entitled to a pension under the provisions of N.J. S.A. 43:6-6.8.

Very truly yours,
ARTHUR J. SILLS
Attorney General
By: RICHARD NEWMAN
Deputy Attorney General