

FORMAL OPINION

December 14, 1964

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

MEMORANDUM OPINION — NO. 9

Dear Mr. Kervick:

You have requested our opinion as to whether two State employees, who are serving as secretaries to Superior Court Judges and are paid by Essex County, are required to become members of the Public Employees' Retirement System. Both secretaries were appointed after N.J.S.A. 43:15A-1, *et seq.* became effective. They are not veterans.

We are of the opinion that enrollment of the secretaries in the Public Employees' Retirement System is not mandatory, but optional, since they do not have the status of permanent employment in the classified service of the State.

Secretaries to Superior Court Judges (whether in the Law or Chancery Division) are appointed to serve at the pleasure of the Judge pursuant to N.J.S. 2A:11-7 and N.J.S. 2A:11-9. R.S. 11:4-4(m) further provides that the secretary of every State Judge shall be in the unclassified service. It is clear, therefore, that the secretaries do not have permanent employment in the classified service of the State.

The provision under which the secretaries are eligible for membership in the System is N.J.S.A. 43:15A-79(c), which provides in part:

"Except as provided in subsection (b) hereof, an employee of the State whose compensation is paid in whole or in part by any such county or municipality or by any board, body, commission or agency of any such county or municipality maintained by funds supplied by such county or municipality shall be eligible for membership in the public employees' retirement system and shall not be a member of any county or municipal pension system by reason of such State Service. \* \* \*"

In effect, State employees compensated in whole or in part by counties are to be treated as other State employees for purposes of participation in public pension systems. The statutory words "shall be eligible" clearly indicate, however, that membership in the State Public Employees' Retirement System is optional and not mandatory for such employees. This is emphasized by N.J.S.A. 43:15A-7, which applies to all State employees. It provides in part:

"The board may deny the right to become members of the retirement system to any class of elected officials or to any class of persons other than veterans not within the classified civil service. \* \* \*. Notwithstanding any other law to the contrary all other persons accepting permanent employment in the classified service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age. \* \* \*"

Thus, under this statutory provision, an enrollment under N.J.S.A. 43:15A-79 (c) is mandatory for permanent employees in the classified service of the State. Enroll-

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ment, however, is optional for nonveterans who do not have permanent status as a State employee under Civil Service.

It should be noted that the secretaries in question are not eligible for enrollment in any other public pension system, even though their enrollment in the Public Employees' Retirement System is optional. N.J.S.A. 43:15A-79 (c)

In answer to your inquiry, we conclude, therefore, that enrollment in the Public Employees' Retirement System of the secretaries in question who are nonveterans is at the option of the secretaries.

Very truly yours,  
ARTHUR J. SILLS  
*Attorney General*

By: RICHARD NEWMAN  
*Deputy Attorney General*

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December 14, 1964

MR. LEO CULLOO  
*Executive Secretary*  
Police Training Commission  
24 Commerce Street  
Newark, New Jersey

MEMORANDUM OPINION—NO. 10

Dear Mr. Culloo:

You have requested our advice as to whether police officers appointed by the Delaware River Port Authority come within the provisions of the Police Training Act (N.J.S.A. 52:17B-66 *et seq.*).

In our opinion such police officers do not come within the provisions of the Police Training Act.

The Delaware River Port Authority was established to operate and maintain bridge and other port facilities between the Philadelphia, Pennsylvania and Camden, New Jersey areas. N.J.S.A. 32:3-1, *et seq.*

The authority for the Delaware River Port Authority to appoint policemen is found in N.J.S.A. 32:4-6, which in part provides:

“The Delaware River Port Authority, a body corporate and politic, functioning under the legislation enacted by the Commonwealth of Pennsylvania and the State of New Jersey, shall have the power, and authority is hereby conferred thereon to appoint such number of policemen as may be found necessary to keep in safety and preserve order upon such bridges and tunnels and approaches thereto as the authority does or may hereafter operate; to administer to such policemen an oath or affirmation faithfully to perform the duties of their respective positions or offices; and to provide