

FORMAL OPINION

2. In 1938, Section 20(9) of Chapter 208 was amended so that the \$3.00 annual license fee applied to "... farm tractors and traction [machines] equipment *used for farm operations* [not equipped with rubber tires] equipped *with or without rubber tires* ..." (L. 1938, c. 66, §7, p. 176). The effect of this amendment, of course, was that this statute now applied to *all* farm tractors and traction equipment. The reason for this amendment becomes obvious when one considers the development of rubber tires in the agricultural industry. In 1921, the great majority of farm tractors and traction equipment that was in operation was equipped *without* rubber tires. It was not until the late thirties that farm tractors became equipped *with* tires (*Smith, Farm Machinery and Equipment* (4th ed. 1955), p. 5). Until 1941, this was the only statute applicable to farm vehicles excepting a prior enactment in 1933 providing lesser registration fees for trucks used by farmers (L. 1933, c. 124, §§ 1, 2, pp. 261, 262; N.J.S.A. 39:3-25).

November 29, 1965

HONORABLE ROSCOE P. KANDLE, *Commissioner*
Department of Health
129 East Hanover Street
Trenton, New Jersey

MEMORANDUM OPINION – NO. 3

Dear Commissioner Kandle:

You have requested an opinion on the propriety of issuing birth certificates without charging fees therefor to persons seeking to secure Federal Old Age, Survivors and Disability Insurance Benefits under R.S. 26:8-63(a).

It is our opinion that claims for Federal Old Age, Survivors and Disability Benefits are claims for public pension within the purview of the law, and that the Department of Health should not charge fees for such birth certificates.

N.J.S.A. 28:8-63 provides, in pertinent part, that:

"The State Registrar shall:

"(a) Furnish a birth, marriage or death certificate without fee in the prosecution of any claim for public pension or for military or naval enlistment purposes . . ."

Our Supreme Court has defined the term "public pension" in the case of *Salz v. State House Commission*, 18 N.J. 106, 111, 112 (1955). The Court, speaking through Justice Heher, said:

"A public pension, while not contractual in nature, is akin to wages and salaries in that it is payable in stated installments for the maintenance of the servant after his productive years have ended ***."

The Court cited with approval the Connecticut case of *Kneeland v. Administrator*,

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Unemployment Compensation Act, 138 Conn. 630, 88 A. 2d 376 (Sup. Ct. Err. 1952) wherein it was said, in defining the word "pension", that:

"It serves the same purpose as wages to the recipient in that it helps him to meet the expense of living. It is a substitute for the wages which the employee has lost by reason of the loss of his job."

It is manifest that Federal Old Age, Survivors and Disability Benefits come within the scope of the foregoing principles. Old age benefits are clearly installments for the maintenance of an employee after his productive years have ended. Survivors benefits are unquestionably a substitute for wages which have been lost through the loss of a job by reason of death, and disability benefits are also a substitute for wages in much the same manner. All such benefits serve the same purpose as wages in that they assist the recipient in meeting the expense of living, and are in the nature of a pension paid by the Government upon the happening of certain contingencies.

The cases discussing the purpose of Federal Social Security laws are in accord with the cases, discussed above, which deal with the nature and purpose of pensions. The Supreme Court of the United States, speaking through Mr. Justice Reed, clearly stated the object of Federal Old Age Benefits as follows:

"The purpose of the Federal Old Age Benefits of the Social Security Act is to provide funds through contributions by employer and employee for the decent support of elderly workmen who have ceased to labor." *Social Security Board v. Nierotko*, 327 U.S. 358, 364, 66 S. Ct. 637, 640, 90 L. Ed. 718 (1946).

The following year the same court, in an opinion dealing with unemployment benefits, stated that:

"The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of government and industry for solving the problems. The principal method adopted by Congress to advance its purpose was to provide for periodic payments *in the nature of annuities to the elderly . . .*" *United States v. Silk*, 331 U.S. 704, 710, 68 S. Ct. 1463, 1466, 91 L. Ed. 1757 (1947). (Emphasis added.)

The leading case of *Helvering v. Davis*, 301 U.S. 619, 642, 57 S. Ct. 904, 909, 81 L. Ed. 1307 (1937), discusses in detail the purposes of such legislation. The case stresses the evidence, gathered through extensive hearings, that the number of elderly persons in the United States unable to take care of themselves was, at that time, growing at a threatening pace because of the loss of employment due to old age.

It has been said of State old age assistance, which for our purposes can be equated to Federal Benefits, that its purpose

"is to aid or to pension, to the extent therein provided, aged persons who come within its provisions, and thus prevent or at least tend to prevent their

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need of support, care and maintenance." 81 C.J.S., *Social Security and Public Welfare*, Sec. 15.

Moreover, the understanding of the statutory term "pension" as including old age assistance is illustrated by the recognition of the federal old age assistance program accorded by our Legislature in the state pension program. The Public Employees' Retirement System made a part of New Jersey Statutes by P.L. 1954, c. 84, superseded the State Employees' Retirement System and provided additional coverage for members of the former State Employees' Retirement System under the provisions of Title II of the Federal Social Security Act. N.J.S.A. 43:15A-2, *et seq.* For this reason, this act is known as the Public Employees' Retirement-Social Security Integration Act.

Under this Act, public employees were not required to pay the Social Security tax on wages to the extent of rates prevailing as of January 1, 1960; such taxes were paid to the federal government by the Retirement System from pension contributions collected from the members. N.J.S.A. 43:15A-58. The pension system bore the cost for the total tax upon the employee until January 1, 1960 and thereafter in the amount of the prevailing rate as of that date. Thus, it is clear that the federal tax on employees' wages was paid out of Retirement System funds. Because of this federal tax payment from Retirement System funds, the Retirement System was given the economic advantage of the federal benefits purchased for each employee in the form of a corresponding reduction of the State Retirement allowance as provided by N.J.S.A. 43:15A-59. The Public Employees' Retirement-Social Security Integration Act was basically designed to provide a monthly allowance for retired employees to be made up in part by the State fund and in part by the Federal fund. The underlying objective of the integrated system is the same objective that existed before the State and Federal plans were merged, *i.e.*, to enable an aged servant to meet the necessities of life after his release from employment. *Miller v. Bd. of Trustees, etc., Retirement System*, 35 N.J. 19, 23 (1961); *cf. Spina v. Consolidated Police, etc., Pension Fund Com.*, 41 N.J. 391, 401-402 (1964).

This objective, when considered in the light of the definition of public pension as expounded in the *Salz* case, *supra*, in discussing a State pension, and the integration of the Federal and State funds, indicate a legislative intent for the term "public pension" to encompass Social Security.

In conclusion, we are of the opinion that the Department of Health may issue birth certificates without charge to persons seeking to obtain Federal Old Age, Survivors and Disability Insurance Benefits under R.S. 26:8-63(a).

Very truly yours,
ARTHUR J. SILLS
Attorney General

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