

ATTORNEY GENERAL

existing registration period terminating on the 40th day preceding an election. Moreover, the manifest purpose of Chapter 117 is to facilitate registration and to encourage the participation of registrants in the next election. Evening registration is a convenience to the public, designed to furnish persons, otherwise preoccupied in daily routine, with an added opportunity to register to vote. Extensive evening registration was considered by the Legislature as being obviously conducive to increased voter participation in the election process. There would be no overriding or pressing need to furnish such evening registration opportunities to persons registering within 39 days of the next forthcoming election since, in any event, such persons would be ineligible to vote therein.

For the foregoing reasons, we are of the opinion that evening registration must be conducted within every county for 5 days in each week during the period of registration up to and including the 40th day preceding any non-presidential election; in providing for such evening registration during this period of registration, facilities for evening registration must be provided at least once in each municipality within every county, and at least once in each election ward in any municipality divided into election wards, during each week of the registration period, unless any municipality has a population of less than 750 persons and is specifically exempted by the commissioner of registration provided that evening registration facilities are made available within a reasonable distance of any municipality so exempted.

Sincerely yours,

ARTHUR J. SILLS

Attorney General

By: ALAN B. HANDLER

First Assistant Attorney General

March 17, 1967

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

FORMAL OPINION 1967—NO. 1

Dear Mr. Kervick:

You have requested our opinion on a question concerning the payment of interest on the accumulated deductions of members of the Public Employees' Retirement System (hereinafter referred to as PERS) and the Teachers' Pension and Annuity Fund (hereinafter referred to as TPAF).

You have asked specifically whether the "withdrawal" rate of interest authorized by N.J.S.A. 43:15A-41(a) in the PERS and by N.J.S.A. 18:13-112.36 in the TPAF or the "death" rate of interest authorized by N.J.S.A. 43:15A-41(c) in the PERS and by N.J.S.A. 18:13-112.40 in the TPAF is payable on the accumulated

FORMAL OPINION

deductions of a member who dies within two years after discontinuing his service as an employee.

It is our opinion, for the reasons set forth herein, that N.J.S.A. 43:15A-41(a) and N.J.S.A. 18:13-112.36 with respect to "withdrawal" are the controlling statutes in paying the applicable rate of interest on the accumulated deductions of a member of PERS or TPAF who has died within two years after termination of service as an employee.

The PERS and the TPAF provide for the withdrawal of accumulated deductions and interest standing to a member's credit in his Annuity Savings Fund account. N.J.S.A. 43:15A-41(a) applicable to the PERS provides in pertinent part:

"A member who withdraws from service or ceases to be an employee for any cause other than death or retirement shall receive all of the accumulated deductions standing to the credit of his individual account in the annuity savings fund, plus regular interest, less any outstanding loan, except that for any period after June 30, 1944, the interest payable shall be such proportion of the interest determined at the regular rate of 2% per annum bears to the regular rate of interest. . . . Except as provided for in sections 8 and 38 of this act, he shall cease to be a member 2 years from the date he discontinued service as an employee, or, if prior thereto, upon payment to him of his accumulated deductions."

N.J.S.A. 18:13-112.36 applicable to the TPAF provides in pertinent part:

"A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall receive all of the accumulated deductions standing to the credit of his individual account in the annuity savings fund, plus regular interest on contributions made after January 1, 1956, less any loan outstanding, and except that for any period after June 30, 1944, the interest payable shall be such proportion of the interest determined at the regular rate as 2% per annum bears to the regular rate of interest. . . . Except as provided for in sections 7 and 8 of this act, he shall cease to be a member 2 years from the date he discontinued service as a teacher, or, if prior thereto, upon payment to him of his accumulated deductions."

In the event of the death of a member while in service, the PERS and the TPAF provide for the return of accumulated deductions and interest under a separate and different statutory standard. N.J.S.A. 43:15A-41(c) applicable to the PERS provides in pertinent part:

"Upon the receipt of proper proofs of the death of a member in service on account of which no accidental death benefit is payable under section 49 there shall be paid to such member's beneficiary:

"(1) The member's accumulated deductions at the time of death together with regular interest"

N.J.S.A. 18:13-112.40 applicable to the TPAF provides in pertinent part:

ATTORNEY GENERAL

“Except as provided in section 69, upon the receipt of proper proofs of the death of a member in service on account of which no accidental death benefit is payable under section 46, there shall be paid to such member’s beneficiary: (a) The member’s accumulated deductions at the time of death together with regular interest after January 1, 1956.”

It is evident that the interest prescribed in the “in service death” statutes do not apply with respect to a member who has terminated his service by withdrawal while alive but who subsequently dies, with two years, but has not formally terminated his membership and has not received his accumulated deductions credited to his account prior to his death. In such circumstances the member has terminated his employment or service for a cause other than death or retirement. The fact the member dies prior to the expiration of his formal membership in the respective fund does not alter the fact that this death did not occur while he was in service and that his death as such was not the critical event which brought his service to an end. Consequently, the withdrawal rate of interest shall be deemed the rate paid.

This conclusion turns upon the distinction between “service” in public employment and “membership” in the applicable pension system. Service as referred to in the statutory schemes establishing the PERS and the TPAF implies the existence of an employment relationship. *Friedman v. Board of Trustees Pub. Employ. Ret. System*, 78 N.J. Super. 571 (App. Div. 1963). The plain meaning and commonly understood interpretation of the phrase “in service” within the context of N.J.S.A. 43:15A-1 *et seq.* and N.J.S.A. 18:13-112.1 *et seq.* includes one in an employment relationship, an employee or teacher of the State, political subdivision, government agency or school district for which the retirement system is made available. The title of N.J.S.A. 43:15A-1 *et seq.* is the Public *Employees’* Retirement System. Creditable school service in the TPAF is service as a teacher. N.J.S.A. 18:13-112.40. Membership in the respective retirement system is available to a person becoming an employee of the State or other employer, N.J.S.A. 43:15A-7(b), or a person becoming a teacher. N.J.S.A. 18:13-112.6. A person may be in service or in an employment relationship if on an approved leave of absence. *Cf.* Formal Opinion of the Attorney General, No. 2 — 1966.

As previously indicated, N.J.S.A. 43:15A-41(a) and N.J.S.A. 18:13-112.36 provide for payment of accumulated deductions and interest to a member who has withdrawn from service for reasons other than death or retirement. Such withdrawal from service does not *per se* terminate membership in a particular pension system. Membership status in the respective retirement system continues until payment of the member’s accumulated deductions and interest, upon expiration of two years from the discontinuance of service as an employee, or at death. A person may thus remain in a status of “inactive” membership for a period of two years by operation of law. N.J.S.A. 43:15A-7(e), N.J.S.A. 18:13-112.9(a). The member does not contribute to the retirement system, nor is he engaged in any public service subject to it.

A membership account in the PERS or the TPAF is always terminated on the death of the member. Thus, accumulated deductions and interest are payable to a designated beneficiary or estate upon the death of a member while in service. N.J.S.A. 43:15A-41(c), N.J.S.A. 18:13-112.40; the death of a member in service as a result of a service connected accident, N.J.S.A. 43:15A-49, N.J.S.A. 18:13-112.48; membership in the TPAF is expressly terminated at death. N.J.S.A. 18:13-112.9(e). Therefore, it is the withdrawal rate of interest which is applicable upon actual with-

FORMAL OPINION

drawal of accumulated deductions by a member while in service or employment, or upon his death during an existing "inactive" membership or upon expiration of the "inactive" membership account following the termination of service or employment.

We have been informed that the payment of the lesser withdrawal rate of interest as compared with the greater death rate has acted as a mechanism to encourage prompt termination of "inactive" membership accounts. The cessation of "inactive" membership accounts obviates the continued recognition of potential, substantial liabilities for such members with respect to the funding of the systems and this fact has been taken into account in the actuarial planning of the systems. We are further informed that, in the context of the facts posed, the withdrawal rate has been paid on "inactive" membership accounts for a considerable number of years. This practical administrative understanding and long standing practice are strongly indicative of the legislative meaning and intent and are entitled to great weight in construing the pertinent legislation. *Cf. Pringle v. N.J. Dept. of Civil Service*, 45 N.J. 329, 333 (1965); 2 Sutherland, *Statutory Construction*, § 5107, p. 520, (3rd Ed. 1943).

We, therefore, advise you for the foregoing reasons that the rate of interest which is to be paid on the accumulated deductions in the Annuity Savings Fund Account of a member in the PERS or TPAF who has died within two years after discontinuing his employment shall be at the rates authorized by N.J.S.A. 43:15A-41(a) and N.J.S.A. 18:13-112.36.

Very truly yours,
ARTHUR J. SILLS
Attorney General of New Jersey
By: THEODORE A. WINARD
Deputy Attorney General

April 7, 1967

HONORABLE JUNE STRELECKI, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION 1967—NO. 2

Dear Director Strelecki:

You have requested our opinion as to the meaning of the term "arrest" within the context of the Implied Consent Law, N.J.S.A. 39:4-50.1 et seq., and specifically, N.J.S.A. 39:4-50.4. By virtue of that law, any person who operates a motor vehicle on the roads of this state is deemed to have given his consent to the taking of a breath test in order to determine the content of alcohol in his blood. Should the operator refuse to consent to the taking of the test under proper circumstances, he may forfeit his driver's license or right to operate a motor vehicle within this state for six months.