

FORMAL OPINION

The issue, therefore, remains whether the Director to be consistent with the definition prescribed for federal income tax purposes is obliged to treat a lump sum pension distribution as a capital gain transaction in accordance with section 402 (a) (2) of the Code, or, rather, adopt the generally accepted definition of a pension distribution as a form of ordinary income. It is clear that the treatment of retirement benefits as ordinary income under section 72 of the Code is based upon the realization that these benefits are merely a form of deferred compensation for work previously performed. See *Heard v. C.I.A.*, 326 F. 2d 962 (8th Cir. 1964) *cert. denied* 377 U.S. 978 (1964). The deferral in the distribution of the sum representing the employer's contribution does not change the basic transaction as one involving compensation to an employee. The congressional determination to treat lump sum pension distributions differently is simply based on underlying policy considerations in the administration of the Federal tax laws and not on a strict definition of the transaction involved.

The Act merely requires the Director to be consistent with definitions prescribed for federal income tax purposes. It does not require him to adopt a congressional policy to give this form of transaction capital gains treatment. The employee is simply collecting an obligation from his employer due to him as deferred compensation for previously rendered services. See *Pounds v. U.S.*, 372 F. 2d 342 (5th Cir. 1967). You are accordingly advised that a lump sum distribution from a pension fund does not constitute a sale or exchange of a capital asset under the Act and would not thereby be taxable to its recipient as unearned income.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: BARRY D. SZAFERMAN
Deputy Attorney General

January 19, 1976

HON. PHILLIP ALAMPI
Secretary of Agriculture
Health & Agriculture Bldg., Rm. 304
Trenton, New Jersey 08625

FORMAL OPINION NO. 2-1976

Dear Secretary Alampi:

You have asked for our advice on certain questions pertaining to the notification provisions of the newly enacted Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.* In particular, you have asked whether the State Board of Agriculture is required to promulgate a schedule of its regular meetings for this year as soon as the Act takes effect on January 19, 1976 or whether the Board may delay the promulgation of its schedule of regular meetings until its reorganization meeting to be held in July of 1976.

ATTORNEY GENERAL

The controlling statutory provision dealing with public notification of the schedule of the regular meetings of a public body is N.J.S.A. 10:4-18 which provides in pertinent part:

“At least once each year, within 7 days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10 of such year, every public body shall post and maintain posted throughout the year in the place described in subsection 3.d . . . a schedule of the regular meetings of the public body to be held during the succeeding year”

It is clear that every public body must promulgate a yearly schedule of its regular meetings within seven days of its annual organization or reorganization meeting. In the case of a public body which does not conduct an annual organization or reorganization meeting, the schedule of regular meetings must be promulgated not later than January 10 of each year. The Act, however, is silent as to whether an annual schedule of meetings must be promulgated as of the effective date of the Act, January 19, 1976, or whether a public body may wait to promulgate such a schedule until January 10, 1977 or until it conducts its annual organization or reorganization meeting sometime during the year.

There is no question that a public body is empowered to promulgate a schedule of its regular meetings as of the effective date of the Act, January 19, 1976, notwithstanding that its annual organization or reorganization meeting may be scheduled many months in the future. The Act authorizes a public body to revise its annual notice schedule after it has been duly promulgated. N.J.S.A. 10:4-18. The statutory requirement that each public body “post and maintain posted throughout the year” a schedule of its regular meetings also suggests a legislative purpose that a public body have a schedule of regular meetings in existence throughout the year. In light of these legislative objectives, it would be unreasonable to assume a legislative purpose to delay the promulgation of the schedule of annual meetings to January 10, 1977 or to an annual organization or reorganization meeting to be held many months in the future. The Act should not be construed in a manner to frustrate the underlying legislative purpose for an unduly long period of time after its effective date. The statute should be construed in a manner to fully effectuate its beneficial purposes. *N.J. Builders, Owners and Managers Association v. Blair*, 60 N.J. 330, 338-40 (1972); *Leonard v. Werger*, 21 N.J. 539, 543 (1956).

It may, therefore, be concluded that every public body which does not hold an annual organization or reorganization meeting should promulgate a schedule of all regular meetings through January 10, 1977 at its next meeting to be held on or about January 19, 1976. Public bodies, including the State Board of Agriculture, whose annual organization or reorganization meeting is not held in close proximity to the effective date of the Act should promulgate a schedule of all regular meetings, through and including the next scheduled annual organization or reorganization meeting, at its next meeting to be held on or about January 19, 1976.

Very truly yours,

WILLIAM F. HYLAND

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