



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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December 9, 2021

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Township of Toms River
Law Division
Anthony Merlino, Esq.
[REDACTED]

RE: Maurice B. Hill, Jr.
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Merlino:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying Mayor Maurice Hill's request to continue his PERS membership after having been elected to a new position. The Board originally denied this request at its meeting of October 21, 2020. You filed a timely appeal of that determination on November 30, 2020. At its meeting of January 20, 2021, the Board affirmed its previous decision, and finding no genuine issue of material fact in dispute, directed the Secretary to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law were presented to and approved by the Board at its February 17, 2021, meeting.

Mayor Hill appealed the matter to the Superior Court, Appellate Division. While the matter was pending, Deputy Attorney General Porter Strickler moved before the court to remand the matter to consider whether Mayor Hill is eligible to remain in the PERS pursuant to N.J.S.A. 43:15A-7.5.

At its meeting of November 17, 2021, the Board reviewed the factual circumstances pertaining to Mayor Hill's request to remain in the PERS, as well as his argument regarding his

eligibility under N.J.S.A. 43:15A-7.5. After careful consideration, the Board determined that the statute does not permit Mayor Hill to remain in the PERS. Accordingly, the Board directed the undersigned to draft this Final Administrative Determination, which was approved at its meeting of December 8, 2021.

FINDINGS OF FACT

The Board incorporates by reference the factual findings as detailed in its Final Administrative Determination, dated February 17, 2021, as if the same were repeated herein. Briefly summarized, Mayor Hill was enrolled in the PERS effective April 1, 2004, as a result of his elected position as Toms River Township Councilman. Mayor Hill served in that position until December 31, 2019, at which time he was elected Mayor of Toms River.

In 2007, the New Jersey Legislature issued a series of bills aimed at reforming the pension system. L. 2007, c. 92, (Chapter 92) which became effective July 1, 2007, precluded elected officials from enrollment in the PERS. Subsequent to the passage of Chapter 92, elected officials were eligible only for enrollment in the Defined Contribution Retirement Program (DCRP). Elected officials who were already enrolled in the PERS prior to July 1, 2007, were permitted to remain in the PERS while they remained in the elected office they held prior to that date. Thus, Chapter 92 authorized Mayor Hill to remain in the PERS and he continued to accrue PERS service credit while he remained in the office of Councilman he held as of July 1, 2007.

In 2019, Hill was elected as Mayor and began his term on January 1, 2020. As a result of the fact that Hill no longer held his Council seat, Toms River Township submitted Mayor Hill's DCRP application on January 13, 2020, and he was enrolled in the DCRP retroactive to January 1, 2020. Based on these facts, the Board found that because Mayor Hill no longer served in the position he held on July 1, 2007, as a result of Chapter 92, specifically, N.J.S.A. 43:15C-2, Mayor Hill was required to enroll in the DCRP, and is precluded from continuing his PERS enrollment or from earning any PERS service credit in his Mayoral position.

CONCLUSIONS OF LAW

The Board incorporates by reference the legal reasoning and conclusions detailed in its Final Administrative Determination dated February 17, 2021, as if the same were repeated herein. At its meeting of November 17, 2021, the Board made the following Conclusions of Law.

The sole question before the Board in November 2021 was whether Mayor Hill is eligible for continued PERS enrollment, notwithstanding his election to a new position and the termination of his former elected position, under N.J.S.A. 43:15A-7.5. After careful consideration, the Board denied Mayor Hill's request, finding that the plain language of the statute simply does not apply to confer his eligibility for continued PERS enrollment.

N.J.S.A. 43:15A-7.5 states, in pertinent part:

a. The Division of Pensions and Benefits in the Department of the Treasury shall reenroll in the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), any person holding elective public office on the effective date [Jan. 16, 2018] of this act, P.L.2017, c.344, who was a member of the retirement system as of the effective date [July 1, 2007] of ... P.L.2007,c.92 on the basis of holding an elective public office and who was elected to another elective public office after that effective date, provided the person has at least 15 years of continuous service in elective public offices of this State. The person shall be eligible for membership in the retirement system based on service in another elective office pursuant to (citations omitted) as amended by P.L. 2017, c.344. This reenrollment provision shall include any person holding elective public office on the effective date [Jan. 16, 2018] of this act, P.L.2017, c.344, who is receiving a retirement allowance from the retirement system on that effective date. For the purposes of this section, a person shall be deemed to have met the requirement for holding elective public office on the effective date of this act, P.L.2017, c.344, if the person's term of office expired within 30 days before that effective date.

...

b. An elected public official eligible for enrollment in the Public Employees' Retirement System pursuant to subsection a. of this section may request, in writing, within 180 days of the effective date

of this act, P.L.2017, c.344, that the official's enrollment in the system be made retroactive to the date of his or her assumption of another elective office without a break in service as required by sections 7 and 75 of P.L.1954, c.84 (C.43:15A-7 and 43:15A-75), or section 1 of P.L.1972, c. 167 (C.43:15A-135), as amended by P.L.2017, c.344...

In your November 11, 2021 submission to the Board, you assert that N.J.S.A. 43:15A-7.5 provides a basis to allow Mayor Hill to continue his PERS membership even after he was elected to a new office.

It is beyond dispute that N.J.S.A. 43:15A-7 excludes elected public officials who are elected after July 1, 2007, the effective date of Chapter 92. The statute initially left only a small carve-out for elected officials, such as Mayor Hill, who were enrolled as of July 1, 2007, and continued to hold that same elective public office. Approximately 11 years after Chapter 92 became effective, N.J.S.A. 43:15A-7.5 amended the statute to allow a temporary 180-day window of time for a very small number of members to re-enroll in PERS based on their new elective public office. N.J.S.A. 43:15A-7.5; L. 2017, c. 344, § 1.

This statute also has a clear requirement that any individual meeting the qualifications of part (a) may apply to the Division for re-enrollment in PERS, but only within 180 days of the effective date of the act, which was January 16, 2018. The Division followed this plain reading of the statute and provided a deadline of July 16, 2018 for an elected official to request re-enrollment, which is 180 days after the effective date of Chapter 344. There is no dispute that at that time Mayor Hill was an active contributing member of the PERS, based on his status as an elected official holding the same office he held as of July 1, 2007, the effective date of Chapter 92.

N.J.S.A. 43:15A-7.5(b) limits re-enrollment to any persons who satisfies the following criteria: (1) a "person holding elective public office on . . . Jan. 16, 2018"; (2) "who was a member of the retirement system as of . . . July 1, 2007"; (3) "on the basis of holding an elective public office"; (4) "and who was elected to another elective public office after that effective date"; and (5) "provided the person has at least 15 years of continuous service in elective public offices of

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this State.” N.J.S.A. 43:15A-7.5(a). Again, the plain language of the statute does not confer eligibility for Mayor Hill to remain in PERS.

You argue that the 180-day limitations period does not apply to Mayor Hill because he attained eligibility after the effective date of N.J.S.A. 43:15A-7.5. Thus, because he was not eligible at the time the statute was enacted, the statute would permit him, and all others in the future who were not so eligible, to continue PERS enrollment when they met the remaining statutory criteria. The Board disagrees, as the statute unambiguously applies only to those elected officials eligible for continued enrollment at the time of the enactment.

The Board also noted that the language of part (a) referring to an individual who “was” elected to another public office is stated in the past tense, meaning prior to January 16, 2018. The language requiring a person to have at least 15 years of public service at the time of enactment is in the present tense, meaning that the individual needed to have 15 years of service on January 16, 2018. There is no dispute that, on the effective date of Chapter 344, January 16, 2018, Mayor Hill had not been elected to another public office and he did not have the requisite 15 years of public service. The statute, by contrast, nowhere employs the future tense and there is no expression of an intent for the re-enrollment provisions to apply both prospectively and indefinitely. The clear temporal requirement of requesting re-enrollment within 180 days of the effective date of the act, the usage of past tense for the requirement of an election to a different public office, and the use of the present tense for the requirement of 15 years of service on the effective date of Chapter 344 all preclude Mayor Hill from eligibility, based on the criteria set forth in N.J.S.A. 43:15A-7.5.

As noted above, the Board has considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this

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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

This matter is currently pending in the Superior Court, Appellate Division. The Board will await a decision of the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeff Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-7/JSI

C: J. Ehrmann (ET); N. Munko (ET)

Mayor Maurice B. Hill, Jr.