



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

February 18, 2021

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 and, alternatively, to allow Mayor Hill to collect a retirement benefit while he remains employed. 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,<sup>1</sup> the Board affirmed its previous decision denying Mayor Hill's request. Finding no genuine issue of material fact in dispute, the Board directed the Secretary to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its February 17, 2021, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the Board to grant Mayor Hill's request.

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<sup>1</sup> Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

### **FINDINGS OF FACT**

The Board made the following factual findings.

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 only eligible 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. 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 is 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.

You wrote to the Division of Pensions and Benefits challenging Mayor Hill's enrollment in the DCRP, claiming that the statute should not be read rigidly to preclude his continued enrollment in the PERS. In the alternative, you suggested that, if Mayor Hill is no longer eligible for continued PERS enrollment, he be permitted to collect his PERS retirement benefit notwithstanding that he did not terminate his service to Toms River. On July 8, 2020, the Division replied to your request,

advising that Toms River properly enrolled Mayor Hill in the DCRP upon his acceptance of his new electoral position. In addition, via email dated July 16, 2020, the Division advised a representative of Toms River that Mayor Hill would not be able to begin to receive his pension benefit, even though he was no longer eligible for PERS enrollment, because he did not separate from his employment pursuant to PERS regulations.

At its meeting of October 21, 2020, the Board denied Mayor Hill's request to continue to participate in the PERS as well as his request to retire from the PERS and collect his pension benefit while he remains employed by Toms River. On November 20, 2020, you filed a letter on Mayor Hill's behalf appealing the Board's decision. In your appeal you argue that Mayor Hill should be allowed to continue to participate in the PERS, notwithstanding that he left the office which grandfathered him into the PERS, but that because he went from the legislative branch to the executive branch of the Toms River government, that he separated from his former position and should therefore be exempt from the PERS rules regarding return to employment after retirement.

At its meeting of January 20, 2021, the Board denied Mayor Hill's request for reconsideration and affirmed its prior determination. The Board also directed the Board Secretary to draft Findings of Fact and Conclusions of Law for consideration at the February 17, 2021, meeting.

### **CONCLUSIONS OF LAW**

The Board made the following Conclusions of Law.

In making its determination, the Board relied upon 43:15C-2, which states, in pertinent part:

2. a. The following persons shall be eligible and shall participate in the Defined Contribution Retirement Program:

(1)A person who commences service on or after the effective date of this section of P.L.2007, c.92 (C.43:15C-1 et al.) in an elective

public office of this State or of a political subdivision thereof, except that it shall not include a person who holds elective public office on the effective date of this section and is enrolled in the Public Employees' Retirement System **while that person continues to hold that elective public office** without a break in service. Service in the Legislature shall be considered a single elective public office.

[(emphasis supplied.)]

The Board noted that Mayor Hill was in the position of Councilman at the time Chapter 92 was passed. The law clearly grandfathers in those elected officials who continue to hold the office held at the time Chapter 92 became law. There is no question that Mayor Hill was eligible to remain in the PERS as an elected official after the passage of Chapter 92 until he left *that* position (Councilman) on December 31, 2019, when he became Mayor. Accordingly, the Board denied his request to continue to remain in the PERS after taking office as Mayor.

Mayor Hill also requested that he be allowed to retire from the PERS and collect his PERS benefit while he continued his mayoral service with Toms River. In an email dated July 16, 2020, Toms River's Chief Financial Officer wrote on behalf of Mayor Hill and requested that, in light of the decision that he not be permitted to remain in the PERS, that he be able to receive his PERS pension now, while continuing to serve as Mayor. On that same date, the Division responded via email and advised that Mayor Hill would not be eligible to receive his PERS pension and continue working, as he did not separate from service as required by N.J.A.C. 17:1-17.14 and therefore he would not have a "bona fide" retirement.

The Board therefore adopted the Division's determination that Mayor Hill is precluded from collecting his PERS retirement pension while continuing to serve as Mayor of Toms River.

N.J.A.C. 17:1-17.14(a)(2) states, in pertinent part:

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or reemployment in a part-time position;
- ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;
- iii. A change in title;
- iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or
- v. Termination of employment with a pre-arranged agreement for reemployment.

Because Mayor Hill had no break in service, and simply continued his service for Toms River, albeit in a different elected office, he is not eligible to collect a retirement benefit from his previous service while he continues his service as Toms River Mayor. Accordingly, the Board denied his request.

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

You also have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Anthony Merlino  
Re: Maurice Hill  
February 18, 2021  
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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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

G-12/JSI

C: D. Dinkler (ET); N. Munko (ET)

Mayor Maurice B. Hill, Jr.