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# NEW JERSEY Court of Errors and Appeals

## NOTICE OF APPEAL AND GROUNDS.

NEW JERSEY SUPREME COURT.

JANE CARR HOFF, ADMINIS- TRATRIX OF ESTATE OF J. WALLACE HOFF, <i>Relator-Appellee,</i>	}	On Mandamus.      10 Notice of Appeal and Grounds.
<i>vs.</i> EDWARD W. LEE ET AL., THE POLICE AND FIRE PENSION COMMISSION OF TRENTON, N. J., <i>Respondents-Appellants.</i>		

To Henry Hartman, Esq., attorney for Jane Carr Hoff,  
*Administratrix, relator-appellee:*

Take Notice that the appellants, Edward W. Lee, director of revenue and finance, and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., appeal to the Court of Errors and Appeals in the last resort in all cases in New Jersey from the whole of the judgment entered in this cause on the following grounds:

First. That the Supreme Court allowed a writ of mandamus in favor of J. Wallace Hoff in this cause, although there was error in so doing.

Second. That the Supreme Court in allowing the writ of mandamus declared that J. Wallace Hoff was a member of the Fire Department of the City of Trenton and was entitled to the relief created by Chapter 160 of the Laws of 1920, of the State of New Jersey, although there was error in so doing.

10 Third. That the Supreme Court decided that the said J. Wallace Hoff came into the provisions of Chapter 160 of the Laws of 1920, and was entitled thereby to be placed upon the pension roll of the Police and Fire Commission of Trenton, N. J., under the provisions of the last-mentioned act, although the said J. Wallace Hoff was not within the provisions of the said act, and was not entitled so to be placed upon the pension list as aforesaid and the Supreme Court committed error in such determination.

KATZENBACH & HUNT,  
*Attorneys for Respondents-  
Appellants.*

20

(ENDORSED.)

Service of copy of the within notice of appeal and grounds is hereby acknowledged this first day of February, 1923.

HENRY M. HARTMAN,  
*Attorney for Relator-Appellee.*

## STIPULATION.

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,**vs.*EDWARD W. LEE ET AL., THE  
POLICE AND FIRE PENSION  
COMMISSION OF TRENTON,  
N. J.,

} On Mandamus.

*Respondents.*

10

It is hereby stipulated and agreed that whereas after the award of the peremptory writ of mandamus in this cause J. Wallace Hoff departed this life on or about December 13, 1922, and whereas his wife, Jane Carr Hoff, was duly appointed administratrix of his estate, henceforth for the purposes of an appeal, said Jane Carr Hoff, administratrix, shall be substituted in the place and stead of the deceased relator.

HENRY M. HARTMAN,

20

*Attorney for Relator.*

KATZENBACH &amp; HUNT,

*Attorneys for Respondents.*

## PETITION.

*(Filed December 15, 1921.)*

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,**vs.*

EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
10 EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TET-  
TEMER AND GEORGE W.  
GUTHRIE, THE POLICE AND  
FIRE PENSION COMMISSION  
OF TRENTON, NEW JERSEY,

*Respondents.*On Mandamus.  
Petition.*To the Honorable the Supreme Court of Judicature of  
the State of New Jersey:*

21 The petition of J. Wallace Hoff, of the City of Tren-  
ton, in the County of Mercer and State of New Jersey,  
respectfully shows:

1. That he is a member of the paid fire department  
of the City of Trenton, having been elected to serve  
as clerk of said department March 16, 1892, by the then  
Board of Fire Commissioners of said City of Trenton.

2. That by an act of the legislature of the State of  
New Jersey, approved April 15, 1920, being Chapter  
160 of the Laws of 1920, provision was made for the  
30 establishment of a commission of five members, con-  
sisting of the mayor or other chief executive of the  
municipality, the chief financial officer of the munici-  
pality, one policeman of the police department, one  
fireman of the fire department and one citizen not

holding office under the municipality, for the retirement of policemen and firemen of the police and fire departments, and for pensioning such retired policemen and firemen and members of the police and fire departments, and widows, children and sole dependent parents of deceased members of said departments.

3. That on January 1, 1921, Frederick W. Donnelly, who was at said time mayor of the City of Trenton; Edward W. Lee, who was at said time director of revenue and finance and city comptroller of said city and the chief financial officer thereof; William J. Mullen, a policeman of said city who was duly elected at a meeting held by members of the police department pursuant to Section 5 of said act; William Tettermer, a fireman of said city who was duly elected at a meeting held by the members of the fire department of said city pursuant to Section 5 of said act, and George W. Guthrie, a citizen of said city not holding office under the municipality, who was selected by the members of the commission hereinbefore named, met and organized as the "Police and Fire Pension Commission of Trenton, New Jersey," and assumed the duties and responsibilities devolved upon them by said Act of April 15, 1920.

4. That the annual compensation received by your petitioner for the services rendered by him, as aforesaid, is the sum of \$2,000.00.

5. That he was under the age of thirty-five years at the time he entered the service as a member of the fire department, of the City of Trenton.

6. That Edward W. Lee, director of revenue and finance of said City of Trenton, made certain deductions from the pay of your petitioner as his proportional share of the contributions or assessments which were levied upon the members of the fire department of the City of Trenton, pursuant to Section 4 of the Act of April 15, 1920, until January 31, 1921, and paid the amount deducted to the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer

and George W. Guthrie, the Police and Fire Pension Commission of the City of Trenton.

7. That at a meeting of the said Police and Fire Pension Commission of Trenton, New Jersey, held January 27, 1921, said commission, by resolution, directed that all amounts deducted from the payment of salary to your petitioner, and received by them, shall be refunded to him, and that the said commission refuse to accept any contributions that he may tender there-  
10 after to said commission, and resolved that it is the opinion of such commission that he is not entitled to the benefits of the fund established by the Act of April 15, 1920.

8. That after the passage of the resolution mentioned in the last preceding paragraph of this petition the said Edward W. Lee, director of revenue and finance, made no deduction from the salary paid your petitioner, as he is in duty bound to do, and made no payments to said Police and Fire Pension Commission of Trenton,  
20 New Jersey, of any amount deducted from the salary of your petitioner.

9. That your petitioner has requested and demanded of the said Edward W. Lee, director of revenue and finance of the City of Trenton, that he deduct from every payment of salary made to your petitioner the proportional share of the contributions or assessments which are levied upon the members of the Police and Fire Departments of the City of Trenton, in conformity with Section 4 of said Act of April 15, 1920, and that  
30 he pay the amount deducted as aforesaid to the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettemer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, pursuant to statute.

10. That your petitioner has also requested and demanded that the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettemer and George W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, New Jersey, that they,

as in duty bound, receive and accept the sum of two per centum to be deducted from every payment of salary to your petitioner, or such proportional amount or amounts, as is due and payable under the statute by your petitioner, to the Police and Fire Pension Fund of said city, and that they place upon the list or roll of the members of the police and fire departments of said city, entitled to the benefits of the pension fund established by said Act of April 15, 1920, the name of your petitioner.

10

II. Your petitioner further shows that although he has repeatedly tendered, and has at all times been ready and willing to advance the aforesaid proportional amounts, in the same manner as they are being paid by other members of said police and fire departments, yet the said Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, have refused to replace or place the name of your petitioner among the number, on the list or roll, of the members of said police and fire departments, or to take from him any contributions or assessments which they have during all the time past been collecting and receiving from other members of said departments, and that all his efforts to have the said Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, replace or place the name of your petitioner upon said list or roll, and receive and accept said contributions or assessments and to accord to him the rights and benefits to which he is entitled as a member of the fire department of the City of Trenton, New Jersey, under said Act of April 15, 1920, have been unavailing.

20

30

Your petitioner therefore prays that a writ of mandamus issue out of and under the seal of this Honorable Court directed to Edward W. Lee, director of revenue and finance, and to Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George

W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, New Jersey, commanding and enjoining the said Edward W. Lee, director of revenue and finance, to deduct from every payment of salary made to your petitioner such proportional amount or amounts as is due and payable, under the statute, by your petitioner to the police and fire pension fund of said city, and that the said Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer  
 10 and George W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, New Jersey, to receive and accept from the said Edward W. Lee, director of revenue and finance, the said proportional amount or amounts due and payable under the statute, deducted from the salary of your petitioner, who entered the service before attaining the age of thirty-five years, and to place the name of said J. Wallace Hoff on the list or roll of the members of said police and fire departments who are entitled to the benefits of the pension fund  
 20 created in and by the Act of April 15, 1920, being Chapter 160 of the Laws of 1920.

And your petitioner will ever pray, etc.

J. WALLACE HOFF,  
*Petitioner.*

Dated Trenton, N. J., December 13th, 1921.

STATE OF NEW JERSEY, }  
 COUNTY OF MERCER, } ss.

J. WALLACE HOFF, being duly sworn according to  
 30 law, on his oath says:

That he has read the foregoing petition, that the matters and things therein contained, so far as they relate to his own acts are true, and so far as they relate to the acts of other he believes them to be true.

J. WALLACE HOFF.

Sworn and subscribed to before me this 13th day of December, 1921.

WALTER D. COUGLE,  
*M. C. C. of N. J.*

RULE TO SHOW CAUSE.

(Filed December 15, 1921.)

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,*

*vs.*

EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TET-  
TEMER AND GEORGE W.  
GUTHRIE, THE POLICE AND  
FIRE PENSION COMMISSION  
OF TRENTON, NEW JERSEY,  
*Repsondents.*

On Motion for  
Mandamus. 10

Rule to Show Cause.

Upon reading and filing the petition in the above-entitled cause,

It is, on motion of Henry M. Hartman, ordered by 20  
the Court, that the said Edward W. Lee, director of  
revenue and finance, and the said Fred'k W. Donnelly,  
Edward W. Lee, William J. Mullen, William Tette-  
mer and George W. Guthrie, constituting the Police  
and Fire Pension Commission of Trenton, New Jersey,  
do show cause, at the State House, in the City of Tren-  
ton, on Tuesday, the twenty-first day of February, A.  
D. 1922, at 11:00 o'clock in the forenoon of that day,  
why a peremptory or alternative writ of mandamus  
shall not be issued out of and under the seal of this Hon- 30  
orable Court, commanding and enjoining Fred'k W.  
Donnelly, Edward W. Lee, William J. Mullen, William  
Tettermer and George W. Guthrie, constituting the Police  
and Fire Pension Commission of Trenton, New Jersey,  
to fix and determine an amount to be paid to the police

and fire pension fund by J. Wallace Hoff, the relator, pursuant to Section 4 of the Act of April 15, 1920, being Chapter 160 of the Laws of 1920, and the said Edward W. Lee, director of revenue and finance, to deduct from every payment of salary made to said relator the proportional sum so fixed and determined by said police and fire pension commission, to be due and payable to the police and fire pension fund, by the relator, under the statute, and pay the same to the said

**10** police and fire pension commission, and the said Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, New Jersey, to receive and accept from the said Edward W. Lee, director of revenue and finance, the said amount so fixed and determined by them, as the proportional share of the assessment which the relator shall pay to the said police and fire pension fund, and to place the name of the said J. Wallace Hoff, the re-

**20** lator, on the list or roll of the members of the said police and fire departments who are entitled to the benefits of the pension fund created in and by the said Act of April 15, 1920.

And it is further ordered that both parties hereto have leave to take affidavits.

Dated, Trenton, N. J., December 15, 1921.

On motion of

HENRY M. HARTMAN,  
*Attorney for Relator.*

**30**

Enter

THOMAS M. TRENCHARD,  
*J. S. C.*

## DEPOSITIONS.

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,**vs.*

EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TET-  
TEMER AND GEORGE W.  
GUTHRIE, THE POLICE AND  
FIRE PENSION COMMISSION  
OF TRENTON, NEW JERSEY,  
*Respondents.*

On Petition for  
Mandamus.

10

Depositions taken in the above-stated cause before  
CHARLES E. GUMMERE, ESQ., a Supreme Court Com-  
missioner, this sixteenth day of June, A. D. 1922, at  
ten-thirty o'clock, A. M., in the council chambers in the  
city hall, in the City of Trenton, New Jersey.

20

## APPEARANCES:

HENRY M. HARTMAN, ESQ., for relator.

EDWARD L. KATZENBACH, ESQ., of KATZENBACH  
& HUNT, for respondents.

It is stipulated and agreed between counsel that the  
testimony given in this cause shall be taken stenographi-  
cally and that the signature of the witnesses to the testi-  
mony not be required.

30

It is stipulated and agreed between counsel that the  
following facts be considered in the determination of the  
issue raised in this cause and they shall have the same  
force and effect as if legally proven by competent wit-  
nesses and in addition and supplemental to the evidence  
hereinafter taken in this cause, to wit:

1. That Chapter 160 of the Laws of 1920 is operative in the City of Trenton.

2. That Fred'k W. Donnelly, Edward W. Lee, William J. Mullen, William Tettmer and George W. Guthrie constitute the Police and Fire Pension Commission of the City of Trenton.

3. That the minutes of the Board of Fire Commissioners of the City of Trenton show, among other things:

10 "Trenton, N. J., March 16, 1892.

"A special meeting of the Board of Fire Commissioners was held this evening under the call of the President. Present—Messrs. Bamford, MacCrellish, Ossenberg, Schweizer.

"The following resolution was then adopted:

20 "Resolved, that this Board do now go into the election of one Clerk, one Superintendent of Fire Alarm, one Lineman, one Chief Engineer, two Assistant Chiefs, eight Captains, six Engineers, six Stokers, eight Drivers, two Tillermen, thirty-four Hosemen and Laddermen, and two Janitresses. The same when elected to be considered the permanent force of the Paid System of the Fire Department of the City of Trenton when established and created by this Board.

"For Secretary (Clerk) Mr. MacCrellish nominated J. Wallace Hoff. There being no other nominees the President declared the nominee duly elected."

30 4. That Chapter CCL of the Laws of 1885 entitled "An Act to remove the fire and police departments in cities of this State from political control, approved May 2, 1885, was adopted by the legal voters of the City of Trenton at an election held on the 8th day of April, 1889."

5. A paid firemen's pension fund was set up in the City of Trenton under the authority of Chapter 65 of the Laws of 1905 on May 19, 1905.

6. The Commission Government Act (being Chapter 221 of the Laws of 1911) was adopted by the legal voters of the City of Trenton on June 20, 1911.

7. The minutes of the Board of Commissioners of the City of Trenton show among other things:

December 20, 1911.

Present; Mayor Donnelly, Messrs. Burk, Fell, LaBarre and Lee. Mayor Donnelly called the meeting to order; thereupon Mr. LaBarre nominated J. Wallace Hoff as Secretary (Clerk) of the Fire Department and Deputy Director of Public Safety, and he was elected by the following vote:

Affirmative, Messrs. Burk, Donnelly (President), 10  
Fell, LaBarre and Lee.

Negative, None.

8. The Civil Service Act, passed in 1908, was adopted in the City of Trenton by a referendum vote in the manner prescribed by law on November 7, 1911.

9. That the relator was not listed on the roll of members entitled to the benefits of the fire pension fund and has made no contributions in any amount to any fire or other pension fund, prior to April 15, 1920, and claimed no right to be placed upon the roll or list of 20  
members of the fire department of the city entitled to the benefits of any fire or other pension fund, prior to the enactment of the Act of April 15, 1920.

10. That Edward W. Lee, director of revenue and finance of the City of Trenton, made certain deductions from the relator's pay, as his proportional share of the contributions or assessments which were levied upon the members of the fire department of the City of Trenton, pursuant to Section 4 of the Act of April 15, 1920, until January 31, 1921, and paid the amounts 30  
deducted to the Police and Fire Pension Commission of said city.

11. That at a meeting of the said Police and Fire Pension Commission of Trenton, New Jersey, held January 27, 1921, said commission by resolution, directed that all amounts deducted from the payment of salary to the relator, and received by them shall be refunded to him, and that the said commission refuse to accept any contributions that the relator may tender

thereafter to said commission, and resolved that it is the opinion of such commission that the relator is not entitled to the benefits of the fund established by the Act of April 15, 1920.

10 12. That after the passage of the resolution mentioned in the last preceding paragraph the said Edward W. Lee, director of revenue and finance, made no deduction from the salary paid the relator, and made no payments to said Police and Fire Pension Commission of Trenton, N. J., of any amount deducted from the salary of the relator.

20 13. That the relator has requested and demanded of the said Edward W. Lee, director of revenue and finance of the City of Trenton, that he deduct from every payment of salary made to the relator the proportional share of the contributions or assessments which are levied upon the members of the police and fire departments of the City of Trenton, in conformity with Section 4 of said Act of April 15, 1920, and that he pay the amount deducted as aforesaid to the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, pursuant to statute; that said director has refused, and continues to refuse to, make such deductions and payments.

30 14. That the relator has also requested and demanded that the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, N. J., receive and accept the sum of two per centum to be deducted from every payment of salary to the relator, or such proportional amount or amounts as is due and payable under the statute by the relator, to the police and fire pension fund of said city, and that they place upon the list or roll of the members of the police and fire departments of said city, entitled to the benefit of the pen-

sion fund established by said Act of April 15, 1920, the name of the relator.

15. That the relator has repeatedly tendered, and has at all times been ready and willing to advance the aforesaid proportional amounts in the same manner as they are being paid by other members of the said police and fire departments; that the said police and fire commission has refused to place or replace the name of the relator on the list or roll of the members of said police and fire departments, or to take from him any contributions or assessments which they have, during all the time past, been collecting and receiving from other members of said departments, and that all his efforts to secure the benefits of said Act of April 15, 1920, have been unavailing. **10**

It is stipulated and agreed between counsel that the following letter dated May 29, 1915, addressed to James W. Bennett, Esq., chief of fire department, city, was forwarded by George B. LaBarre, director of public safety of the City of Trenton: **20**

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

J. WALLACE HOFF,  
Deputy.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

May 29, 1915.

James W. Bennett, Esq.,  
Chief of Fire Dept.,  
City. **30**

Dear Sir:—

The following is taken from the Minutes of the Board of Commissioners at their meeting held on December 20, 1911:

“J. Wallace Hoff was nominated Clerk of Fire Department and Deputy Director of Public Safety and he was elected by the following

vote: Messrs. Burk; Donnelly, Pres't; Fell; La-Barre; Lee—5."

I regret that the action of the Board of Commissioners in naming Mr. Hoff Deputy Director of Public Safety was not communicated to you by the City Clerk. The City Clerk was instructed at that time to give proper notice to the action of the Board at that meeting.

By virtue of Mr. Hoff's election as Deputy Director  
**10** of Public Safety, he has the same powers and rights possessed by the Director of Public Safety. This includes the giving of orders either verbal or written.

Kindly see that a copy of this letter is promulgated to every officer connected with the Fire Department of the City of Trenton.

Very truly yours,

(Signed) GEORGE B. LABARRE.

It is stipulated and agreed between counsel that after  
**20** the Commission Government of the City of Trenton had gone into effect and after the resolutions adopted at a meeting of the Board of Commissioners mentioned in the agreed stated facts as held December 20, 1911, letters were written by J. Wallace Hoff addressed to James W. Bennett, Chief of the fire department, as follows:

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

**30** J. WALLACE HOFF,  
Deputy.

CITY OF TRENTON, NEW JERSEY.

March 12, 1913.

Mr. James W. Bennett,  
Chief Fire Dept.,  
City.

Dear Chief:

The thought has occurred to me that in some few instances members of our department are not getting

the amount of time for meal hours necessary to enable them to make the long trips between their quarters and their homes, and to give them sufficient time in which to properly enjoy their meals. I can think of one or two instances and I have no doubt that with your knowledge of the residences of the men and the distance from their quarters, would enable you to arrange to good advantage, such schedule of time in going to and returning from meals as would meet the situation. It might be that in some instances a quarter of an hour in addition to the present meal hour would be sufficient, while in other cases a half hour in addition to the present meal hour would be more conducive to the comfort of the men during the meal hour period. 10

At any rate, I should like to see this matter taken up and an investigation and report made that will cover the matter.

Very truly yours,  
(Signed) J. WALLACE HOFF.

20

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY  
Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

May 28, 1913.

James Bennett, Esq.,  
Chief of Fire Dept.,  
City.

30

Dear Sir:

Complaint has been made to this department of the practice pursued by Mr. John W. Hardiman, 141 N. Warren Street, of burning waste wall paper clippings in the yard in the rear of the above noted remises. According to the report, this seems to be a common occurrence, which resulted the other evening, in setting fire

to a number of boxes and barrels that are alleged to be stored in this yard.

Will you kindly make investigation of the matter and take such steps as you may see fit, according to the findings upon investigation.

Very truly yours,

(Signed) J. WALLACE HOFF.

10 (Seal of the City  
of Trenton.)

GEORGE B. LABARRE,  
Director.  
J. WALLACE HOFF,  
Deputy.

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY  
Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

June 20, 1913.

James W. Bennett, Esq.,  
Chief of Fire Dept.,  
City.

20 Dear Sir:

As a precautionary measure upon the advice of Dr. A. S. Fell, Health Officer, I hereby notify you to relieve Walter Allen, on duty at Fire Headquarters, from further attendance upon his duties until such time as his child, who is ill with scarlet fever, is pronounced past the stage that the disease might be carried. In justice to the other members of his company, Mr. Allen will no doubt see that this action is the best for all concerned. It is a practice of the Health Department

30 to give such advice and make such requests, where conditions in the home are such that those going in and out might carry any contagious diseases. This procedure was followed not long ago in the case of a member of the Police Department.

Very truly yours,

(Signed) J. WALLACE HOFF,  
per S. G.

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

J. WALLACE HOFF,  
Deputy.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

Sept. 22, 1913.

James W. Bennett, Esq.,  
Chief Fire Dept.,  
City.

10

Dear Sir:

Will you please ship by express to Couple-Gear Freight-Wheel Company, Grand Rapids, Mich., the defective casting from Truck 1 that you have at Fire Headquarters. The Company has sent by freight four steering knuckles of different pattern, for which they claim extra strength.

Also please have Adolph Doldy present himself at the State House, Civil Service Commissioners office, 20 for re-examination as to his weight. Please have this done at once.

Very truly yours,  
(Signed) J. WALLACE HOFF.

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

J. WALLACE HOFF,  
Deputy.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

June 2, 1915.

James W. Bennett, Esq.,  
Chief of Fire Dept.,  
City.

30

Dear Sir:

I am having delivered to-day at Engine No. 1, one barrel of No. 301 cylinder oil for use in No. 1 engine.

Kindly see that this oil is used in this engine until further notice.

Very truly yours,

(Signed) J. WALLACE HOFF.

P. S.—This is a positive order as to location and use, and is not to be changed for any fancied reason.

JWH

10

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

J. WALLACE HOFF,  
Deputy.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

May 29, 1916.

20 James W. Bennett, Esq.,  
Chief of Fire Department,  
Trenton, N. J.

Dear Sir:

I have this day notified Frederick C. Kreuger, Peter J. Schafer and Charles W. Ford to report to you in order to fill vacancies now existing in the Fire Department.

Kindly make these appointments to date from June 1, 1916, for the usual probationary period.

30

Very truly yours,

(Signed) J. WALLACE HOFF.

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

GEORGE B. LABARRE,  
Director.

J. WALLACE HOFF,  
Deputy.

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—Municipal Hospital

CITY OF TRENTON, NEW JERSEY.

June 30, 1916.

James W. Bennett, Esq.,  
Chief of the Fire Dept.,  
Trenton, N. J.

10

Dear Sir:

Will you please notify Captain Cline to set aside the mercury arc rectifier bulbs and to save with care any mercury that may remain in the same, as the brass and mercury will be credited with a good allowance by the General Electric Company of Brooklyn, so that when several of them have accumulated, we may, in all probability, receive new bulbs for the same.

Very truly yours,

20

(Signed) J. WALLACE HOFF.

“Trenton Makes—The World Takes”

Pottery  
Rubber

Linoleum  
Wire

(Seal of the City  
of Trenton.)

BOARD OF COMMISSIONERS  
DEPARTMENT OF PUBLIC SAFETY

Division of  
Fire—Police—Health—Excise  
Police Courts—Building  
Inspection—Garbage and  
Ashes—

Electrical Bureau

CITY OF TRENTON, NEW JERSEY

May 15, 1920.

James W. Bennett, Esq.,  
Chief of the Fire Dept.,  
Trenton, N. J.

30

Dear Sir:

When the auxiliary was placed at Headquarters recently, I gave notice that it was to be used for city work

only, on account of the inability of the gear makers to furnish parts promptly, in case of accident. Transmit this request clearly, so that this piece of apparatus is kept ready for use for our own taxpayers.

Also, owing to the present shortage of gasoline, its high cost and going higher, together with a likelihood of a still further shortage, conserve your present supply of high grade gas, place yourself in position to secure other gas for the shop car, service truck, etc., and use the lower  
**10** grade gas for out-of-town work, and for testing apparatus. Take this matter up with Captain Cline.

Another matter, that of Assistant Chief Lanning's condition. Until Assistant Chief Lanning is able to answer alarms, keep yourself and Assistant Chief Ford in duty at Headquarters at all times, and maintain Battalion Chief McGill in his own district, the Second District. It is far from business-like to run Headquarters short handed, for day-off privileges. In view of the fact that Assistant Chief Lanning has remained  
**20** continuously in the office when others have been off duty, ill, it is only fairness to him that his mind be relieved now that he is temporarily incapacitated. This has been the department practice in the past, and it must be adhered to now.

Very truly yours,

(Signed) J. WALLACE HOFF.

GBL-C

*Deputy Director.*

It is further stipulated and agreed between counsel that during the same period, to wit, on July 12, 1920, J.  
**30** Wallace Hoff, wrote the following letter addressed to Hon. William L. Dill.

PAID FIREMEN'S PENSION FUND OF TRENTON, N. J.  
 TRENTON, N. J., July 12, 1920.

Hon. Wm. L. Dill,

Dear Sir:

The bearer, John Demster, is an all around driver and operator of Fire Department Trucks, Tractors and Motor Fire Engines. He was drilled and trained two

years ago by our Master Mechanic and Assistant previous to being entrusted to drive.

During the time he held a permit from the Motor Vehicle Department of the State, he informs me he drove small cars two or three times, but his duties at that time interfered with his taking examination for a regular license ere the permit expired.

Very truly yours,

(Signed) J. WALLACE HOFF,

*Deputy Director of Public Safety, 10  
Trenton, N. J.*

GEORGE B. LABARRE, being duly sworn, according to law, upon his oath, testifies as follows:

Direct examination.

By Mr. Hartman:

Q. Mr. LaBarre, you are one of the commissioners of the City of Trenton and also director of public safety?

A. Yes, sir.

Q. And you have served in that capacity for how long? 20

A. Since August 22, 1911.

Q. And you have continued in that office down until the present time?

A. That is correct.

Q. As director of public safety you have jurisdiction of what departments?

A. I have jurisdiction of the fire, police, health, building inspector, plumbing inspector, dairy inspector, dog catcher, and then on August 22, 1911, when those departments were assigned to me, the Municipal Hospital was also assigned to me, but has since been transferred to the department of public affairs; those departments which I have just named were assigned to me August 22, 1911, and the police court also, I might say. 30

Q. The relator, J. Wallace Hoff, has been in your department ever since you have been director of public safety and a commissioner of the City of Trenton?

A. He has.

Q. And he has served in what particular department?

A. On August 22, 1911, those departments were assigned to me; Mr. Hoff was, at the time of the inauguration of commission government, clerk, of the board of fire commissioners of the City of Trenton; he was named by me and elected by the board of commissioners clerk of the fire department and deputy director of public safety; my recollection is, December 20, 1911. He has served in the fire department practically from the  
10 time of the inauguration of commission government down to the present date.

Q. Has Mr. Hoff performed any duties in any other department other than the fire department?

A. To my recollection, he has not; if he has, they have been so infinitesimal in number and importance so that as not to impress my memory.

Q. What have his duties consisted of?

A. His duties consisted of having supervision of the fire department generally; that means, in obtaining prices  
20 and advising as to the purchase of the fire department apparatus; in purchasing supplies other than those extending in amount of five hundred dollars, or in excess of five hundred dollars, and in such cases of recommending the purchases; seeing that the apparatus and equipment is always kept in proper condition, that requiring a good bit of his attention; of making up a complete budget of the fire department and inventory of the fire department and there are many more details connected with the fire department I could give you if you cared to have them.

30 Q. Did his duties call upon him in anywise to attend fires?

A. Well, as assigned duties, I would hesitate to say; but he has attended fires regardless of whether his duties called upon him to do so.

Q. You know that of your own knowledge, do you?

A. I know that of my own knowledge; I have seen him present at the fires of Roebblings, C. V. Hill and the Trenton Scrap Rubber; I only attend the important fires

of the City of Trenton and I have seen him inside the fire lines at the fires which I have attended.

Q. He was doing what when you saw him?

A. He was seeing that the proper supplies were there to operate the equipment and if there was any accident to the men he would see that they were properly taken care of and in case of inclement weather or when he saw the men were getting weak from fighting the fire he would give them relief and at times eatables were furnished when the fires were of long duration. I have 10  
seen him at other fires, Convery's fire and others which I do not recall at the present time.

Q. What duties did he perform as deputy director of public safety other than you have already enumerated?

A. None except being in the office and when anyone came in and wanted to see me he would direct them into my office. I nominated him with the entire thought of giving him supervision over the fire department so that he would have proper supervision over the fire department. 20

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Hoff has a desk in your office hasn't he, Mr. LaBarre?

A. Yes, sir.

Q. Did Mr. Hoff have supervision over the individual members of the fire department to the extent of giving orders and directions to them?

A. I so intended that he should have that supervision. 30

Q. He did, as a matter of fact, did he not, give orders to individual members of the fire department?

A. He gave orders to the chief of the fire department and outside of the chief he gave orders to the superintendent of machinery; but I know that it was his rule as well as my rule in communicating orders to communicate them to the head of the department, except as in such cases when the chief officer was not present or in

case of fire when it would be impracticable to communicate to the chief officer.

Q. Assuming that any infraction of rules occurred, would it become the duty of Mr. Hoff to try such persons and inflict any penalty upon them that he saw fit?

A. No, the policy pursued until recent years was for the chief to report such infractions to Mr. Hoff and Mr. Hoff report the infraction to me and up until 1916, after the commission government act was amended, it  
10 was amended in 1914 or 1915; the board of commissioners tried the different officers and members of the fire department.

Q. Since the amendment to the commission government act did Mr. Hoff, as deputy director of public safety, ever try any members of the department?

A. He did not; I was familiar with the charges and while I imposed the penalty, it may have been upon his recommendation and the transmission of such penalty may have been made through him to the offending  
20 members of the department; this is all true prior to the adoption of the amendment to the Civil Service Act, January 1, 1918.

Q. The authority Mr. Hoff had in connection with the fire department was a general authority such as might have been exercised by you had he not been appointed deputy director of public safety, is that so; a general authority to issue orders to those in charge of the department?

A. He had general authority under my supervision  
30 and direction.

Q. Did he consult you about the details of the things that he did, or only in case of where there was a question of policy?

A. He consulted me only on questions of policy in the department; he did not consult me on details of the department no more than the clerk of the police department consults me on details that are not essential in that department.

By Mr. Hartman:

Q. Did he prepare the semi-monthly pay rolls, Mr. LaBarre?

A. Yes, that was part of his duties; at times the pay rolls had been partly prepared by the stenographer in my department and since Mr. Hoff's sickness they have been entirely made out by her; but, she would be unable to make them out if she did not have a record of the advancement in salary of the different members of the department which was furnished by Mr. Hoff 10 so that any competent clerk could take his record and make out the pay roll.

By Mr. Katzenbach:

Q. If Mr. Hoff, in the capacity which he occupied in the fire department gave directions to chief Bennett relative to the chief returning to work while he still had a broken arm, that was something that Mr. Hoff did of his own initiative?

A. He spoke to me about that; that he thought the chief had taken sufficient time on account of his broken arm and as it was very arduous upon Assistant Chief Stackhouse and he felt that Assistant Chief Stackhouse was breaking in health and that the chief should return. 20

Q. Do you know what Mr. Hoff's salary was?

A. As clerk of the board of fire commissioners?

Q. No, at the present time?

A. Do I know what his salary is?

Q. Yes.

A. My recollection is two thousand dollars a year 30 and five hundred dollars bonus.

By Mr. Hartman:

Q. Did Mr. Hoff in anywise supervise any details in connection with the building of new fire houses or with the repair of the old ones?

A. He did.

Both sides rest.

I hereby certify that the foregoing testimony was taken by John F. Trainor, a competent person selected by me to take stenographically and reproduce in type-writing the evidence given in the above stated cause; that the testimony was taken in my immediate presence and hearing and at the examination, and I believe it accurately states the said evidence.

CHAS. E. GUMMERE,  
*Supreme Court Commissioner.*

10	Commissioner's Fees.	
	Attendance fee, .....	\$10.00
	Writing depositions, 64 fol., .....	19.20
	Swearing 1 witness, .....	.25
		<hr/>
		\$29.45

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OPINION.

20 (Filed November 8, 1922.)

NEW JERSEY SUPREME COURT.  
June Term, 1922.

J. WALLACE HOFF,

*Relator,*

*vs.*

30 EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TETTE-  
MER AND GEORGE W. GUTH-  
RIE, THE POLICE AND FIRE  
PENSION COMMISSION OF  
TRENTON, N. J.,

*Respondents.*

On Rule to Show Cause why Mandamus should not issue.

Argued before Justices Kalisch, Black and Katzenbach.

Henry M. Hartman, Esq., for the Relator.

Katzenbach & Hunt, Esqs., for the Respondents.

PER CURIAM. This case is before us on a rule to show cause why a peremptory or alternative writ of mandamus should not be issued to those constituting the Police and Fire Pension Commission of Trenton, New Jersey, to fix and determine the amount to be paid to the police and fire pension fund by J. Wallace Hoff, the relator, pursuant to Section 4 of Chapter 160 of the Laws of 1920. The question presented in this proceeding is the same presented in the case of *VanHorn vs. Donnelly et al.*, 115 *Atl. Rep.* 337. Mrs. VanHorn was elected a janitress in the Fire Department of Trenton on March 16, 1892, at the time of the inception of the paid fire department of the City of Trenton. At the same meeting and by the same resolution, Mr. Hoff, the relator, was elected secretary or clerk of the Fire Department. We feel that we are controlled by the decision of this Court in the VanHorn case. We do not think the present case differentiated from the VanHorn case by reason of the fact that the relator has been made "deputy director of Public Safety," an office for which there appears to be no legal warrant.

A peremptory writ of mandamus will issue. As an order awarding a peremptory writ of mandamus is not appealable, *Morris and Cummings Dredging Company vs. Bayonne*, 76 *N. J. L.* 573, the Court will, if an appeal is desired, on application, frame the pleadings so as to permit an appeal to be taken.

## RULE FOR JUDGMENT.

*(Filed November 14, 1922.)*

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,**vs.*

EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
10 EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TETTE-  
MER AND GEORGE W. GUTH-  
RIE, THE POLICE AND FIRE  
PENSION COMMISSION OF  
TRENTON, N. J.,

*Respondents.*

On Mandamus.  
Rule for Judgment.

20 This cause being regularly brought on for considera-  
tion and determination at the June, 1922, term of this  
Court, on rule to show cause why a peremptory or  
alternative writ of mandamus should not be issued out  
of and under the seal of this court commanding and  
enjoining Edward W. Lee, Director of Revenue and  
Finance of the City of Trenton, N. J., to deduct from  
every payment of salary made to the said J. Wallace  
Hoff such proportional amount or amounts as may be  
fixed and determined by the Police and Fire Pension  
Commission of said City of Trenton as the relator's  
30 proportional share of the contributions or assessments  
to be paid by him to the Police and Fire Pension Fund,  
in conformity with Section 4 of the Act of April 15,  
1920, being Chapter 160 of the Laws of 1920, and to  
pay the amount or amounts so deducted to the said  
Police and Fire Pension Commission, and Frederick

W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, constituting the Police and Fire Pension Commission of said city to fix and determine the amount or amounts to be paid by said relator to said fund, pursuant to Section 4 of said Act of April 15, 1920, and to place the name of the relator upon the roll of the members of the fire department entitled to the benefits of said fund, and to receive and accept such proportional amount or amounts as shall be fixed and determined by them as the amount or amounts to be paid by said relator to said fund, and the court having heard argument thereon and having inspected, examined and considered the petition and order, the testimony and facts stipulated upon as the State of the Case, filed in this cause, and all and singular the premises aforesaid being seen, and by the said court now here fully understood, mature deliberation thereupon had, and the court being of the opinion that a peremptory writ of mandamus should issue out of and under the seal of this court commanding and enjoining the said Edward W. Lee to deduct from every payment of salary made to the said relator such proportional amount or amounts as may be fixed and determined by the Police and Fire Pension Commission of said City of Trenton, as the relator's proportional share of the contributions or assessments to be paid by him to the Police and Fire Pension Fund, in conformity with Section 4 of the Act of April 15, 1920, being Chapter 160 of the Laws of 1920, and to pay the amount or amounts so deducted to the said Police and Fire Pension Commission, and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, constituting the Police and Fire Pension Commission of said city to fix and determine the amount or amounts to be paid by said relator to said fund, pursuant to Section 4 of said Act of April 15, 1920, and to place the name of the relator upon the roll of members of the fire department entitled to the benefit of said fund, and to receive and accept such proportional amount or

amounts as shall be fixed and determined by them as the amount or amounts to be paid by said relator to said fund.

It is on this 14th day of November, Ordered that a peremptory writ of mandamus issue out of and under the seal of this court directed to the said Edward W. Lee, Director of Revenue and Finance of said City of Trenton, commanding and enjoining him to deduct from every payment of salary made to the said J. Wallace Hoff such proportional amount or amounts as may  
10 be fixed and determined by the said Police and Fire Pension Commission of said City of Trenton, as the relator's proportional share of the contributions or assessments to be paid by him to the said Police and Fire Pension Fund, in conformity with Section 4 of the Act of April 15, 1920, being Chapter 160 of the Laws of 1920, and to pay the amount or amounts so deducted to the said Police and Fire Pension Commission, and to Frederick W. Donnelly, Edward W. Lee, William J.  
20 Mullen, William Tetteimer and George W. Guthrie, constituting the Police and Fire Pension Commission of Trenton, N. J., to fix and determine the amount or amounts to be paid by the said relator to said fund, pursuant to Section 4 of said act of April 15, 1920, and to place his name upon the roll of members of the fire department of said city entitled to the benefit of said fund, and to receive and accept such proportional amount or amounts as shall be fixed and determined by them as the amount or amounts to be paid by said relator  
30 to said fund. It is further ordered that the relator shall be entitled to his costs to be taxed.

Entered, November 14, 1922.

FRANK S. KATZENBACH, JR.,

J. S. C.

On motion of

HENRY S. HARTMAN,

*Attorney.*

## WRIT.

STATE OF NEW JERSEY, ss.

The State of New Jersey to Edward W. Lee, director of revenue and finance of Trenton, New Jersey, and to Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey,

10

GREETING:

WHEREAS, In our Supreme Court of Judicature, lately held before the Justices thereof, at Trenton, upon the relation of J. Wallace Hoff, we have been given to understand, and been informed, that the said J. Wallace Hoff was duly elected to serve as Clerk of the fire department of the City of Trenton, New Jersey, on March 16, 1892, by the then board of fire commissioners of said city; that said J. Wallace Hoff requested the said Edward W. Lee, director of revenue and finance of the City of Trenton, to deduct from every payment of salary made to him the proportional share of the contributions or assessments which are levied upon the members of the police and fire departments of said City of Trenton, in conformity with Section 4 of the Act of April 15, 1920, being Chapter 160 of the Laws of 1920, and that he pay the amount so deducted to the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, pursuant to statute, and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting the Police and Fire Pension Commission of said city to receive and accept such proportional amount as should be fixed and determined by them as the amount to be paid by him to said fund, pursuant to Section 4 of the

20

30

said Act of April 15, 1920, and place his name on the roll as a member of the fire department entitled to the benefit of said fund; that the said Edward W. Lee refused to make any deduction from the salary of the said J. Wallace Hoff and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of said city, refused to fix and determine an amount to be paid by the said J. Wallace

10 Hoff, to said fund, pursuant to the requirement of the statute, and to place his name upon the roll as a member of the fire department entitled to the benefit of said fund and did, by their acts, deprive the said J. Wallace Hoff of his right to the benefit of the fund created by the said Act of April 15, 1920. And the said J. Wallace Hoff hath heretofore besought us, in our said Supreme Court, before the Justices thereof, to award to him our writ of mandamus in this behalf, directed to you, commanding you, Edward W. Lee, to deduct from his salary

20 the amount fixed and determined as the amount to be paid by him to said fund, and you, Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of said city, to fix and determine the amount that shall be paid by him to said fund and to place his name upon the roll as a member of the fire department of said city entitled to the benefit of said fund, pursuant to Section 4 of said Act of April 15, 1920, being Chapter 160 of the Laws of 1920.

30 And our Supreme Court aforesaid, held at Trenton, before the Justices thereof, having lately, by the judgment of the same court, considered, adjudged and ordered that a peremptory writ of mandamus should issue, directed to the said Edward W. Lee, commanding him to deduct from the salary of the said J. Wallace Hoff the amount fixed and determined by the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting the Police and Fire Pension Commission of

Trenton, New Jersey, as the amount to be paid by him to said fund, and to Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting said commission, commanding them to fix and determine the amount to be paid by the said J. Wallace Hoff to said fund, and to place his name upon the roll as a member of the fire department of said city entitled to the benefit of said fund, pursuant to Section 4 of said Act of April 15, 1920, being Chapter 160 of the Laws of 1920, as appears 10  
to us of record;

We, therefore, do command you, Edward W. Lee, that you do deduct the amount fixed and determined by the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting said Police and Fire Pension Commission of Trenton, New Jersey, as the amount to be paid by the said J. Wallace Hoff to the said fund, and that you, Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. 20  
Guthrie, constituting said Police and Fire Pension Commission of the City of Trenton, New Jersey, to forthwith fix and determine an amount to be paid by the said J. Wallace Hoff to said fund and place his name upon the roll as a member of the fire department of the said City of Trenton, New Jersey, entitled to the benefit of said fund, pursuant to Section 4 of the said Act of April 15, 1920, being Chapter 160 of the Laws of 1920, and that you do receive and accept from the said Edward W. Lee, director of revenue and finance, afore- 30  
said, all sums of money deducted from the salary paid to the said J. Wallace Hoff.

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, the fourteenth day of November, in the year of our Lord one thousand nine hundred and twenty-two.

HENRY M. HARTMAN,

*Attorney.*

ENOCH L. JOHNSON,

*Clerk.*

## RULE.

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,

*Relator,**vs.*EDWARD W. LEE ET AL., THE  
POLICE AND FIRE PENSION  
COMMISSION OF TRENTON,  
N. J.,On Mandamus.  
Rule.

10

*Respondents.*

Application having been made on behalf of the said respondents that pleadings may be filed and formal judgment entered to the end that the award of the peremptory writ in this cause may be reviewed by writ of error, it is ordered accordingly, and that the pleadings shall consist of an alternative writ and return thereto, demurrer to such return and joinder in demurrer, upon which judgment shall be entered in favor of the relator as of the fourteenth day of November, nineteen hundred and twenty-two, awarding a peremptory writ of mandamus, with costs.

20

For the Court,

FRANK S. KATZENBACH,

*J. S. C.*

On motion of

KATZENBACH &amp; HUNT,

*Attorneys of Respondents.*

## ALTERNATIVE WRIT.

STATE OF NEW JERSEY, ss.

The State of New Jersey to Edward W. Lee, director of revenue and finance of Trenton, New Jersey, and to Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, New Jersey, GREETING:

WHEREAS, J. Wallace Hoff was duly elected to serve 10  
as clerk of the fire department of the City of Trenton,  
New Jersey, on March 16, 1892, by the then board of  
fire commissioners of said city; and

WHEREAS, The said J. Wallace Hoff requested the  
said Edward W. Lee, director of revenue and finance of  
the City of Trenton, to deduct from every payment of  
salary made to him the proportional share of the con-  
tributions or assessments which are levied upon the  
members of the police and fire departments of said City  
of Trenton, in conformity with Section 4 of the Act of 20  
April 15, 1920, being Chapter 160 of the Laws of 1920,  
and that he pay the amount so deducted to the said  
Frederick W. Donnelly, Edward W. Lee, William J.  
Mullen, William Tettermer and George W. Guthrie, the  
Police and Fire Pension Commission of Trenton, New  
Jersey, pursuant to statute, and the said Frederick W.  
Donnelly, Edward W. Lee, William J. Mullen, William  
Tettermer and George W. Guthrie, constituting the  
Police and Fire Pension Commission of said city, to  
receive and accept such proportional amount as should 30  
be fixed and determined by them as the amount to be paid  
by him to said fund, pursuant to Section 4 of the said  
Act of April 15, 1920, and place his name on the roll as  
a member of the fire department entitled to the benefit of  
said fund; and

WHEREAS, You, the said Edward W. Lee, have re-  
fused to make any deduction from the salary of the said  
J. Wallace Hoff, and you, the said Frederick W. Don-

nelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of said city, have refused to fix and determine an amount to be paid by the said J. Wallace Hoff to said fund, pursuant to the requirement of the statute, and to place his name upon the roll as a member of the fire department entitled to the benefit of said fund, and have, by your acts, deprived the said J. Wallace Hoff of his right to the benefit of the fund  
10 created by the said Act of April 15, 1920.

We, therefore, willing that due and speedy justice should be done in this behalf, command and strictly enjoin you that, immediately after the receipt of this writ, you, Edward W. Lee, do deduct the amount fixed and determined by the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting said Police and Fire Pension Commission of Trenton, New Jersey, as the amount to be paid by the said J. Wallace Hoff to  
20 the said fund, and that you, Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting said Police and Fire Pension Commission of the City of Trenton, New Jersey, do forthwith fix and determine an amount to be paid by the said J. Wallace Hoff to said fund and place his name upon the roll as a member of the fire department of the said City of Trenton, New Jersey, entitled to the benefit of said fund, pursuant to Section  
30 of the Laws of 1920, and that you do receive and accept from the said Edward W. Lee, director of revenue and finance aforesaid, all sums of money deducted from the salary paid to the said J. Wallace Hoff, or cause to us to the contrary thereof, signify, lest in your default complaint should come to us repeated; and how you shall execute this, our command, certify to our Justices of our Supreme Court of Judicature, at Trenton, on the 21st day of February, instant, together with this, our writ, and this in nowise omit, at your peril.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court, at Trenton, the fifteenth day of December, in the year of our Lord one thousand nine hundred and twenty-one.

ENOCH L. JOHNSON,  
HENRY M. HARTMAN, *Clerk.*  
*Attorney.*

RETURN TO ALTERNATIVE WRIT.

NEW JERSEY SUPREME COURT. 10

<p>J. WALLACE HOFF, <i>Relator,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>EDWARD W. LEE ET AL., THE POLICE AND FIRE PENSION COMMISSION OF TRENTON, N. J.,</p> <p style="text-align: right;"><i>Respondents.</i></p>	}	<p>On Mandamus. Return to Alternative Writ.</p>
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*To the Honorable the Justices of the Supreme Court of  
Judicature of the State of New Jersey:* 20

The said Edward W. Lee, director of revenue and finance of Trenton, N. J., and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., respondents for return to the alternative writ of mandamus in the above-entitled cause to them directed, say:

That J. Wallace Hoff, relator, is not entitled to the benefit of the Act of April 15, 1920, having claimed no benefit of any pension act prior to the enactment of the Act of April 15, 1920, and being, therefore, now estopped from asserting a right to the relief created by the 1920 Act. 30

That the said J. Wallace Hoff is not entitled to be placed upon the pension roll of the Police and Fire

Pension Commission of Trenton, N. J., not being of the class of persons contemplated in the said Act of April 15, 1920.

That the said J. Wallace Hoff is not a member of the Fire Department of the City of Trenton within the meaning of the Act of April 15, 1920, and is, therefore, not entitled to the determination by the Police and Fire Pension Commission of Trenton, N. J., of an amount to be paid by the said J. Wallace Hoff to the fund estab-  
 10 lished by said Act of April 15, 1920, and to enrollment by said Commission as a member of the Fire Department of the City of Trenton entitled to the benefit of said fund.

Wherefore these respondents pray that they may be discharged of and from the premises, and that they be not further required to perform the matters in said alternative writ mentioned.

KATZENBACH & HUNT,  
*Attorneys for Respondents.*

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## DEMURRER TO RETURN.

NEW JERSEY SUPREME COURT.

J. WALLACE HOFF,  
*Relator,*

*vs.*

EDWARD W. LEE ET AL., THE  
 POLICE AND FIRE PENSION  
 COMMISSION OF TRENTON  
 N. J.,

*Respondents.*

On Mandamus.  
 Demurrer to Return.

30

J. Wallace Hoff, the above-named relator, by Henry M. Hartman, his attorney, comes and says:

That the return to the Alternative Writ made herein by the above-named respondents and the matters and

things therein set forth are not sufficient in law, and show no sufficient reason in law why the said respondents should be discharged of and from the premises, and the said Relator prays judgment upon the Alternative Writ.

HENRY M. HARTMAN,  
*Attorney for Relator.*

JOINDER IN DEMURRER.

NEW JERSEY SUPREME COURT. 10

J. WALLACE HOFF,

*Relator,*

*vs.*

EDWARD W. LEE ET AL., THE  
POLICE AND FIRE PENSION  
COMMISSION OF TRENTON,  
N. J.,

*Respondents.*

On Mandamus.  
Joinder in Demurrer.

20

And the said Edward W. Lee, Director of Revenue and Finance of Trenton, N. J., and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., say that the said return by them made to the said alternative writ, and the matters and things therein contained in manner and form as the same are above stated and set forth, are sufficient in law, and they, the said Edward W. Lee, Director of Revenue and Finance of Trenton, N. J., and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., are ready to verify and prove the same as the Court here shall direct and award; where-

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fore, inasmuch as said J. Wallace Hoff, relator, has not answered the said return nor hitherto in any manner denied the same, the said Edward W. Lee, Director of Revenue and Finance of Trenton, N. J., and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., pray judgment, and that they may be discharged of and from the premises and that they be not required further  
 10 to perform the matters in said alternative writ mentioned.

KATZENBACH & HUNT,  
*Attorneys for Respondents.*

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### JUDGMENT.

NEW JERSEY SUPREME COURT.

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J. WALLACE HOFF,

*Relator,*

*vs.*

EDWARD W. LEE ET AL., THE  
 POLICE AND FIRE PENSION  
 COMMISSION OF TRENTON,  
 N. J.,

*Respondents.*

} On Mandamus.  
 Judgment.

And now at this day, to wit, the fourteenth day of  
 30 November, in the year nineteen hundred and twenty-two, before the Justices of the Supreme Court of New Jersey at Trenton aforesaid, come as well the said J. Wallace Hoff, Relator, as the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tetteimer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J.,

by their attorneys aforesaid, whereupon all and singular the premises being seen and by the Justices of our said Court now here fully understood, and mature deliberation being thereupon had, it appears to the said Court that the said return of the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., by them above pleaded to the said alternative writ, and the 10 matters therein contained, are not sufficient in law to discharge the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., Respondents, of and from the premises, or from the performance of the matters in said alternative writ mentioned;

Therefore, it is considered that a peremptory writ of mandamus issue out of and under the seal of this Court, 20 directed to the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., commanding the said Edward W. Lee to deduct the amount fixed and determined by the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constituting said Police and 30 Fire Pension Commission of Trenton, N. J., as the amount to be paid by the said J. Wallace Hoff to the said fund and that you, Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., do forthwith fix and determine an amount to be paid by the said J. Wallace Hoff to said fund and place his name upon the roll as a member of the Fire Department of the said City of Trenton, N. J., entitled to the benefit of said fund, pur-

suant to Section 4 of the said Act of April 15, 1920, and that you do receive and accept from the said Edward W. Lee, director of revenue and finance aforesaid, all sums of money deducted from the salary paid to the said J. Wallace Hoff, and that the said J. Wallace Hoff do recover against the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and the said Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the  
10 Police and Fire Pension Commission of Trenton, N. J., the costs and charges of the said relator by him in and about his suit in this behalf expended by the Justices of our Court now here adjudged to the said J. Wallace Hoff, relator, and with his assent.

And the said Edward W. Lee, director of revenue and finance of Trenton, N. J., and Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, the Police and Fire Pension Commission of Trenton, N. J., in mercy, etc.

20 Judgment signed as of November 14, 1922.  
For the Court.

FRANK S. KATZENBACH,  
J. S. C.

# New Jersey Court of Errors and Appeals.

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No. 89, March Term, 1923.

JANE CARR HOFF, administratrix of  
the estate of J. WALLACE HOFF,  
deceased,

Relator-Respondent,

*v.*

EDWARD W. LEE, Director of Revenue and Finance, and FREDERICK W. DONNELLY et al.,  
Respondents-Appellants.

On Mandamus.

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## Brief for Relator-Respondent.

This appeal was taken from a judgment of the Supreme Court, directing an alternative writ of mandamus to issue commanding the Police and Fire Pension Commission of the City of Trenton to place the name of respondent's intestate upon the roll of members of the fire department entitled to the benefit of the fund created by the Police and Fire Pension Act, Chapter 160 of the Laws of 1920, and to fix an amount to be paid by him to that fund, pursuant to Section 4 thereof, and to compel the Director of Revenue and Finance to deduct from his salary the amount so fixed and to pay the same to the commission.

## FACTS.

J. Wallace Hoff, deceased, was appointed secretary (clerk) of the Trenton Fire Department on March 16th, 1892, by the then existing Board of Fire Commissioners of the City of Trenton. The resolution under which he was appointed reads as follows:

10       “Resolved, that this Board do now go into the election of one clerk, one superintendent of fire alarm, one lineman, one chief engineer, two assistant chiefs, eight captains, six engineers, six stokers, eight drivers, two tillermen and thirty-four horsemen and ladder-men, two janitresses, the same when elected to be considered the permanent force of the paid system of the fire department of the City of Trenton, when established and created by this Board.”

The foregoing resolution is the identical resolution by which the relators were appointed in the cases of

Van Horn *v.* Donnelly et al., 115 Atl. Rep. 337;

and

20       Trinkle *v.* Donnelly et al., decided on November 23d, 1921, by this Court.

30       He continued his service as secretary (clerk) of the Trenton Fire Department under the old board of fire commissioners, until the adoption of commission government in 1911, when he was appointed by the board of city commissioners, “secretary (clerk) of the fire department and deputy director of public safety,” by a resolution passed on December 20th, 1911, and continued to honorably serve in said fire department until the day of his death. The duties performed by him ever since his appointment were in connection with the Trenton Fire Department. He performed no duties incident to his appointment as “deputy director of public safety,” except as connected with the fire department. His duties called him to the fire zone where he suffered the hazards of fire fighting members of the department.

Respondent's intestate requested and demanded that Edward W. Lee, director of revenue and finance of the City of Trenton, deduct from every payment of his salary the proportionate share of contributions or assessments which are levied upon the members of the police and fire departments in conformity with Section 4 of said 1920 Act, and that he pay the amount deducted to the police and fire pension commission, and said director refused and continues to refuse so to do, as do also the members of the police and fire pension commission.

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The Police and Fire Pension Commission also refuse to place the name of the respondent's intestate on the list or roll of the members of said fire department entitled to the benefit of the fund.

J. Wallace Hoff departed this life on or about December 13th, 1922, and his wife, Jane Carr Hoff, was duly appointed administratrix of his estate and has been substituted as the respondent herein.

Chapter 160 of the Laws of 1920 is operative in the City of Trenton. Chapter C. C. L. of the Laws of 1885, approved May 2d, 1885, was adopted by the legal voters of the City of Trenton at an election held on April 8th, 1889. A firemen's pension fund was set up in the City of Trenton under the authority of Chapter 65 of the Laws of 1905, on May 19th, 1905. The Commission Government Act (being Chapter 221 of the Laws of 1911) was adopted by the legal voters of the City of Trenton on June 20th, 1911.

#### ARGUMENT.

*The single question presented in this case is whether or not the respondent's intestate was a member of the fire department of the City of Trenton within the meaning of Chapter 160 of the Laws of 1920. The provision in Section 2 that where*

"A person being a member or employee of the police or fire department shall desire to retire, by reason of injury or disease, said person shall make application and, etc.,"

clearly indicates that the legislative intention was to confer the benefits of the act *on members of the department, other than those performing fire fighting duty*. In Section 5, wherein provision is made for the election of "one policeman of the police department and one fireman of the fire department" to serve on the pension commission also shows special recognition of classes as a part of the department.

The proofs show that among his many duties in the fire department, respondent's intestate was frequently required to enter the actual fire zone and to endure the hazards of the fire fighting force of the department. Can it be disputed, that he was in the same class of members as a lineman, a watchman and veterinary surgeon? In construing the Fire Pension Act of 1902 (P. L. 793), containing the identical language used in the Act of 1920, Mr. Justice Reed says at page 411 of the opinion (*Leffingwell v. Kiersted*, 74 N. J. L. 407):

"Indeed, there seems no reason to be drawn from the language of the statute in which the class of beneficiaries can be held to be more restricted than a class composed of all members of the fire department, and that these relators (being a lineman, a watchman, a veterinary surgeon) are members of such department seems to be not a matter for dispute."

*Wheeler v. Board of Fire Commissioners*, 46 La. Ann. 731; 15 South. 179;

*People v. Ennis*, 7 N. Y. Supp. 630;

*People v. Gurster*, 35 N. Y. Supp. 86.

The legislature, in using the identical language of the 1902 Act in drafting the 1920 Act, showed an explicit legislative intention to make the class of beneficiaries embrace all members of the fire department. Subsequent to the decision in the *Leffingwell* case, the language used in the 1902 Act had a settled meaning. It is fair to assume that the legislature, in framing the 1920 Act, used the identical language of the 1902 Act, because it intended that the beneficiaries created should exclude no member of the department.

Where terms and modes of expression are employed in a new statute, which, at the time of its enactment had acquired by judicial construction a definite meaning, an application in a previous statute on the same subject or on one analogous to it, they are generally supposed to be used in the same sense, and in the construction of the later act regard should be had to the known and established interpretation of such terms and modes of expression in the former.

See

Sampson *v.* Sampson, 16 Atl. Rep. 711; 10  
New York, New Haven and Hartford R. R. Co. *v.*  
Interstate Commerce Commission, 200 U. S. 361.

In the case of *Frost v. Barnert*, 56 N. J. Eq. 290, on page 292, Vice-Chancellor Stevens, in construing a statute therein considered, said:

"Then again the act under consideration had, through a long series of years, received a settled construction. It must be assumed that when the legislature re-enacted the old provision in the old words they were satisfied with that construction and meant that it should con- 20  
tinue."

The case at bar is controlled by the decisions of this Court in *Van Horn v. Donnelly et al.*, 115 Atl. 337, and *Sheehan v. Lee et al.*, 115 Atl. 347.

In the *Sheehan* case Mr. Justice Trenchard, speaking for the Supreme Court, said:

"The construction that the act includes all and excludes none of the members of the police and fire departments finds strong support in the provision contained in Section 4, requiring the municipality to raise 30  
by taxation and pay into the fund yearly, an amount equal to four per centum of the total salary paid to the members of such department."

*In the light of this reasoning, it appears futile for my adversary to argue that any member of the fire department is excluded from the beneficent provisions of this act.*

On December 20th, 1911, after the respondent's intestate had served in the fire department since his appointment in 1892, he was appointed by the board of city commissioners of the City of Trenton to two distinct and separate positions, "secretary (clerk) of the fire department" and "deputy director of public safety." Is it not significant that the board of commissioners, in naming him to these two distinct and separate positions in the city government, mentioned that of "secretary (clerk)" first, and the position of "deputy director" last? By a mere reading of the resolution, one is impressed with the fact that the board of commissioners regarded the position of "secretary (clerk) of the fire department" as of infinitely greater importance than that of "deputy director of public safety." *It is submitted that the appointment of the respondent's intestate to the position of "deputy director of public safety" was invalid and ineffective, because of the lack of power under the commission government act or any subsequent act, to appoint deputy directors of the several departments of municipal government. In the absence of legislative authority no such appointment could be made. The appointment as such deputy was, therefore, a nullity, but his appointment as "secretary (clerk)" was valid.* There is no connection between the two offices to which he was appointed which would make the former invalid, because the latter was a nullity. For example, if the mayor of the City of Trenton named one person city counsel of such city and "deputy director of public affairs" it could not be contended that because the latter appointment was invalid, that the appointment as city counsel was therefore ineffective.

The evidence shows that he never attempted to exercise control over or authority in any department under the jurisdiction of the director of public safety, except that of the fire department of which he was secretary (clerk). The character of the services performed, rather than the title of the position held, determines the department of municipal government of which an employee is a member. The duties performed by him were wholly within the realm of the fire department.

State (Peal, Prosecutor) *v.* Mayor, etc., of Newark,  
49 Atl. 468.

The attempted appointment of the respondent's intestate to the office of "deputy director of public safety," in addition to the position of secretary (clerk) of the fire department, was ineffective and it must, therefore, follow that he was solely secretary (clerk) of the fire department. He received a yearly salary of twenty-five hundred dollars (\$2500.00), and was necessarily a member of some department of the city government. We are forced to the conclusion that he was a member of the department of government to which he gave his time and service.

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Since the provision for the deduction from the salary paid to each member of the fire department is mandatory, it follows that each member is entitled to share in the benefit of the pension fund, and the respondent's right to a writ of mandamus, commanding the pension commission to fix and determine the amount to be paid to said fund, pursuant to Section 4 of said act and to place decedent's name upon the roll as a member of the fire department, entitled to the benefit of such fund, is clear, as well as the right to compel the director of revenue and finance to deduct from his salary the amount so fixed and determined by such commission.

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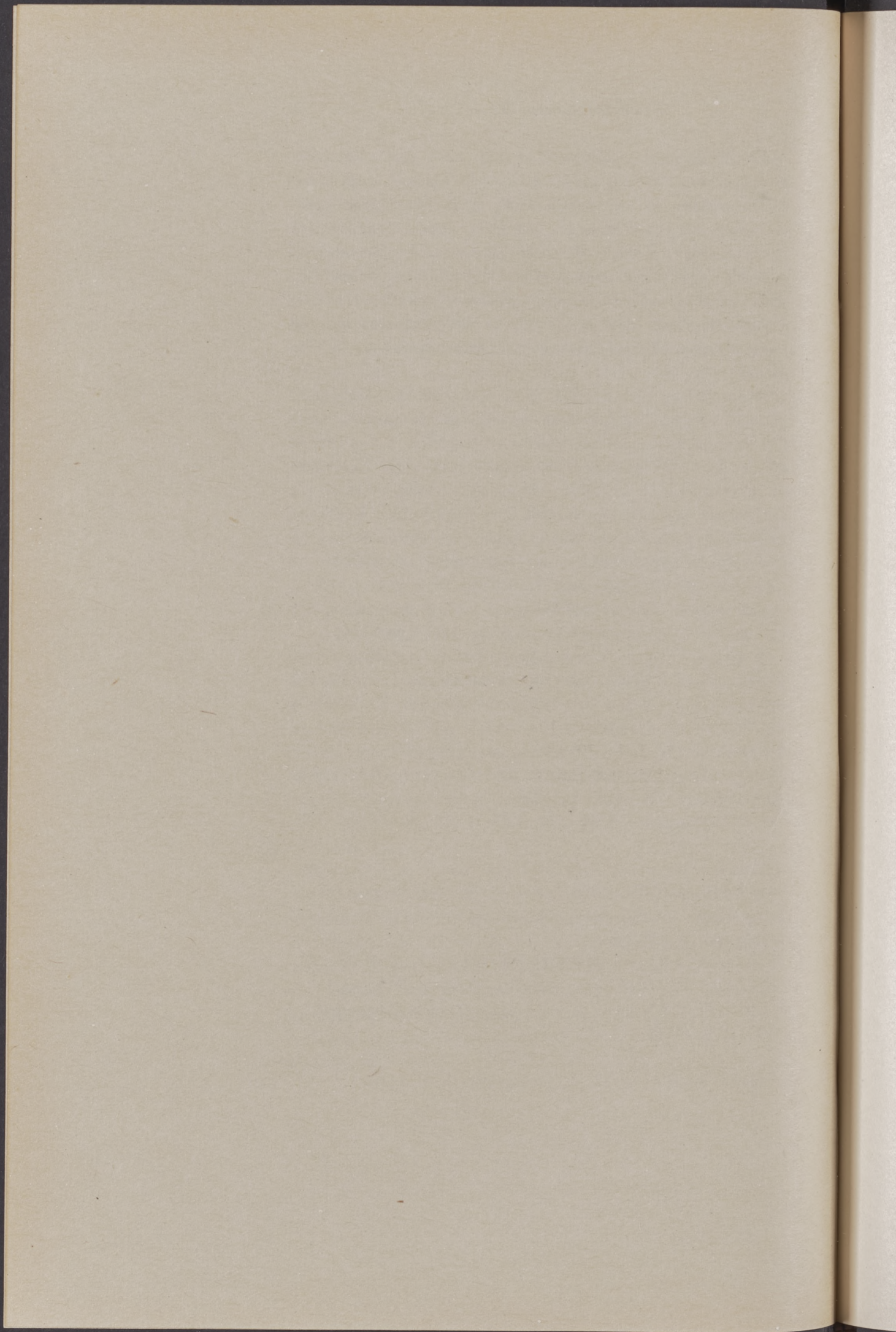
It is contended by the appellant that the act in question is against public policy, because it enlarges the reach of existing pension legislation by creating new classes. This statute was held to be constitutional in *Hulme v. Commissioners of Trenton*, 95 N. J. L. 30, which was later affirmed by this court. A constitutional statute cannot be contrary to public policy, since it is public policy.

*Borgnis v. Falk Co.*, 133 N. W. 216; 147 Wis. 327.

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It is respectfully submitted that the conclusions of the court below are correct and that a peremptory writ of mandamus should issue.

HENRY M. HARTMANN,  
*Attorney for and of Counsel*  
*with Relator-Respondent.*



## NEW JERSEY Court of Errors and Appeals

---

JANE CARR HOFF, ADMINISTRA-  
TRIX OF THE ESTATE OF J.  
WALLACE HOFF,  
*Relator-Appellee,*

*vs.*

EDWARD W. LEE, DIRECTOR OF  
REVENUE AND FINANCE, AND  
FREDERICK W. DONNELLY,  
EDWARD W. LEE, WILLIAM  
J. MULLEN, WILLIAM TET-  
TEMER AND GEORGE W.  
GUTHRIE, THE POLICE AND  
FIRE PENSION COMMISSION  
OF TRENTON, N. J.,  
*Respondents-Appellants.*

} On Mandamus.

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### BRIEF FOR RESPONDENTS.

This case arose by reason of the refusal of the Police and Fire Pension Commission of the City of Trenton to accept contributions from the salary of J. Wallace Hoff and to place him upon the roll of beneficiaries of such fund, with the subsequent view of awarding him a pension.

The facts as set forth in the State of the Case, either as agreed to or proven, are that Chapter 160 of the

Laws of 1920, known as the Police and Fire Pension Act, is operative in the City of Trenton. The respondents, Frederick W. Donnelly, Edward W. Lee, William J. Mullen, William Tettermer and George W. Guthrie, constitute the Police and Fire Pension Commission. J. Wallace Hoff was long in the employ of the City of Trenton in various capacities. On March 16, 1892, by the then Board of Fire Commissioners of the City of Trenton, he was appointed clerk of such Commission. It is admitted that Chapter 250, Laws of 1885, entitled "An act to remove the fire and police departments in cities of this State from political control," approved May 2, 1885, was adopted by the Citizens of the City of Trenton, and that by Chapter 65 of the Laws of 1905, approved March 28, 1905, a paid firemen's fund was set up in the City of Trenton under the authority of such Act. The Commission Government, Chapter 221 of the Laws of 1911, was adopted by the legal voters of the City of Trenton, June 20, 1911. On December 20, 1911, J. Wallace Hoff was nominated and elected by the City Commissioners of the City of Trenton as Secretary (Clerk) of the Fire Department and Deputy Director of Public Safety. He served in the capacity of Deputy Director of Public Safety under George B. LaBarre from the date of his appointment until his death. During the course of such service he gave orders, as will be seen by the stipulations in the State of the Case, as a superior to the Chief of the Fire Department as to the manner in which such department should be conducted and as to the manner in which the officers of the same should act. He was held out by the city government of the City of Trenton to be a deputy commissioner of public safety, as will be evidenced by the official letterheads of the City of Trenton; he was represented to other officials of the City of Trenton as occupying such an official capacity to which he was, as a matter of fact, elected. He acted as the directing and controlling factor in the Fire Department, a superior to all others, and, rather than as

a member thereof, as an officer of the City of Trenton having control of said department.

This action was instituted originally in the name of J. Wallace Hoff as relator. On December 13, 1922, about one month after the Supreme Court awarded a peremptory writ of mandamus, he died, and his wife, Jane Carr Hoff, was duly appointed administratrix of his estate. The cause is now entitled in the name of the administratrix, for the reason that the right of J. Wallace Hoff to make application for a pension under the statute, if he had any such right, was a right peculiar to himself. It was a personam right, and therefore to be established in the name of his personal representative and not in the name of the widow of J. Wallace Hoff. The right of the widow, under the statute, would be merely derivative and solely dependent upon the right established in her husband.

In order that the award of a writ of mandamus by the Supreme Court might be reviewed it was necessary to obtain an order directing the framing and filing of pleadings consisting of an alternative writ of mandamus and a return thereto, a demurrer to such return and a joinder in demurrer. Upon these pleadings judgment was entered in favor of J. Wallace Hoff as of the date of the original award. The cause has therefore been framed in such manner as to permit a review by this court.

#### QUESTION.

The question involved in this case is solely whether, under the facts, J. Wallace Hoff was a city official, not entitled to benefit under the Police and Fire Pension Act, Chapter 160 of the Laws of 1920, or whether he was a member of the Fire Department and as such entitled to make application for the pension.

## ARGUMENT.

J. Wallace Hoff never made any application to be placed upon a pension roll until after the passage of the Act of April 15, 1920. That act provides as follows:

"1. In all municipalities of this State any policeman or fireman, or members of the police or fire department, including all police officers having supervision or regulation of traffic upon county roads, who shall have honorably served in such police or fire department for a period of twenty years, and attained the age of fifty, shall, upon his own application, be retired on half pay, and any member of any such police or fire department who shall have honorably served for a period of twenty years and attained the age of sixty-five years shall be retired on half pay  
\* \* \*"

"2. Any member of such police or fire department who shall have received permanent disability in the performance of his duty, shall, upon certificate of the surgeon or physician of the police or fire department, or other physician designated for that purpose by the pension commission, be retired upon a pension equal to one-half of his salary at the time of his retirement; where, however, a person being a member or employee of the police or fire department shall desire to retire by reason of injury or disease, said person shall make application in writing to the pension commission for such retirement.  
\* \* \*"

"4. A fund shall be created in the following manner for the purpose of paying such pensions, to-wit: There shall be deducted from every payment of salary to such member of the police and fire departments in such municipality two per centum of the amount thereof, providing such

member entered such service on or before the age of thirty-five years; if any member enters service after the age of thirty-five years, then such percentage shall be increased to such an amount as shall be determined by the pension commission to correspond to the risk arising by the additional age of the member. The municipality shall raise by taxation and pay into said fund yearly an amount equal to four per centum of the total salaries paid to the members of the police and fire departments. There shall also be added to such fund the following moneys: All fines imposed upon any member of the police and fire departments; all moneys given or donated to such fund; all moneys deducted from the salary of any member of the police or fire department on account of absence, or loss of time, and one-half of all rewards paid for any purpose. In case there shall not be sufficient money in said pension fund created as aforesaid, the common council or other governing body shall include in any tax levy a sum sufficient to meet the requirements of said fund for the time being."

It is submitted that the application of the deceased relator should be denied for the following reasons:

#### I.

He was a Deputy Commissioner of Public Safety, appointed by the Board of Commissioners of the City of Trenton under the authority of Section 4 of the Walsh Act, Chapter 221, Laws of 1911:

"The board of commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all officers and employees, and they may assign particular offi-

cers and employees to one or more departments and may require any officer or employee to perform duties in two or more departments, and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city."

Also page 466:

"The board of commissioners shall at the first meeting, or as soon as may be after organization create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city."

He was an officer of the city, not an employee of the fire department. The class to which he belonged is not specifically mentioned in the Act of April 15, 1920, unless he could be regarded as an employee of the department, which it is conceived by us would be erroneous for the reason that he was specifically appointed as an officer of the city and in such capacity acted.

## II.

The position which the deceased relator held was one that placed him in no jeopardy or hazard, except such as would be voluntary to himself. He was under no one's direction. He gave orders rather than received them. It would seem that the intention of the Pension Act should be to reward those who have spent their lives in hazard for the municipality and who contributed to the fund for a long period of years, or whose lives have been wrecked by accidents which they have met in the hazard of their positions. We are forced to admit that in *Leffingwell v. Kiersted*, 74 N. J. L. 407, 65 Atl. 1029, the New Jersey Supreme Court, held, under the then Pension act, that there could be certain extension thereof to a veterinary, a lineman and a watchman. They were, however, persons whose positions involved

some hazard. Subsequent to the last-named case the Legislature passed an Act denominated P. L. 1912, p. 142, approved March 20, 1912, in which the line of persons entitled to receive pensions was materially increased. Even then, however, there was exhibited no intention to include public officials within the pension provisions. It applied to employees of the department. Unless all the directive power given to J. Wallace Hoff as director of public safety be taken from him, and he be considered merely to be a clerk of the fire department, it would seem to be impossible for him to come within the rule. The Act of 1912 does not even include clerks, and the Act of April 15, 1920, does not include them. There is obviously an intention to extend the line of those entitled to a pension under the power given in the statute. This, we believe, should be of no avail to the deceased relator.

### III.

By reason of public policy it will be undesirable to increase the lines of those entitled to pension. While the deceased relator tendered payment subsequent to the Act of April 15, 1920, he made no contribution to the fund before that date, although the fund had been established theretofore. It is against public policy to widen the circles of those entitled to the benefits of the Act. It is obvious that there were and will be deficits which, according to the terms of the Act, must be made up by public taxation, and it is contrary to public policy to increase taxation without direct legislative authority.

It is submitted, therefore, that the application should be denied for the reason that J. Wallace Hoff was a public official by appointment and by act, but was not an employee of the fire department or of the persons who even by implication are mentioned in the act of the Legislature; that it would be contrary to public policy to increase the number of persons eligible to a pension fund to be raised in part by contribution of the bene-

ficiaries and in part by public taxation, as being unjust to those who have heretofore paid their assessments, as well as to the general public.

Respectfully submitted,

KATZENBACH & HUNT,  
*Attorneys for and of Counsel with  
Respondents-Appellants.*

