2. Should the $1600.00 be divided as an asset and according to ratables?
3. Should the $1600.00 be given to the new district as an asset and not be divided according to ratables?

The answer to the first question is in the negative. The direction of the legal voters was merely a naked authority which the board never exercised.

The answer to your second question is in the affirmative. The $1600.00 must be divided as an asset according to the ratables of the two municipalities.

I understand that the $1600.00 was not raised by a bond issue but was raised by taxation in the year 1948 and must therefore be considered as an asset.

As to question No. 3, the money is not to be given to the new district as an asset but, as I have already indicated, is to be divided according to the ratables of the two municipalities.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

MARCH 15, 1949.

CHARLES J. SHEEHAN, *Secretary,*
New Jersey Racing Commission,
1 West State Street,
Trenton 8, N. J.

FORMAL OPINION—1949. No. 6.

DEAR MR. SHEEHAN:

I acknowledge receipt of your recent inquiry in which you request my interpretation of Chapter 33, P. L. 1948, appertaining to pari-mutuel breakage based on the following facts:

You inform me that a situation sometimes arises whereby an amount payable to a winning patron, calculated on the basis of one dollar ($1.00), is less than ten cents ($0.10) and that under such circumstances your commission has heretofore determined that all of the balance remaining in this particular pool constitutes breakage payable to the State. I am further informed that in such cases the track contributes a sufficient amount of money to the pool to the extent necessary in order to arrive at a ten-cent ($0.10) distribution on the dollar. You have called my attention to the following specific example:

> "After deducting commission and the amount payable in the show pool to the first and second horse, there remains in the show pool account the sum of $2,000. $21,000 has been bet on the particular horse to show. By arithmetic processes the track determines the amount payable by merely dividing the amount bet into the sum available for distribution to the public. By so doing * * * the moneys to be distributed over and above the amount bet amounts to

$.09 calculated on the basis of a dollar. Applying, therefore, the ruling hereinabove referred to, the entire $2,000 in this pool is declared to be breakage and the track is then obliged to place $2,100 into the show pool in order to distribute the results of the race at the rate of $1.10."

Your letter concludes as follows:

"Your legal opinion is therefore requested with particular reference to the interpretation of breakage as defined in the statute in such instances where the amount to be distributed, calculated on the basis of a dollar, is less than ten cents."

It is my opinion that the moneys in the pool, as set forth in the example quoted, constitutes breakage and is payable in its entirety to the State.

Breakage is defined in our statute (Chapter 33, P. L. 1948):

" * * * as the odd cents over any multiple of ten cents ($0.10) calculated on the basis of one dollar ($1.00) otherwise payable to a patron."

I understand that the argument has been advanced that since the nine cents ($0.09), as indicated above, is not over a multiple of ten cents ($0.10) the same does not constitute breakage and the track should, under such circumstances be obliged to replenish the fund only to the extent of one cent ($0.01)) calculated on the basis of a dollar, for the purpose of making a distribution of one dollar and ten cents ($1.10) or two dollars and twenty cents ($2.20) on a two-dollar ($2.00) ticket.

The interpretive key rests on the words "otherwise payable to a patron." The amount payable to a patron is not nine cents ($0.09) as in the example cited, but rather is one dollar and nine cents ($1.09). Under such circumstances, interpreting the statute as written, the nine cents ($0.09) constitutes the odd cents over a multiple of ten cents ($0.10) calculated on the basis of one dollar ($1.00) "otherwise payable to a patron."

It is not the function of our courts, nor is it mine, to interpret a statute on the basis of what the Legislature intended to say. What did the legislature intend by what it did say is the controlling factor. The intention of the Legislature as expressed in a statute should be ascertained and given effect. *Norton* vs. *State Board of Tax Appeals,* 134 N. J. L. 57, 62. In my opinion, the intention of the Legislature as expressed in this statute is clear and any application for relief therefrom in its present form should be addressed to the Legislature.

There is no provision in our statute for, what is called in racing parlance, a "minus pool." The breakage payable to the State is in the nature of a supplemental license fee for permission to engage in the business of horse racing and pari-mutuel wagering. *State* vs. *Garden State Racing Association,* 136 N. J. L. 173. The adoption of the racing act in 1940 and its several amendments and supplements thereto was not intended for the primary purpose of aiding the track promoters. The benefits accruing to the racing association as a result of such operation are incidental and necessarily subordinate to the paramount welfare of the State.

I know of no provision in the law which requires the racing association to pay to a winning patron a sum in excess of the amount wagered in such instances where there is no surplus in the pool after the deduction of the statutory commission and the breaks as defined in the statute. As a matter of fact, I find that the commission has stricken from its rules and regulations (1948) the provision which heretofore

required the association to distribute to a winning patron not less than the face of the winning ticket plus a certain amount on each dollar wagered. Since there is no statutory requirement (nor even a commission regulation) requiring the track to distribute the ten cents ($0.10) on the dollar as hereinabove stated, I assume that such distribution is voluntarily made by the track for the purpose, among other reasons, of creating good will and inviting greater patronage. In other words, although there is no legal obligation on the part of the track so to do, it is apparently a sound business policy ultimately enuring to the economic advantage of the association. With such policy the State is not legally concerned.

Based on the facts hereinbefore referred to, and the law applicable thereto, it is my conclusion that the odd cents over a multiple of ten cents ($0.10), calculated on the basis of a dollar, constitute breaks payable to the State, even though the amount otherwise payable to the patron may be one dollar and nine cents ($1.09) as herein referred to.

Respectfully yours,

THEODORE D. PARSONS,
Attorney General,

By: MAX EISENSTEIN,
Deputy Attorney General.

MARCH 14, 1949.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 7.

MY DEAR COMMISSIONER BATES:

It appears that there are certain prisoners in the New Jersey State Prison at Trenton who have been committed by the courts to serve a sentence of life and that such prisoners have on one or more prior occasions been convicted of crime.

You desire to be advised as to whether Section 11 or Section 12 of Chapter 84, P. L. 1948, shall be utilized in determining the date upon which such prisoners shall be eligible for consideration for release on parole.

I am of the opinion that section 11 will govern the eligibility date. It provides that any prisoner serving a sentence of life shall be eligible for consideration for release on parole after having served 25 years of his sentence, less commutation time for good behavior and time credits earned and allowed by reason of diligent application to work assignments.

Section 12 can have no application to the matter under consideration for thereunder it will appear that it is impossible for the Parole Board to compute an eligibility date. Section 12 provides that a second offender shall not be eligible for parole until he has served one-half his maximum sentence, a third offender shall not be paroled until he has served three-fourths of his maximum sentence and a fourth offender shall be required to serve his maximum sentence.