

PREFACE

When I assumed office as Attorney General, early in 1949, Governor Alfred E. Driscoll suggested that I give thought to the formalization of my official opinions and to the periodic publication of them in volume form. Accordingly, I early instituted a system under which there were to be two types of opinions, formal opinions and memorandum opinions. Experience has dictated the enlargement of this system by the addition of an informal opinion, so that there are now three types of opinions, formal, informal and memorandum opinions. This volume, the first to be published in compliance with Governor Driscoll's suggestion, contains all the formal opinions rendered in my name as Attorney General between February 23, 1949, and December 31, 1950.

In inaugurating a new system governing opinions, I made provision for an Opinion Board consisting of three members of my legal staff, one of whom, by designation of the Attorney General, serves as Chairman. The other two members may vary from time to time. Every formal opinion is submitted to the Chairman, and no such opinion may issue unless it has been approved by at least two members of the board. This means that every formal opinion issued has been agreed to by at least three members of the legal staff, the writer of the opinion and two others.

Ordinarily, when an opinion that is to be written involves the payment of money, the construction of a statute, or a constitutional or other question of broad public concern, the formal opinion is used. While any one of the three types of opinions has efficacy for its own purpose, an informal opinion or a memorandum opinion usually applies to a particular set of facts and they have no continuing effect as precedent, and the opinion itself should so state. The choice of either of these two types of opinions depends upon the situation and the writer's judgment. The informal opinion is used where the writer considers that the subject matter may be of interest to other Departments, and for that reason it is also submitted to the Opinion Board. Oftentimes the writer of an opinion, whether it be formal, informal or memorandum will consult with the Opinion Board beforehand.

All formal opinions, as well as all informal and memorandum opinions in the writing of which the Board's assistance is sought, are examined by the Opinion Board for accuracy as to conclusion and reasoning. When an opinion is particularly troublesome, its

writer meets with the Board and argues the accuracy of the opinion as submitted by him. If a majority of the Board does not agree and the writer adheres to his views, the opinion is then re-written by a member of the Board. In such an instance, however, there must still be a concurrence by two others. When a member of the Board writes the opinion, either in the event just recited or because it is his to write by assignment in the first instance, there is a substitution for him on the Board for the purpose of the opinion.

When requests for opinions are received, they are passed on to the Chairman of the Opinion Board, who assigns them to the various members of the legal staff. So far as practicable, the respective assignments are made to the members of the staff most familiar with the subject matter. As a rule, opinions are rendered only to departments, agencies and officers of the State Government. This includes, but is not limited to, the executive branch, the Administrative Director of the Courts, and the members of the Legislature.

To date, there have been three chairmen of the Opinion Board. The first one to be designated was Deputy Attorney General Theodore Backes, who, when I took command early in 1949, had served in the Attorney General's office for more than half a century. His passing, late in December of 1950, left a great void. I cannot repeat too often what I have elsewhere said, that it is with a deepening sense of respect that one reflects upon the extraordinary career of Mr. Backes. Coming into the office of the Attorney General as a mere youth, his stature kept pace with the legal complexities of a fast-growing State. In time he became the master. The respective Attorneys General under whom he served soon learned that their confidence in him was merited. The advancing years, in broadening his knowledge and enriching his experience, rendered greater his service. It was inevitable that his mind should become a veritable storehouse of legal lore. Indeed, from it came often the ready answer to problems otherwise answerable only by tedious and time-consuming research.

When Mr. Backes passed away, I designated Deputy Attorney General Dominic A. Cavicchia to succeed him as Chairman of the Opinion Board. Mr. Cavicchia had worked closely with Mr. Backes. He had come to the Attorney General's office after several years of service as a member of the Legislature. He had been Speaker of the General Assembly in 1944 and, while Deputy Attorney General, had been a member of the Constitutional Convention of 1947, which drafted the present Constitution of New Jersey. Mr. Cavicchia's experience served him in good stead, first as a colleague of Mr. Backes on the Opinion Board and then as Chairman succeeding Mr. Backes. Mr. Cavicchia was recently appointed by Governor Driscoll and confirmed by the Senate as Director of the Division of Alcoholic

Beverage Control. To succeed him as Chairman of the Opinion Board I appointed Deputy Attorney General Oliver T. Somerville. Mr. Somerville had already been serving as a valuable member of the board.

I wish to acknowledge my appreciation for the generous and valuable service rendered by the West Publishing Company in the preparation of the index to this volume.

It is a pleasure to acknowledge a particular debt of gratitude to Governor Driscoll for his understanding of the value of published opinions and the encouragement given by him to the compiling and printing of this volume.

THEODORE D. PARSONS,
Attorney General.

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