The section of the statute above cited clearly states that if any commissioner of an authority owns or controls an interest direct or indirect in any project included or planned to be included in a housing project he shall immediately disclose same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to make such disclosure constitutes misconduct in office. Upon such disclosure such commissioner shall not participate in any act of the authority affecting such property.

It can be assumed that Mr. Van Syckle's position as President of the Perth Amboy National Bank was known by the commissioners who designated the bank as depository for authority funds and that his interest as such has therefore been disclosed. The record, therefore, indicates that there is no misconduct on the part of Mr. Van Syckle which would warrant his removal from office or which would require that proceedings for this purpose be instituted against him.

The answer to the first question above set forth, therefore, is that he should not be removed from office as commissioner.

The second question is whether the Authority should discontinue the bank as depository because of the fact that one of its commissioners is president.

In view of the fact that there has been a disclosure as to any interest Mr. Van Syckle may have in this matter either direct or indirect, there is no need of any such discontinuance. However, Mr. Van Syckle should not participate in any action by the Authority affecting the use of this bank as depository or in which both the bank and the Authority have an interest. As to any future matters concerning situations where both the bank and the Authority may have an interest, he should make a full disclosure of same to the Authority, which disclosure should be included in the minutes of the authority.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: CHESTER K. LIGHAM,
Deputy Attorney General.

JANUARY 5, 1950.

HON. ROBERT B. MEYNER,
Senator, Warren County,
Phillipsburg, New Jersey.

FORMAL OPINION—1950. No. 3.

DEAR SENATOR:

Reference is made to your letter of December fourteenth, written on behalf of the Democratic members of the 1950 Senate.

The real issue presented by your letter, as we understand it, is whether it is the intendment of Article IV, Section IV, paragraph 4, of the Constitution of 1947, that the demand of one-fifth of the members present that the yeas and nays be

entered on the journal is of itself effective to force a roll call on any question not otherwise properly before the house for a vote. That paragraph reads:

> Each house shall keep a journal of its proceedings, and from time to time publish the same. *The yeas and nays of the members of either house on any question shall, on demand of one-fifth of those present, be entered on the journal.* (Italics ours).

Our opinion is, and we advise you, that the obvious intendment of Article IV, Section IV, paragraph 4, of the Constitution of 1947, is that the proceedings must be at that stage where, in due course, a question is properly before the house for a vote, before the demand of one-fifth of the members present will be effective to cause the yeas and nays to be taken and entered on the journal.

Article IV, Section IV, paragraph 3, of the Constitution of 1947 (one of the very paragraphs incorporated by reference in Rule 66, as you indicate in your letter) provides:

> Each house shall choose its own officers, *determine the rules of its proceedings,* and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members. (Italics ours).

Of the rule-making power of the respective houses, it is said in Cushing's *Law and Practice of Legislative Assemblies,* 9th Ed., section 614:

> The principle, that each branch of a legislative assembly has a right to determine its own rules, is deemed so important that where it is inserted in the constitution of a State, it has been doubted, whether it was competent for the legislature of such State, by law, to provide rules for the government of its respective branches, which should bind them and supersede their authority to make rules for themselves.

Senate Rule 18, to which you refer in your letter and which you contend "is modified by Rule 66 and paragraph 4 of Section IV of Article IV of the Constitution" (said paragraph 4 being incorporated by reference in said Rule 66), provides:

> Committee reports upon bills, joint resolutions and concurrent resolutions of either House shall be in writing and shall show whether the same are reported upon favorably or otherwise, and how each member signing the report voted upon the question of the report, and *upon the written request of eleven Senators to the Chairman of a Committee to which such bill or resolution shall have been referred, the Committee shall forthwith report the same.* (Italics ours).

Senate Rule 18 is not conceivably at variance with the said paragraph of the Constitution (IV:IV-4). In the absence of constitutional specifications for, or restraints upon, legislative committees as regards the treatment of measures committed to them, we perceive in Rule 18 as written no constitutional infirmity. As already stated, Article IV, Section IV, paragraph 4, of the Constitution is applicable only after a question is properly before the house for a vote.

The clause in our Constitution of 1947 (as in our Constitution of 1844) anent the rule-making power of each house is in essence the same as that contained in the Constitution of the United States (I:5-2). Of the federal clause the United States Supreme Court said, in *United States* vs. *Ballin,* 144 U. S. 1, 5:

> Neither do the advantages or disadvantages, the wisdom or folly, of . . . a rule present any matters for judicial consideration. With the courts the question is only one of power. The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which when once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

We conclude by emphasizing that the Senate, as one of the independent houses of the Legislature, has exclusive authority to "determine the rules of its proceeding"; and that this opinion is not to be interpreted as an expression on our part concerning the policy of the Senate as to procedures which lie within the sole discretion of that body.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

JANUARY 10, 1950.

DANIEL BERGSMA, M. D.,
State Commissioner of Health,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 4.

DEAR DR. BERGSMA:

Your letter of transmittal under date of November 30th, 1949 requesting an opinion relative to requirement of a license in a given case by the Board of Beauty Culture Control is hereby acknowledged and memorandum opinion rendered as follows:

STATEMENT OF FACTS.

It would appear from your inquiry, that a person who is presently licensed as a teacher and demonstrator under the rules and regulations of the Board of Beauty Culture Control and laws applicable thereto, is holding himself out as a "consultant" by rendering advice to duly licensed beauticians on problems of hair styling, illustrating the technique involved and supervising first attempts to apply newer techniques, in places other than licensed beauty schools.