

FEBRUARY 6, 1950.

MR. GEORGE M. BORDEN, *Secretary,*
State Employees' Retirement System,
 1 West State Street,
 Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 14.

MY DEAR MR. BORDEN:

I duly received your letter of the 25th ult. with enclosure of order of Chief Justice Arthur T. Vanderbilt retiring Louis F. Beachner, a court stenographer, on an annual pension of \$2,500 per annum.

It appears that Mr. Beachner is also a member of your retirement system. The question which you have asked is whether Mr. Beachner is entitled to either the pension or annuity portion of the retirement allowance in your fund.

In my opinion he is not entitled to any portion of the pension element which would go to make up his retirement allowance had he retired under your retirement system. He has elected, however, to take the benefit of the law for the retirement of stenographic reporters, and is entitled only to have returned to him his accumulated deductions with interest as provided by your law.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: THEODORE BACKES,
Deputy Attorney General.

TB:B

FEBRUARY 6, 1950.

MAJOR WILLIAM O. NICOL,
New Jersey State Police,
 Trenton, New Jersey.

FORMAL OPINION—1950. No. 15.

DEAR MAJOR NICOL:

Your letter is at hand requesting an opinion as to procedure in authorizing the removal of disabled vehicles from highways.

Under R. S. 39:4-136, no person shall park or leave standing a vehicle, whether attended or unattended, upon the paved, improved or main traveled portion of a highway, outside of a business or residence district, when it is practicable to park or leave it standing off the paved, improved or main traveled portion thereof. In no event shall a person park or leave standing a vehicle whether attended or unattended, upon a highway, unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of the highway opposite the standing vehicle is left

for free passage of other vehicles thereon, nor unless a clear view of the vehicle may be obtained from a distance of two hundred feet in each direction upon the highway.

The act further states that when a peace officer finds a vehicle standing on a highway in violation of this statute he may move the vehicle or require the driver or person in charge of the vehicle to move it to a position permitted under the statute.

So, on your inquiry above, the State Police would have the right to move the vehicle or require the person in charge to move it.

Your second inquiry is, when a highway is blocked by a vehicle as the result of some accident, and the driver has been taken for medical treatment, what liability rests upon the trooper; that is, has the trooper authority to move the vehicle without the consent of the driver.

A vehicle placed upon the highway under such circumstances does not come within the provisions of the statute above quoted, so there would be no violation under the statute. But it is the duty of the State Police to keep the highway clear and if a vehicle has been disabled by accident and no one is in charge of it, it is the duty of the State Police to have the same removed from the highway. If the trooper has the vehicle removed by a responsible person, the trooper is not liable for damage sustained in removing the same.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: ROBERT PEACOCK,
Deputy Attorney General.

FEBRUARY 10, 1950.

HON. FRANK THOMPSON, JR.,
Assemblyman from Mercer County,
Assembly Chamber,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 16.

MY DEAR ASSEMBLYMAN:

Receipt is acknowledged of your inquiry of February 3rd in which you submit for my consideration and opinion several questions concerning the Trenton War Memorial Building, the right of the City of Trenton and the County of Mercer jointly to erect a memorial stadium, and the status of the citizen members of the present War Memorial Commission. Your queries and the answers thereto follow:

1. Under the existing statute may a memorial be built jointly by the City of Trenton and the County of Mercer?

Yes. The Revised Statutes by Section 40:10-2 provides:

"Any municipality having a population in excess of one hundred thousand inhabitants and which is the county seat, may, jointly with the county, erect and maintain a suitable building or buildings for public use, as a permanent memorial