railroad companies and traction companies, and others, to carry on a business made necessary to properly serve the public."

There are many cases in other states upholding the constitutionality of similar legislation, namely: *Zurn vs. City of Chicago,* 389 Ill. 114, 59 N. E. (2d 18); *Spahn* vs.*Stewart,* 268 Ky. 97, 103 S. W. (2d) 651; *Wells* vs. *Housing Authority,* 213 N. C. 744, 197 S. E. 693; *Dornan* vs. *Philadelphia Housing Authority,* 331 Pa. 209, 200 At. 834; *Housing Authority* vs. *Dockweiler,* 14 Cal. (2d) 437, 94 Pac. (2d) 794; *Stockus* vs. *Boston Housing Authority,* 24 N. E. (2d) 333; Re *Brewster Street Housing Site.* 291 Mich. 313. 289 N. W. 493; and *Humphrey* vs. *Phoenix.* 55 Ariz. 374, 102 Pac. (2d) 82.

It is our opinion that under Article VIII, section III, paragraph 1 of the Constitution the tax exemption provided by the act is proper. It does not violate Section 1 of that article since that section permits the granting of exemption from taxation by general laws. Under the authority of the *Redfern case* it can be stated that the property to be included in the exemption is an appropriate class and that this is a general law.

The recent case of *Janouneau* vs. *Div. of Tax Appeal,* 2 N. J., pg. 325 (Sup. 1949) does not apply in that it involved a strictly private use.

It is our opinion that the Limited-Dividend Housing Corporation Act and the tax exemption provided therein is constitutional. Our opinion is based on the statements set forth above and the cardinal rule that in judging the constitutionality of legislation every intendment must be found in its favor and its constitutionality shall be sustained where the issue is in doubt unless it clearly and inescapably offends a plainly written provision of the Constitution; which is not the case at hand. *City of Jersey City* vs. *Kelly,* 134 N. J. L. 239, 243 (E. & A. 1946); *State* vs. *Klapprott,* 127 N. J. L. 395, 399 (Sup. Ct. 1941); *Mansfield & Swett, Inc.* vs. *West Orange,* 120 N. J. L. 145, 156, 157 (Sup. Ct. 1938); *State* vs. *Murada,* 116 N. J. L. 219, 223 (E. & A. 1935); *State Board of Milk Control* vs. *Newark Milk Co.,* 118 N. J. Eq. 504, 518, 519 (E. & A. 1935).

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: CHESTER K. LIGHAM,
Deputy Attorney General.

FEBRUARY 24, 1950.

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

FORMAL OPINION—1950. No. 18.

DEAR COMMISSIONER BATES:

This relates to your request of February 21, 1950, for an opinion regarding sentencing practices now in effect at the State Prison.

You illustrate your first question by a hypothetical example as follows: A prisoner was received at the State Prison accompanied by five separate sentences, each with

a minimum of one year and a maximum of two years, and you indicate that the court that imposed the sentences provided therein that the sentences should be consecutive rather than concurrent.

You advise that the prison authorities now follow the practice of combining the minima and maxima of the five sentences so that in total aggregate they determine the sentence in the case presented to have a minimum of five years and a maximum of ten years.

First, you desire to be advised whether it is legally proper for the State Prison authorities to consider consecutive sentences in total aggregate by combining the minima and maxima thereon, resulting in a sentence having a total aggregate minimum and maximum which is the sum total of the five sentences.

It is our opinion, and we so advise you, that the above described procedure is unlawful and must be discontinued, for the reasons set forth below. The proper method of handling these cases will also become apparent.

At the outset let it be noted that our former Court of Errors and Appeals determined that the imposition of consecutive sentences was legal and proper, and that one should follow the other. (*State* vs. *Mahaney*, 73 N. J. L. 53; aff. 74 N. J. L. 849).

The order in which respective terms shall be served, unless otherwise provided by the court, will be determined by the order in which the court pronounces sentence or renders judgment. (16 C. J. par., 3237).

We fail to find any statute in this State which specifically permits the handling of consecutive sentences by aggregating the sum total of the minima and maxima. In the absence of such a law there is no legal authority so to do. This for the reason that, traditionally, penal statutes have been strictly construed and the rights and freedom of the individual are regarded with tenderness by the law. (Sutherland - Statutory Construction Vol. III, 49, 53).

Chief Justice Marshall said "The rule that penal laws are to be construed strictly is perhaps not less old than construction itself. To determine that a case is within the intention of a statute its language must authorize us to say so." (*U. S.* vs. *Wiltberger,* 18 U. S. 76, 5 L. Ed. 37, approved and followed in *State* vs. *Woodruff,* 1902, 68 N. J. L. 89, 52 A. 294).

Nor does it appear that these specific facts have ever been the subject of judicial determination in this State. Our courts have not been called upon to approve or reject the system. Not so in other jurisdictions.

An almost identical situation was considered by the Supreme Court of Pennsylvania in Commonwealth ex rel *Lynch* vs. *Ashe,* 320 Pa. 341; 182 A. 229, and the court declared that, in the absence of statutory authority, the practice of combining minima and maxima on consecutive sentences was unlawful and should be discontinued.

Thereafter, in 1937, Pennsylvania enacted 19 P. S. 897, which specifically provided for the aggregating of minima and maxima on consecutive sentences and the statute was judicially construed in Commonwealth ex rel *Lycett* vs. *Ashe,* 20 A. 2d. 881. The Superior Court said:

> "It is clear that the purpose of the Act of 1937 was to furnish the legislative authority for the computing together, for purposes of parole, of consecutive sentences of imprisonment, which it was pointed out in Com. ex rel. *Lynch* vs. *Ashe,* 320 Pa. 341, 344, 182 A. 229, was necessary before such a course could be applied by the prison authorities in relation to the parole of prisoners."

The court thereupon went on to declare that such an act is in no sense violative of the constitutional rights of the prisoner.

However, it cannot be retroactive in its application to sentences imposed prior to passage of the law. (Commonwealth ex rel *Stengel* vs. *Burke,* 43 A. 2d. 921, 158 Pa. Super. 87).

In view of the striking similarity between the procedure in this State and that rejected in Pennsylvania, we rely on the decisions of our sister State and must conclude that the practice now followed at the State Prison with respect to this matter is unlawful and must be discontinued.

We can also look to the Pennsylvania decisions for guidance as to the correct method to be used. In Com. ex rel *Lynch* vs. *Ashe, supra,* the court took great pains to illustrate its decision. It said that a prisoner serving two consecutive sentences was eligible for consideration for release on parole at the expiration of the minimum on the first sentence, and if parole was allowed, "he would then enter upon the minimum term of his second sentence, and while serving it would also be serving the maximum term of his first sentence, thus reducing to that extent the combined maximum terms of his consecutive sentences."

The court then cautioned that the period of time that the prisoners should serve on parole would be that represented by the time remaining unserved on the longest maximum, having due regard for the formula described in the court's decision above.

In addition to the Pennsylvania decisions there is other authority for treatment of consecutive sentences on an individual basis where one term is shortened by pardon or parole:

> "Where accused is sentenced to imprisonment for successive terms, and the first sentence is reversed or is shortened by a pardon, the second term begins to run from the time of the reversal of the first, or from the pardon of the convict." (16 C. J., par. 3238).

It would further appear from the provisions of Chapter 84, P. L. 1948, establishing the State Parole Board that there is a requirement in Section 17 thereof that sentences shall be subject to individual treatment, for this language is found:

> "It shall be the duty of the board to maintain a record of the dates upon which each prisoner shall first be eligible for parole consideration as provided in section 9 hereof. On or before such date, in the case of each prisoner, it shall further be the duty of the board to consider the case of each such prisoner for parole * * *."

If the Legislature had intended that there be a combining of consecutive sentences, for purposes of parole, it should have so stated, and it may very well now do so, prospectively, as did the State of Pennsylvania.

We now direct our attention to your second inquiry:

When a prisoner on parole is convicted of subsequent commission of crime, and in the absence of a specific direction in the most recent sentence of imprisonment, does the latest sentence commence to run on the date imposed and concurrently with the sentence upon which the prisoner was paroled or can the prisoner be required to serve the most recent sentence, and then be reverted to and be required to serve the balance of time remaining upon the sentence upon which he was paroled?

It is our opinion and we so advise you that in the situation you describe, the prisoner shall first serve the most recent sentence, which begins to run when imposed, and upon completion thereof, he shall be reverted to and be required to serve the

balance of time remaining on his prior sentence, computed from the date of his release thereon.

This for the reason that Chapter 84, P. L. 1948, Section 24, so provides as follows:

> "A prisoner, whose parole has been revoked because of conviction of crime committed while on parole, shall be required, unless sooner reparoled by the board, to serve the balance of time due on his sentence to be computed from the date of his original release on parole."

Our courts have not yet decided a case exactly in point but the Superior Court of Pennsylvania, in an identical situation respecting a similar statutory provision, in the case of Commonwealth ex rel *Barnes* vs. *Smith,* 156 Pa. Super. 231; 40 A. 2d 104, determined that a prisoner sentenced for a crime committed while on parole, shall serve that sentence and thereafter shall serve the remainder of the sentence upon which he was paroled. (See also *Wolkiewicz* vs. *Pa. Parole Board,* 45 A. 2d. 868; 158 Pa. Super. 607).

There are also numerous footnote cases in other jurisdictions in support of this legal proposition in 46 Corpus Juris 1209.

And as recently as a few days ago, in a case not yet reported (Com. ex rel *Tate vs. Pa. Parole Board*), the Supreme Court of Pennsylvania reaffirmed the principle that commission of crime by a prisoner on parole operates to stop the running of time on his prior sentence, requiring service thereof after completion of the most recent sentence. (See also *In re Wright,* 139 N. J. Eq. 515).

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

FEBRUARY 28, 1950.

HARRY S. WALSH, *Superintendent,*
Custodian, Capitol,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 19.

DEAR SIR:

Receipt is acknowledged of your inquiry of February 20th in which you ask who has the authority to grant requests for the use of the Assembly Chamber, Highway Board Room, and other State buildings for meetings of outside private organizations that have no official connection with the State government. By the provisions of the Revised Statutes 52:27B–64 this power is now vested in the Division of Purchase and Property and in the Director thereof. (See also Chapter 92, P. L. 1948.)