It is noted in connection with the first query that the Legislature, while it removed the immunity against fingerprinting, made the further stipulation that if the offender is found to be not guilty of the offense for which he was apprehended then it is the responsibility of the State Bureau of Identification, or any police department having possession of such fingerprints, to deliver them to the judge of the court having jurisdiction of the proceedings, upon demand, and they thereupon shall be destroyed. Even if not demanded by the court, it would seem to be the better plan for the agency having possession of said fingerprints, in case of a dismissal of the charges, to voluntarily surrender them to the court.

In respect to the second and third questions, you inquire as to whether persons over the age of 17 and under the age of 18, who are received in county jails, workhouses and penitentiaries and State penal and correctional institutions, may be fingerprinted when received therein. The answer is in the affirmative if the offenses for which these individuals were convicted and sentenced would have been indictable offenses were it not for the provisions of Title 9, Chapter 18, Revised Statutes. If, however, the individuals were received in these respective institutions for offenses not indictable then they may not be fingerprinted.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

MARCH 10, 1950.

HON. J. L. BROWN, *Acting Commissioner,*
Department of Labor and Industry,
State House,
Trenton 7, N. J.

FORMAL OPINION—1950. No. 23.

DEAR MR. BROWN:

This will acknowledge receipt of your letter of February 24, 1950, wherein you request an opinion interpreting Sec. 3, Chap. 38, P. L. 1946, which law pertains to labor disputes in public utilities. The law also provides for collective bargaining, enlarging the duties of the State Board of Mediation and providing for seizure and operating of public utilities by the State.

Section 3 is as follows:

"There is hereby included in the functions of the State Board of Mediation the following responsibility:

(A) The determination of who are the representatives of any given craft or class of employees of a utility; which employees of a utility constitute or are members of a given craft or class and entitled to vote in an election for choice of representatives of such craft or class for purposes of collective bargaining. It

shall be the duty of the State Board of Mediation to recognize as an appropriate bargaining unit, any craft, group, or class of employees of a utility, the majority of whom desire to be represented as such class, craft or group."

The facts in question are as follows:

There is presently pending the conduct of an election involving the Passaic Valley Water Commission and its employees in an appropriate class. Conflict in opinion has arisen as to the construction of the words "majority of whom" as the same appear in Sec. 3, Chap. 38, P. L. 1946, and as the same pertain to the election in question.

The questions presented are:

1. In elections conducted among employees of a utility for a choice of representation of a craft or class for the purpose of collective bargaining, shall the *majority voting in such election* be sufficient to determine the collective bargaining agency?

2. Shall the *majority of those eligible to vote* in such election be required, before the collective bargaining agency can be determined?

The interpretation of the phrase "majority of whom" has arisen in a great many cases. In 1905, the Supreme Court of this State in the case of *Murphy* vs. *City of Long Branch,* 61 A. 593, cited with approval the General Election Law (P. L. 1898, p. 319, Sec. 185.) This law is as follows:

"When by the provisions of any statute the decision of any question has been or shall be submitted to the decision of a majority of the legal voters of this State or of any subdivision thereof; or when the approval of a majority of the legal voters of this State or of any subdivision thereof is required in any statute before such statute takes effect or before any prescribed action or proceeding under such statute shall be valid and lawful, it is hereby declared that the intent and meaning in any such statute of the words, legal voters, are persons entitled to vote, and who do vote, at the time and in the manner prescribed in and by such statute upon the question or proposition submitted; and that for the purpose of ascertaining what is a majority of the legal voters of any district defined in such statute, upon the proposition herein directed to be submitted, the persons who do not vote at such election shall not be estimated, counted or considered for the purpose of ascertaining what is a majority of the legal voters in such district, with respect to the proposition submitted; * * *."

The New Jersey Supreme Court held that "a majority of the voters voting at such election" required for approval of a resolution for a bond issue means only a majority of the persons voting on such proposition and not a majority of the persons voting at such election on that and other questions. Only the voters who actually vote upon the proposition submitted are to be counted in determining the result on the proposition.

The same interpretation was followed in *Louisville & N. R. Co.* vs. *Davidson County Court,* 33 Tenn. 637. The court there held:

"A 'majority of the voters' does not mean a majority of the voters of the county, since what is a majority of the voters in the county at any given time could be determined only by the ballots cast, but the phrase must be construed to mean a majority of the voters in the county who see fit to exercise their privilege of voting."

In *Holcomb vs. Davis,* 56 Ill. 413, the court held a majority of the legal voters of the county to be construed as meaning a majority of the legal voters voting on the proposition.

The same principle was followed in *Harrison* vs. *Barksdale,* 127 Va. 180; *Bradshaw* vs. *Marmion,* 188 S. W. 973; *Williams* vs. *City of Norman,* 85 Okla. 230; *Taylor* vs. *McFadden,* 84 Iowa 262; *People* vs. *Warfield,* 20 Ill. 159, and cases in many other jurisdictions.

A reading of the act hereinbefore referred to, reveals that the Legislature followed the phrase, "the majority of whom," with the words "desire to be represented," and it would seem that the only way one could officially express his desire to be represented would be at an election held for that purpose.

It is my opinion that based on all of the foregoing the answer must be that the "majority of whom desire to be represented can only mean the majority of those members of a given class or craft who exercise their vote at the election and not a majority of all the members of such group who are eligible to vote.

Nothing in this opinion contained shall be construed as indicating a right in the Passaic Valley Water Commission to enter into any bargaining agreement with a representative of the employees of said Commission.

I trust that the above answers the questions contained in your letter.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: OSIE M. SILBER,
Deputy Attorney General.

MARCH 13, 1950.

HONORABLE C. A. GOUGH, *Commissioner,*
Department of Banking and Insurance,
State House Annex,
Trenton 7, New Jersey.

FORMAL OPINION—1950. No. 24.

DEAR COMMISSIONER GOUGH:

We are in receipt of your letter of March 2, 1950, wherein you request an opinion relative to the scope of insurance permitted by Section 17:17–1(e) of the Revised Statutes of New Jersey and that a previous opinion on the subject, rendered by the Department of Law under date of August 30, 1946, be re-examined in light of developments since that date.

The statute in question reads as follows:

> "Against loss or damage resulting from accident to or injury suffered by any person for which loss or damage the insured is liable, including, if the insured is a State or a political subdivision of a State or a municipal corporate instrumentality of one or more States, loss or damage resulting from accident to or injury suffered by any person for which loss or damage the insured would be liable if it were a private corporation."

At this point it is pertinent to observe that the aforesaid paragraph was amended in 1948 to read in its present form. On August 30, 1946, the date of the previous opinion, it read as follows: