

"that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose." In 1949, however, the second proviso ("that any item for capital improvement may be transferred to any other item of capital improvement on the approval of the State Treasurer") made its appearance in the section for the first time. In our view the term "capital improvement" was used in this proviso as a synonym for the term "permanent improvement" in the first proviso, and that the proviso itself was added as a precaution against the misinterpretation that funds appropriated for permanent improvements could not be transferred to augment an appropriation for a like purpose.

The construction we have herein placed upon the "flexibility section" is not to be understood to permit the increase of an item in the instance where the Legislature has expressed itself to the effect that the appropriation is not to exceed the sum named. Such an expression is, we think, clearly indicative of a legislative intent to keep expenditures for such item within the amount specified; and we cannot conceive that the Legislature, having made an appropriation in such rigid terms, intended by the "flexibility section" to undo the rigidity so imposed.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: DOMINIC A. CAVICCHIA,  
*Deputy Attorney General.*

JULY 7, 1950.

HONORABLE SAMUEL L. BODINE,  
*President of the Senate,*  
Flemington, New Jersey.

FORMAL OPINION—1950. No. 43.

DEAR MR. PRESIDENT:

Receipt is acknowledged of your letter of July sixth, in which you state that "there is a possibility that when the Constitutional Session of the Legislature convenes on Saturday, July 8, that there will not be a quorum present either in the Senate or in the House of Assembly" and request an opinion as to "whether it is proper procedure to provide for a recess from day to day until July 17th when a quorum will probably be available."

It is our opinion, and we advise you, that the members of the Legislature have a constitutional duty to assemble on July eighth, which is the forty-fifth day (Sundays excepted) after sine die adjournment of the regular session, in special session "for the sole purpose of acting . . . upon bills returned by the Governor;" but that, in the event a quorum of each house (which is a majority of all the members thereof) is not present, those present may adjourn from day to day until such time as a quorum is present.

Article V, Section I, paragraph 14 (b), of the Constitution of 1947 provides, in part:

(b) If on the tenth day the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall

become a law, notwithstanding the failure of the Governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor.

And Article IV, Section IV, paragraph 2, prescribes in part that a majority of all the members of each house

shall constitute a quorum to do business, but a smaller number may adjourn from day to day . . .

In your letter you ask specifically: "Can each house properly recess from July 8 each day until July 17 without placing in jeopardy the legality of any action that may be taken on July 17?" In view of the constitutional provision, above recited, that a smaller number than a quorum may adjourn from day to day, the members assembled (less than a quorum) must adjourn daily until a quorum is present. In other words, adjournment cannot be taken to a day other than the succeeding day. However, Sunday is not to be deemed a day for this purpose, and adjournment on Saturday will be until the Monday next succeeding.

It is further our opinion that the Legislature will be duly convened for the session only when a majority of the members of both houses have assembled for the first meeting thereof. In other words, one house, a quorum being present, cannot proceed to the business of the session unless a quorum is also present in the other house.

Concluding, we point out that the absence of a quorum on July 8th will in no way affect the return of any bill vetoed by the Governor, provided he returns the same "at or before noon" of that day; and we advise that, if a quorum be not present, due record of the return of all vetoed bills be made in the journal of the proper house for that day, but we caution that the veto messages of the Governor are not to be opened and spread upon the journal until such time as, a quorum being present, the house may proceed to do business.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

JUNE 26, 1950.

HON. FRED V. FERBER, *Director,*  
*Division of Purchase and Property,*  
*Department of the Treasury,*  
State House,  
Trenton, New Jersey.

FORMAL OPINION—1950. No. 44.

MY DEAR MR. FERBER:

I have your letter on the 20th instant requesting my opinion whether the operation of the cafeteria in the new State Highway building is a function of your department or a function of the State Highway Department. This necessitated an examination