JULY 24, 1950.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
1060 Broad Street,
Newark, New Jersey.

FORMAL OPINION—1950. No. 60.

GENTLEMEN:

You have requested the opinion of this Office with reference to the following situation involving Trenton Transit, the owners and operators of an auto bus transportation system in Trenton, New Jersey.

On September 22, 1933, the Court of Chancery of New Jersey appointed Rankin Johnson and Edward W. Lee, as Receivers of Trenton Transit Company, and directed them to continue the operation of the transit business. On December 9, 1941, the same persons were appointed as Receivers of Trenton Street Railway Company, Consolidated. Both companies, while in receivership were merged. Accordingly, the receiverships were consolidated by order of the Court of Chancery, and the Receivers were ordered to continue the business of the two corporations as Receivers of "Trenton Transit," the name of the continuing company under the merger. Mr. Lee having died in 1942, the Court of Chancery, by an order dated February 10, 1942, ordered Rankin Johnson to continue, until further order of the Court, the business under the designation "Receiver of Trenton Transit." Application recently having been made to terminate the receivership, the Superior Court, Chancery Division, on May 25, 1950, ordered the Receiver to "convey, assign, transfer and set over" to Trenton Transit, as of the close of business on May 31, 1950, all real and personal property, including franchises and monies, held by him as Receiver, and to file his final accounting as Receiver.

On the date of said order of the Chancery Division, the auto bus equipment owned and operated by the Company, was licensed for 1950, by the Commissioner of Motor Vehicles of New Jersey, in the name of Rankin Johnson, Receiver, Trenton Transit.

Under date of May 31, 1950, counsel for the Receiver, in a communication addresed to Mr. R. Earle Leonard, Motor Vehicle Department, Trenton, N. J., requested a ruling as to whether, in view of the terms of the aforementioned Court order of May 25, 1950, it was necessary for the Receiver to transfer to the Company title to the buses, and also whether the Company now should obtain new motor registration plates and licenses in the name of Trenton Transit.

I am informed by Hon. William Dearden, Deputy Commissioner of Motor Vehicles, that after consulting with the Deputy Attorney General assigned to the Motor Vehicle Department, he verbally advised the Company that a transfer of title to the motor equipment and new licenses were not necessary under the circumstances indicated. Mr. Dearden further advised me that he had reasoned that the 1950 plates had been issued in reality to a corporation, viz., Trenton Transit, and inasmuch as that Company would now continue its corporate existence, the only significant change being the removal of the Receiver, that no change in ownership had taken place, and accordingly new licenses were not required. I also was informed by Mr. Dearden that his Department, in accordance with his opinion as stated, merely issued new certificates of ownership dated June 1, 1950, covering the auto bus equipment of the Company, listing Trenton Transit, as the owner of said equipment.

Your Board now inquires whether "certificates of compliance" heretofore issued by your Board to Rankin Johnson, Receiver, Trenton Transit, certifying that specified motor equipment of the Company, complies with the Board's requirements, may be amended without re-inspection and fee, or whether, re-inspection of the equipment should now be made and new certificates of compliance issued on payment by the Company of the statutory fee. These certificates of compliance were issued by your Board pursuant to the requirements of R. S. 39:3–4.1 and were a condition precedent to the issuance of motor vehicle licenses.

The answer to your question, as well as that presented to the Commissioner of Motor Vehicles, depends upon whether, a real change in ownership of the motor equipment took place under the terms of the order of the Chancery Division, dated May 25, 1950, referred to above.

It is my opinion, and I so advise, that under the specific circumstances herein presented and discussed, such change of ownership of the motor equipment did not take place as to require the Commissioner of Motor Vehicles to issue new registration plates for the operation of its auto buses, nor is your Board required to issue new certificates of compliance, and to collect the fee therefor, assuming, of course, that the motor equipment does comply with your rules, regulations and specifications.

The reasons for the foregoing conclusion may be found first in the provisions of the pertinent statutes. R. S. 14:14-9 provides that "all the real and personal property of a corporation for which a receiver shall be appointed . . . and all its franchises, rights, privileges, credits and effects shall, upon the appointment of a receiver or trustee . . . forthwith vest in him or them, and the corporation shall be divested of the title thereto." R. S. 14:14–10 provides that the Court subsequently may "direct the receiver to reconvey to the corporation all of its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed." This section further provides that "in every case in which the Court of Chancery shall not direct such re-conveyance, it may, in its discretion make a decree dissolving the corporation and declaring its charter forfeited and void."

It will be recalled in the matter before us, that the Court of Chancery by its order of February 10, 1942 had directed Mr. Rankin Johnson to continue the business of Trenton Transit, as Receiver under the designation "Receiver of Trenton Transit," and that the Chancery Division of our Superior Court, by its order of May 25, 1950 had directed the Receiver to "convey, assign, transfer and set over" to Trenton Transit all real and personal property, thus permitting the *same corporation,* viz., Trenton Transit to continue in its business under the direction of its stockholders, rather than under the direction and supervision of a receiver. The effect of the order of May 25, 1950, was not, in my opinion, an order directing a transfer of property to a *new* owner but merely constituted an order complying with the specific terms of R. S. 14:14-10. In no event, however, had liquidation of Trenton Transit ever taken place. Liquidation does not necessarily follow a receivership. See *Garr* vs. *Kelly-Springfield Tire Co.,* 117 N. J. Eq. at 365 (1934). The Court could have ordered this result. A decree of dissolution "actually killing the corporation may be entered at any time after the appointment of a receiver." See *Michel* vs. *Necher,* 90 N. J. Eq. at 175 (1918). No such action was taken by the court with reference to Trenton Transit, but instead it will be noted that the Court took the Company out of receivership, permitting the company to continue in its business as heretofore, under the direction and control of its owners.

In other words the intent of the provisions of R. S. 14:4-9 was to place title to assets of the then insolvent corporation in the receiver, an independent entity created by the statute, in order that he might preserve these assets in the best interests of all concerned. See *Shachat* vs. *Standard Auto Supply Co.* 106 N. J. Eq. at 110 (1930). As has been said heretofore, the order of the Chancery Division terminating the receivership, and directing the reconveyance of the assets of the corporation to it, merely restored control of those assets to the original owner, namely the stockholders of the original company. A change of ownership did not take place, as the corporation had never been dissolved.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: DANIEL DE BRIER,
Deputy Attorney General

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SEPTEMBER 15, 1950.

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

FORMAL OPINION—1950. No. 61.

DEAR COMMISSIONER BATES:

This acknowledges your inquiry of September 15th, relating to the improvement and beautification of the burial plot for deceased indigent prisoners from the State Prison. You indicate that the Prison authorities are desirous of utilizing monies from the Inmates' Welfare Fund for the improvement of this plot and you wish to be informed whether this would be a proper expenditure from the fund as contempleted by the statute.

It is our opinion and we advise you that such an expenditure from the Prison Inmates' Welfare Fund is not within the legislative intent as expressed in the statute and, therefore, cannot be permitted.

The Welfare Fund derives from interest which accumulates on monies of the inmate population maintained in a general trust fund. The manner in which these monies shall be deposited and maintained is provided for in R. S. 30:4-67.1.

The most significant language in the cited section of the law and which, of necessity, controls this situation is as follows:

> "Any interest paid by a bank or trust company wherein said fund is maintained may be utilized by the board of managers of such institution for the use, benefit and general welfare of the inmate population as a whole."

Admittedly, this burial plot is utilized for the interment of indigent prisoners who die while in confinement. Of necessity, the number of prisoners buried therein