NOVEMBER 16, 1950.

HON. ANDERSON FOWLER:
Peapack, New Jersey.

FORMAL OPINION—1950. No. 72.

DEAR ASSEMBLYMAN:

Receipt is acknowledged of your letter of November third in which you direct our attention to the passage, at the 1949 session of the Legislature, of Assembly Concurrent Resolution No. 17 (which in reality is an application to Congress "to call a convention for the sole purpose of proposing amendments to the Constitution which are appropriate to authorize the United States to negotiate with other nations, subject to later ratification, a constitution of a World Federal Government, open to all nations, with limited powers adequate to assure peace, or amendments to the Constitution which are appropriate to ratify any world constitution which is presented to the United States by the United Nations, by a world constitutional convention or otherwise").

The application represented by this concurrent resolution was made in accordance with Article V of the Constitution of the United States, which provides that

> The Congress, whenever two-thirds of both Houses shall deem it necesary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; . . . (U. S. C. A. Const.).

It is to be noted that there are two distinct stages in the process of amendment thus specified. One is the proposal and the other is the ratification; and just as there are two methods of proposal, so are there two methods of ratification.

In your letter you state that the concurrent resolution has, since its passage, "become a controversial issue and misunderstanding exists in many people's minds regarding the implications of the measure;" and "in order to assure a fair appraisal" thereof, you request a clarification of what you denominate as three points.

Two of the points are specific queries which permit of categorical answers. The third point is really a discussion in which you evince concern (in relation to which you desire to be advised) as to whether the people of New Jersey will have ample opportunity to express approval or disapproval of the participation of the United States in a limited world government as set forth in the said concurrent resolution (A. C. R. No. 17).

To the two specific queries we shall give categorical answers and such further clarification as, under the circumstances, it is possible to set forth. We shall then proceed to a clarification of your third point.

Your first specific query is: "Has the passage of A. C. R. No. 17 committed the people of the State of New Jersey to participation in a world government?"

Our answer to this query is "no."

Inasmuch as the convention toward which the passage of the concurrent resolution was directed has not as yet been called, there has been before the people no proposed amendment. Therefore, there has been no action by the Legislature which has

committed the people of New Jersey to participation in a world government. When such a convention is called (which will be only in the event of a similar petition on the part of the Legislatures of two-thirds of the several States), it will be expressly for the purpose of *proposing* amendments to that end. And only the action *ratifying* any such proposed amendment can be binding upon the people. (We shall treat of this further when we come to your third point).

In this connection, we call to your attention the case of *Dillon* vs. *Gloss,* 256 U. S. 368, 41 S. Ct. 510, 65 L. Ed. 994, in which the United States Supreme Court (1921), speaking through Mr. Justice Van Derventer, said:

> "We do not find anything in the Article [U. S. Const., Art. V] which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests to the contrary. First, the proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson [Constitutional Conventions, 4th ed., sec. 585] 'that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may be fairly supposed to exist, it ought to be regarded as waived . . .'"

The court concluded that the ratification must be within some "reasonable time after the proposal." While the deliverance in that case related to an amendment proposed by Congress itself, it has bearing here, we think, because the court expressed its opinion to be that the fixing of a period of time is "a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification." But see the later case of *Coleman* vs. *Miller,* 307 U. S. 972, 59 S. Ct. 972, 83 L. Ed. 1385, where the United States Supreme Court (1939), speaking through Mr. Chief Justice Hughes and referring to its opinion in *Dillon* vs. *Gloss,* said:

> ". . . But it does not follow that, whenever Congress has not exercised that power, the Court should take upon itself the responsibility of deciding what constitutes a reasonable time and determine accordingly the validity of ratifications. . . .
>
> "Where are to be found the criteria for such a judicial determination? . . . In short, the question of a reasonable time in many cases would involve . . . an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice and as to which it would be an extravagant extension of judicial authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political

departments of the Government. The questions they involve are essentially political and not justiciable. . . ."

Your second query is: "Has the passage of A. C. R. No. 17 committed the members of the State Legislature, who voted for it, to acceptance of any constitutional amendment that may result from their petition to the Congress of the United States as embodied in A. C. R. No. 17?"

Our answer to this query is also "no."

Acceptance will involve a new question. We deem it unnecessary to elaborate upon this one, except to say that the question of acceptance would not come before the Legislature unless action by the Legislatures of the several States (rather than by conventions therein) were the mode of ratification prescribed by Congress.

We proceed now to the third point set forth in your letter, i.e., your discussion in which you evince concern as to whether the people of New Jersey will have ample opportunity to express approval or disapproval of the participation of the United States in a limited world government as set forth in the concurrent resolution.

The convention mode of proposing amendments has never been successfully invoked. Should the current application advance to that stage where Congress is to call a convention for proposing amendments accordingly, it is to be expected that the people of the several States will have a voice, either directly or through their representatives, in the choice of delegates thereto.

The procedure for ratification of any amendment proposed by the convention (if one should eventuate) would be no different from the procedure for ratification of a proposed amendment originating in Congress. One or the other constitutional mode of ratification would have to be prescribed by Congress. When proposed in either mode amendments to be effective must be ratified by the Legislatures, or by conventions, in three-fourths of the States, "as the one or the other mode of ratification may be proposed by Congress." See *Dillon* vs. *Gloss, supra,* where the court further declared: "Thus the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several States and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the States shall be taken as a decisive expression of the people's will and be binding on all."

If a proposed amendment should materialize (and this is applicable whether the amendment originates either in convention or in Congress) and the prescription for ratification be by conventions in the states, rather than by the Legislatures thereof, it would doubtless devolve upon each State, as in the case of the twenty-first amendment, to legislate for the calling of its own convention. (See P. L. 1933, c. 73, which was passed in New Jersey to bring about a convention for the ratification of the twenty-first amendment and in which provision was made for delegates-at-large as well as for delegates on a county basis). As one court put it, the views of the candidates, for election to the convention, would be known in advance, so that the final action of the convention would be truly representative of the will of the people. See *State ex rel. Donnelly* vs. *Meyers, Secretary of State* (Ohio), 186 N. E. 918.

There remains only to say that should the prescription of Congress be ratification by the Legislatures of the several States, it is to be expected that the members of the Legislature would vote upon the question in a manner that would reflect the then prevailing sentiment of their constituents thereon.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

OCTOBER 31, 1950.

COL. CHARLES H. SCHOEFFEL, *Superintendent,*
New Jersey State Police,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 73.

DEAR COLONEL SCHOEFFEL:

Your letter received, with request for opinion as to whether police officers or prosecutors have the right to close fatal automobile accident investigations without first making complaint before a local magistrate or having the matter presented to the grand jury.

Your inquiry is directed particularly to a fatal automobile accident case in Middlesex County, where your department has conducted the investigation and the prosecutor has advised that no action whatever would be taken against the operator, if his investigation disclosed that the operator was not at fault.

The statute concerning killing by automobile is set forth as follows in R. S. 2:138–9:

> "Any person who shall cause the death of another by driving any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of a misdemeanor. * * *."

Under R. S. 2:182–4 the criminal business of the State shall be prosecuted exclusively by the prosecutor of the pleas except in counties where, for the time being, there is no prosecutor or where the prosecutor desires the aid of the attorney general or otherwise as provided by law.

Under R. S. 2:182–5 each prosecutor of the pleas will be vested with the same powers and subject to the same penalties within his county as the attorney general shall by law be vested with or subject to, and he shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law.

Under the new rules adopted by the court, where it appears from the complaint that there has been probable cause to believe that an offense has been committed a warrant for the arrest of the offender shall issue to any officer authorized by law to