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

execute it. It is set forth that the warrant shall be signed by the magistrate and the defendant taken before the magistrate named in the warrant for hearing. In case of violation of 2:138-9 it is the duty of an officer having knowledge of an offense to sign the complaint and have the warrant issued and take the offender before the magistrate in the community in which the offense was committed. It is the duty of the magistrate to hear the evidence and, if a prima facie case has been made out against the defendant, he shall be committed to the county jail where the judge of the court may set bail for such offender.

In all criminal cases, the prosecutor must use all reasonable and lawful diligence for the arrest and indictment of all persons and where the arresting officer has made a prima facie case, it is the duty of the prosecutor to submit the case to the grand jury, who shall pass upon the question of whether or not there is sufficient evidence to find an indictment and bring the defendant to trial.

I trust this answers your inquiry.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: ROBERT PEACOCK,
Deputy Attorney General.

RP:N

NOVEMBER 14, 1950.

HON. J. LINDSAY DEVALLIERE,
Director, Division of Budget & Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 74.

DEAR SIR:

I am replying to your communication of October 20, 1950, in which you advise me that for a number of years the State has been making regular yearly appropriations for municipal aid and in addition has been making supplemental appropriations for payment of deficiencies, and that when the Legislature passed the annual appropriation act for the fiscal year beginning July 1, 1950, the sum of $3,600,000 was appropriated for subsidies to municipalities for relief costs, and that a supplemental appropriation act contained an appropriation for the fiscal year 1949-50 of $2,202,000. These appropriations will be found in the session laws of 1950, the first on page 791, and the second on page 109.

It now appears from your communication that subsequent to the supplemental appropriation of $2,202,000 it was ascertained that the appropriation would be insufficient by approximately $550,000. The question which you have propounded for my consideration is whether you may permit the use of funds appropriated for the fiscal year 1950-51 to pay deficiencies incurred in the fiscal year 1949-50.

The answer is positively "no."