MAY 21, 1952.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
520 East State Street,
Trenton, New Jersey.

RE FORMAL OPINION—1952. No. 9.

DEAR COMMISSIONER ERDMAN:

This is to answer your recent memorandum wherein you request an opinion as to the legality of giving to veteran tenant occupants of units in Veterans' Emergency Housing Projects the first option to purchase such units.

Pursuant to the Veterans' Emergency Housing Law (c. 323, P. L. 1946, as amended and supplemented, R. S. 55:14G–1, et seq.) you, as Administrator of the Public Housing and Development Authority constructed or caused to be constructed throughout the State various Veterans' Emergency Housing Projects. There are three general types of projects—temporary, semi-permanent and permanent. Such projects are made up of detached dwellings; semi-detached (duplex units); and multi-family consisting of 3, 4, or 6-family houses or apartment buildings, both conventional and garden. All of these projects, with the exception of private conversions with which we are not here concerned, were constructed and are now being managed, operated and maintained pursuant to contracts between you as Administrator and the municipality within which same were erected. These contracts generally provide for (a) a lease to the Administrator for a term of five years (commencing from initial occupancy after completion of construction); (b) that the site be supplied by the municipality (in all cases except for a few instances involving temporary projects the fee simple title to the site is owned by the municipality—where it is not, the municipality has obtained a lease from the owner and pays the rental—the one exception is the Weequahic Park Project in Newark (a temporary project), where the lease is to the Administrator); (c) that the Administrator provide a certain sum of money for the construction of the project; (d) that the municipality undertake the necessary site preparation and in some instances in connection with temporary projects, and almost all instances involving permanent projects, it supply additional funds necessary for construction. Such sums have been obtained by the municipality through (1) bond issue; (2) mortgage, and (3) appropriated funds; (e) that the Administrator appoint the municipality as agent to manage, operate and maintain the project pursuant to the rules and regulations of the Administrator; (f) that the managing agent collect the rents and after paying out costs of management and operation pay (1) a service charge to the municipality in lieu of taxes, (2) distribute the net rents to the State and the municipality in proportion to the investment of each—the municipality's investment includes moneys expended by it for site preparation and construction, if any—however, generally in permanent projects its contribution toward construction is not included since if it was raised by bond issue or mortgage, payments required thereon are included within the expense of management and operation if the rental income is sufficient to cover such charges—if not, the municipality pays the deficit remaining with the understanding it will be reimbursed as a priority payment out of the gross proceeds of sale of the project; and (g) that on termination of the lease the Administrator will (1) as to temporary projects remove the units from the site, level the foundation and rough-grade the site and dispose of

the units—the municipality not having any interest therein since such units under the contract are deemed personalty and the property of the Administrator—if the municipality requests that the unit and site be sold together, the Administrator will proceed with such sale and the proceeds of sale will be divided between the State and the municipality pursuant to an agreement between them, (2) as to permanent projects, sell the project in accordance with arrangements mutually agreed upon between the Administrator and the municipality to the end that the best interests of each will be protected; the gross proceeds of such sale shall be applied (I) to expenses of sale, (II) to retire any mortgage or bond issue of the municipality in connection with its contribution to construction of the project and to reimburse the municipality for any moneys it has paid on such bond issue or mortgage because there were not sufficient rents to do so, and (III) the net balance shall be divided between the State and the municipality in accordance with the investment of each in the project under the same formula as in distribution of net rents except that the municipality's investment shall include the appraised value of the site.

Some few contracts contain an option to the municipality enabling it to purchase the State's interest for a specific sum. We are not concerned with this here. In all cases the elements of the State's and municipality's investment have been agreed upon after certification by the municipality and review by the State.

Many of these leases are about to expire and all will expire during the period 1952-1956 despite the fact that some have and will be extended under the authority of chapter 20, P. L. 1951 (R. S. 55:14G–12); however, as a matter of policy, permanent housing projects will not be extended by the Administrator.

The temporary projects in the main consist of converted army barracks and prefabricated units, some with and some without cellars. Some of the permanent units are duplex, either one- or two-story buildings. All of these units are, under the rules and regulations of the Administrator, now occupied by World War II veterans and their families having a minimum monthly income indicating financial ability to pay the rent and utility charges—there are no maximum income limitations. Throughout the State there are 4,016 temporary units and 3,217 municipally-owned permanent units, including municipally-owned conversions.

The policy of the State as set by you as Administrator and approved by the Veterans' Services Council in sales of the projects and buildings thereon is (1) to obtain an independent appraisal of market value; (2) to offer it for sale in the first instance to the veteran occupant at the appraised figure; and if the veteran desires to buy at such a figure, to sell the building or building and site to him at a private sale; and (3) if the veteran occupant does not desire to purchase the building, to sell it at public sale. No definite policy has as yet been set regarding sales to limited-dividend housing corporations, co-operatives or public agencies, including municipalities.

Under the law these projects are now tax exempt; however, on sale of such projects, such tax exemption terminates.

There are two questions involved:

> (1) Has the Administrator the right under existing law to sell buildings in a Veterans' Emergency Housing Project to the veteran tenant occupant at private sale?
>
> (2) If such a sale involves the necessity of a conveyance of real property by the municipality owning the site, does such municipality have the power under existing law to make such a conveyance to a veteran tenant occupant where it involves a private sale and preference to such veteran?

The answer to both questions is in the affirmative providing such sales are approved in the first instance by the Director of the Division of Purchase and Property in the Department of the Treasury. Such sales are permissible under the contract and existing law. They will, of course, be made pursuant to arrangements mutually agreed upon between you as Administrator and the municipality involved.

Section 12 of the Veterans' Emergency Housing Act (c. 323, P. L. 1946, as amended, sec. 1, c. 186, P. L. 1949, sec. 1, c. 20, P. L. 1951; R. S. 55:14G–12) provides that whenever any emergency housing project is available for occupancy in whole or in part, the Administrator shall, subject to regulations approved by the Veterans' Services Council, have certain powers during the duration of the emergency. This section defines the emergency to be for a period of five years from the date the housing is available for occupancy and that such emergency shall be deemed to continue for an additional two-year period in any municipality where the governing body of such municipality shall, prior to the expiration of the five-year period, by resolution find that the need for such housing continues to exist in such municipality and files a certified copy of the resolution with the Administrator.

Subsections (d) and (e) of section 12 sets forth the powers of the Administrator in connection with sale. Subsection (d) provides that the Administrator may transfer, set over, grant and convey such property to any public corporation, municipality or other public agency or private person, firm or corporation including the person, persons, firm or corporation from whom or which such property was acquired, by public or private sale or by lease, at such rentals and with such preferences as to occupancy and upon such terms and conditions as shall be for the best interests of the public. This subsection authorizes a municipality, public corporation or other public agency to purchase such property from the Administrator, subject to the approval of the State House Commission. Subsection (e) authorizes the Administrator to provide in any agreement or agreements heretofore or hereafter made that any emergency housing be disposed of by sale at any time, subject to the approval of the Director of the Division of Purchase and Property and that such sale may be public or private and may be conducted by him, subject to the approval of said director, on a lump sum or negotiated contract basis. It also provides that, if any sale is made during the period of the emergency, the housing shall, during the period of said emergency, continue to be operated under the act and the regulations.

Under these provisions you, as Administrator, have the right to sell projects or any units therein to private persons by public or private sale, subject to the approval of the Director of Purchase and Property, and in connection with such sale you have the right to convey and sell such property with preferences as to occupancy and under such terms and conditions as may be for the best interest of the public. Any sale to a public agency, however, would be subject to the approval of the State House Commission.

Section 17 of the Veterans' Emergency Housing Act (c. 323, P. L. 1946, as amended, sec. 2, c. 52, P. L. 1947; R. S. 55:14G–17) states, among other things, that any municipality, by resolution of its governing body, is hereby authorized and empowered to enter into any contract which the Administrator is authorized by the act to execute, and any such municipality is given all powers necessary, convenient or desirable in order to carry out and perform any and all provisions of any such contract.

Section 25 of the Veterans' Emergency Housing Act (c. 323, P. L. 1946; R. S. 55:14G–25) states that the powers enumerated in the act shall be interpreted broadly to effectuate the purposes thereof and shall not be construed as a limitation of powers.

From the above it would appear that a municipality would have the power to enter into a contract with you as Administrator in connection with the sale of these projects or units therein and to make conveyance of any property necessary to effectuate the sale; however, in view of the fact that such a conveyance involves real property, it may be well to proceed under the law covering sale of municipally owned real property. Under this law (sec. 1, c. 160, P. L. 1944, as amended sec. 1, c. 106, P. L. 1946, sec. 1, c. 417, P. L. 1947, sec. 1, c. 245, P. L. 1948; R. S. 40:60–26) the governing body of any municipality may sell any lands or buildings or any right or interest therein not needed for public use. Subsection (d) thereof provides that the governing body may sell any such properties at public or private sale upon such terms and conditions as may be authorized by resolution of said governing body with the approval in writing of the Director of the Division of Local Government in the State Department of Taxation and Finance, except that in the case of a sale to a veteran of World War II the approval of said director shall not be required.

Under subsection (d) of this act a municipality may be authorized to convey the real property involved on the sale of any unit of a Veterans' Emergency Housing Project to a veteran tenant occupant under the policy set by you as Administrator. Such a sale would have to be authorized by a resolution of its governing body and comply with the other requirements of that act; however, these requirements would not prohibit a private sale to such veteran.

Subsection (d) of that act was reviewed by our Supreme Court in the recent case of *Jamouneau* vs. *Local Govt. Bd., et al.*, 6 N. J. (Sup. Ct., 1951) 281. That case involved the private sale of the interest of the City of Newark in certain property and did not involve World War II veterans. The sale was not to a veteran. The court held that the provision requiring the approval of the Director of the Division of Local Government was unconstitutional in that it was an unlawful delegation of legislative authority since no standards were set by which said director was to exercise his power.

The fact that this provision was held unconstitutional does not invalidate the other parts of that subsection relating to sales to World War II veterans. It is a fundamental principle that a statute may be constitutional in one part and unconstitutional in another and that if the invalid part is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected. *Hudspeth* vs. *Swayze*, 85 N. J. L. 592; *Riccio* vs. *Hoboken*, 69 N. J. L. 649; 11 Am. Jur-Const. Law, sec. 152, p. 834.

There are several tests as to whether such portions of an act are severable; one is, if the invalid parts are eliminated, whether the remaining provisions are operative and sufficient to accomplish their purpose; another is the intention of the Legislature and whether one part of the act would have been passed without the other. With these tests in mind and from a reading of subsection (d) of the act, there would appear to be no question that the part which has been held unconstitutional by the Supreme Court is severable from the part relating to private sales to World War II veterans.

It is, therefore, my opinion that under subsection (d) of that act, the governing body of the municipality may sell properties at a private sale to a veteran of World War II and that such sale may be authorized by resolution of the governing body. It is my opinion that the policy set by you as Administrator as approved by the Veterans' Services Council providing the option of first refusal in the sale of units in Veterans' Emergency Housing Projects to veterans of World War II, who are tenant occupants of these units, is authorized under existing law and that both you

and the municipality would be authorized to consummate such sale under the provisions of the acts referred to herein.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: CHESTER K. LIGHAM,
Deputy Attorney General.

JUNE 16, 1952.

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

FORMAL OPINION—1952. No. 10.

DEAR SIR:

I have your letter of June 3, 1952, wherein you ask this office to render a legal opinion on the question as to whether or not cigarettes sold at the State Prison and purchased by the prisoners are subject to the three-cent stamp tax.

The answer to your inquiry is that all sales at the prison of cigarettes are subject to the three-cent stamp tax.

Section 303 of the Cigarette Tax Act (R. S. 54:40A–10) gives an exemption only on cigarettes which New Jersey is prohibited from taxing under the Federal Constitution or the statutes of the United States. This would encompass sales of unstamped cigarettes to the United States Government or the sale of cigarettes in interstate commerce.

There is nothing in the present law which provides for an exemption of the three-cent per package tax on sales to State institutions.

Your attention is further directed to section 302 of the Cigarette Tax Act (R. S. 54:40A–9), which provides:

> "The taxes imposed by this act are hereby levied upon any sales of cigarettes made to the State Government or any department, institution or agency thereof, and to the political subdivisions of this State, and their departments, institutions, and agencies."

When the State of New Jersey purchases cigarettes and distributes them to its institutions, departments or agencies the three-cent stamp tax must be paid before a resale of the cigarettes is permitted to be made.

The tax in question is levied specifically upon the sale of cigarettes. Therefore, these cigarettes being sold by the State Government are not exempt from the tax even though sales are made within the confines of the State Prison.

We are, therefore, of the opinion that all sales of cigarettes in the State Prison must be subject to the cigarette stamp tax.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: BENJAMIN M. TAUB,
Deputy Attorney General.

JUNE 26, 1952.

HONORABLE PERCY A. MILLER, JR., *Commissioner,*
Department of Labor,
State House,
Trenton, New Jersey.

FORMAL OPINION—1952. No. 11.

DEAR COMMISSIONER MILLER:

I am in receipt of your recent letter requesting an opinion on the following question:

What position should the New Jersey State Board of Mediation take in response to requests for service in cases where labor disputes arise between political subdivisions of government and employees in the State of New Jersey?

We are of the opinion that the board does not have the authority to entertain such requests.

The statutory authority of the board (N. J. S. A. 34:13A-6) to effect the adjustment and settlement of labor disputes must necessarily be limited to those disputes which can legally be made the subject of negotiations between the employer and employee.

It has been recognized for many years that there is a legal difference between the rights of persons in private employment and of those engaged in public employment.

That difference was discussed at length in an opinion given by former Attorney General David T. Wilentz to the New Jersey State Board of Mediation under date of January 12, 1944.

In that opinion the Attorney General said:

> "The departments of the State Government derive their sole power from the statutes. Counties, municipalities and school districts are creatures of the Legislature and possess only such rights and powers as have been granted in express terms, or as arise by necessary or fair implication, or are incident to, powers expressly conferred and as are essential and indispensable to declared objects and purposes of municipalities."

He further states:

> "It is not a question whether the law prohibits a bargaining agreement of the kind we are considering. The real question is, is there any law on our statute books which authorizes, either by express words or by necessary implication, such a bargaining agreement? If there is no such warrant, then certainly the governing bodies of counties and municipalities have not the power to engage in any such undertaking."

Subsequent to the writing of this opinion, the underlying philosophy of the law discussed therein was incorporated into the New Jersey Constitution of 1947. Paragraph 19 of Article I thereof, provides as follows:

> "Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to