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

organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

Thus, we observe, the basic law of the State now recognizes the difference and distinguishes between the rights of persons engaged in private employment and the rights of those engaged in public employment. In the first instance, persons engaged in private employment are given the right of collective bargaining. In the second instance, the rights of persons engaged in public employment are limited to organizing and presenting their grievances to the proper bodies politic.

The rights of public employees were deliberately limited in this respect for valid and substantial reasons.

Government, in the final analysis, is the people. Employees of government are of the people and, as such, they are a part of the government which they serve. The people, through their duly chosen representatives, have, from time to time, provided regulations for the operation of their government. Among these, there are regulations concerning the raising and expenditure of public funds. A strict observance of these regulations is essential for the sound administration of government. The administrative officer in charge of a segment of government is required to confine his expenditures within the limits of the budget assigned to him. To permit him to bargain with the employees serving under him for purposes which would exceed his budget appropriation would extend to other segments of government and employees, to the end that the equilibrium of established government would become disturbed.

In the absence of legal authority for that purpose, within the pattern of government established in this State, public employees do not have the right of collective bargaining in the sense that it applies to persons employed in private enterprise.

In view of this posture of the law, labor disputes involving public employees are not legally the subject of negotiation between employer and employee, and they are, therefore, not within the powers of mediation vested in the Board of Mediation.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

JUNE 19, 1952.

HON. THOMAS S. DIGNAN,
Deputy Director of Civil Defense,
State House,
Trenton, New Jersey.

FORMAL OPINION—1952. No. 12.

DEAR MR. DIGNAN:

Receipt is acknowledged of your inquiry of June 12th as to the operation and effect of chapter 12 of the laws of 1952, providing for disability, death, medical and hospital benefits for civil defense volunteers. This act became effective on April 10, 1952, and is a supplement to the Civilian Defense Act of 1942 as amended.

Specifically, you request to be advised whether claims arising after the effective date of the act, but before July 1, 1952, when the new appropriation act becomes effec-