The second statute dealing with the question is R. S. 30:4-67.1, which permits the chief executive officer of any institution to deposit and maintain the funds of all inmates in a general account and any interest paid thereon by a bank or trust company may be utilized by the board of managers "for the use, benefit and general welfare of the inmate population as a whole."

We cannot find as a fact that the use of these funds to pay for the services of an attorney would come within the quoted limitation placed upon the fund by the Legislature. There are countless inmates in confinement, and there will be many more in the future, who have no need to consult counsel either because the legal points involved in their cases have been settled by the decisions of our courts or because no legal problem is presented by the form of their sentence. While it is true that a decision favorable to one prisoner would operate beneficially to all prisoners sentenced under similar circumstances, we believe that such decisions touch but a minority number of all prisoners in confinement and that it is not the type of expenditure which the Legislature intended should be made from these funds.

For the above reasons, we are obliged to inform you that the moneys in either of these funds cannot be utilized as requested by the committee of inmates.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

AUGUST 13, 1952.

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

FORMAL OPINION—1952. No. 17.

MY DEAR COMMISSIONER BATES:

You have inquired concerning the interpretation to be made of R. S. 44:7-5d.(2) as amended by chapter 24, P. L. 1952.

Specifically, you desire to be advised whether grants of financial assistance, contemplated by chapter 24, P. L. 1952, can be made to persons who are patients in general hospitals owned by the several municipalities.

It is our opinion and we advise you that such payments can be made to individuals otherwise qualified and eligible to receive Old Age or Disability Assistance even though they may be patients in municipally-owned general hospitals.

An examination of chapter 24, P. L. 1952, discloses that certain limitations are contained therein upon payments of this type of assistance to persons otherwise qualified who are hospitalized in certain types of medical institutions. The act clearly precludes such payments to persons who are patients in tuberculous sanatoria or hospitals for treatment of mental diseases. There is a further prohibition in the section of the law under construction against making such payments to persons hospitalized in medical institutions eligible to receive funds from any one of the several counties or municipalities as provided in chapter 5, Title 44, Revised Statutes.

which he was convicted and sentenced to institutions of State Prison character in other States.

You desire to be advised whether he is a fourth offender in contemplation of the Parole Law to the end that he should be denied parole until he has served the maximum of the sentence imposed upon him.

It is our opinion and we advise you that the prisoner in question, for purposes of parole consideration, shall be deemed to be a first offender rather than a fourth offender, for the reasons stated herein.

The pertinent and applicable statute provides that "Any person sentenced to any penal institution of this State who has previously served all or part of three terms of imprisonment in any penal institution" of this State, other States, the United States or a combination thereof "shall be deemed to be a fourth offender and upon his incarceration for such fourth or later offense shall be ineligible for parole consideration by the board until he shall have served the maximum sentence imposed upon him * * *."

At first blush, predicated upon the strict application of the words used in the law, it would seem that the prisoner is a fourth offender since he has served all or a part of three prior sentences in penal institutions. However, we believe this does violence to what appears to be the clear legislative intent in the enactment of this law. Mr. Justice Heher, in his opinion of *In re Huyler,* 133 N. J. L. 171, at page 176, said:

> "Comparing the related sections of the Revision, there is a conspicuous policy to provide an incentive for reformation by imposing penalties for recidivism. The first offender and the unregenerate criminal are placed on different levels. There are readily understandable grounds for this policy."

In the enactment of section 12 (c), chapter 84, P. L. 1948, the Legislature intended to provide this type of incentive for reformation by withholding parole consideration to habitual offenders. The prisoner whose case we review was not such an habitual offender or unregenerate criminal at the time of the commission of the crime in 1925 for which he was convicted in 1939. True that he later became such an offender but it is axiomatic in the interpretation of penal statutes that they shall be liberally construed most favorably to the prisoner and against the authorities. In the classic deliverance upon this subject in *U. S.* vs. *Wiltberger,* 18 U. S. 76, 5 L. Ed. 37, approved and followed in *State* vs. *Woodruff,* 68 N. J. L. 89 (Supreme Court, 1902), Chief Justice Marshall said:

> "The rule that penal laws are to be construed strictly is perhaps not less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative, not the judicial, department. * * * The intention of the Legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction."

The ambiguity in the statute under construction becomes apparent when it is observed that the withholding of parole consideration in this case is contrary to public policy enunciated in the *Huyler* decision, *supra.*

> "A penal statute cannot be extended, by implication, beyond the legitimate import of the words used, to include persons or objects not clearly described

To determine the character of the institutions defined in R. S. 44:7-5d.(2) et seq., examination must be made of R. S. 44:5-2 et seq. Provision is made in that portion of our law whereby the several counties or municipalities may assist certain charitable hospitals to meet their operating deficit by paying to such hospitals sums of money to be used for current maintenance expense and operation thereof or for the direct cost of maintaining patients resident in the several municipalities and counties.

It was the obvious intent of the Legislature that such hospitals eligible to receive these moneys should not also receive, directly or indirectly, additional moneys representing the cost of maintaining persons eligible for the type of assistance provided for in chapter 24, P. L. 1952, and who are hospitalized in such medical institutions.

It becomes apparent from a reading of R. S. 44:5-2 et seq. that a hospital owned, maintained and operated by a municipality is not such a charitable hospital as is defined as eligible to receive financial grants in aid from counties or municipalities. This for the reason that throughout R. S. 44:5-2 et seq. it is provided that in any county or municipality which has no hospital located therein and maintained by the county or municipality that such county or municipality may contribute to the support of existing general charitable hospitals within the county or municipality and which are supported by private charity.

Municipal general hospitals owned, maintained and operated at the sole expense of the community are not in the category of general charitable hospitals supported by private charity. They are agencies of the municipal government and patients hospitalized therein, otherwise eligible for assistance under chapter 24, P. L. 1952, are not prohibited by R. S. 44:7-5d.(2) from receiving assistance payments.

Very truly yours,

THEODORE D. PARSONS,
Attorney General of New Jersey.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

JUNE 25, 1952.

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

FORMAL OPINION—1952. No. 18.

DEAR COMMISSIONER BATES:

You have requested an interpretation of section 12 (c), chapter 84, P. L. 1948, the present law which establishes the State Parole Board and defines its duties and places certain limitations upon its authority.

You state that a prisoner in confinement at State Prison was convicted in 1939 for an offense which occurred in 1925 and with respect to which he surrendered himself to the authorities and confessed the commission of the offense. In the intervening period between 1925 and 1939 he committed three separate offenses and upon