The State Board of Pharmacy consists of five members, each of whom is appointed by the Governor for a term of five years. The board is required to examine into applications for registration and the granting of certificates to duly qualified persons, and other like duties. The members of the board are entitled to receive "traveling and other necessary expenses" and, in addition, each member "shall receive * * * the sum of ten dollars for each and every day upon which he is engaged upon the duties of the board." R. S. 45:14–1 et seq.

R. S. 34:15–37 provides that "In any case the weekly wage shall be found by multiplying the daily wage by five" and "Five days shall constitute a minimum week." Therefore, in the event of an accidental injury sustained by a board member, arising out of and in the course of the performance of his duties, compensation would have to be based upon the statutory rate of two-thirds of the product of $10.00 per day times 5 days, the weekly pay rate, subject to the statutory maximum limitation of $30.00 per week for temporary or permanent disability.

In view of the present practice under which the Board of Pharmacy and other like boards are required to be self-sustaining bodies subsisting and meeting their expenses from the dues, contributions, and fines collected by these boards, it is not only proper but it would appear highly advisable that these boards carry workmen's compensation coverage for their salaried employees and those board members who may come within the definition of the word "employee." It is readily conceivable that serious injury sustained by an employee or a board member might result in an award so high that the board might find it difficult or impossible to pay from its own funds.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: CHARLES I. LEVINE,
Deputy Attorney General.

TDP:L:ld

SEPTEMBER 3, 1952.

DOMINIC A. CAVICCHIA, *Director,*
Division of Alcoholic Beverage Control,
1060 Broad Street,
Newark 2, N. J.

FORMAL OPINION—1952. No. 22.

MY DEAR DIRECTOR:

Your letter of July 30, 1952, poses the question of whether the provisions of the so-called State Limitation Law, P. L. 1947, c. 94, found in R. S. 33:1–12.13, *et seq.*, prohibit the issuance of a new plenary retail consumption license in the Borough of Princeton.

The answer to this question is "Yes."

According to your advices, the borough, with a population of 12,230, has issued 11 plenary retail consumption licenses. If that were all, it would appear

obvious that the borough could properly issue one additional consumption license, since R. S. 33:1–12.14 provides, so far as here pertinent:

> ". . . no new plenary retail consumption . . . license shall be issued in a municipality unless and until the . . . number of such licenses existing in the municipality is fewer than one for each one thousand of its population . . ."

The complicating feature, however, lies in the fact the Princeton Inn, which is located on the boundary line separating the Borough and the Township of Princeton, operates its business under a plenary retail consumption license. Although your letter is not clear as to whether each municipality actually issues a license certificate to the Princeton Inn, it does appear that only one license fee is paid and that the fee is divided between the municipalities pursuant to the provisions of R. S. 33:1–16, which provides:

> "Whenever it shall appear that a building or premises to be licensed is located in more than one municipality, it shall not be necessary to secure more than one license of the same class for the building or premises. Application may be made in each of the municipalities having jurisdiction over any part of the building or premises and said municipalities shall agree upon a satisfactory division of the fee. If the municipalities cannot agree upon a satisfactory division of the fee it shall then be the duty of the commissioner to determine the proportionate amount of the fee to be paid to each of the municipalities; but in no case shall the total fee to be paid exceed the higher license fee as fixed in any of the municipalities in which part of the building or premises is located."

The issue, succinctly stated, therefore, is whether the Princeton Inn, a portion of whose licensed business is located in the borough, should be considered as holding a license "existing in the municipality" within the purpose and intent of the statutory language, quoted above, appearing in R. S. 33:1–12.14.

The issue must be resolved in the affirmative. Irrespective of whether the borough actually issues a license certificate authorizing the alcoholic beverage operation of the Princeton Inn in its municipality, the inn is undoubtedly conducting its licensed business in the borough pursuant to some official action taken by the borough's issuing authority. Otherwise, of course, the inn would be guilty of illegal sales of alcoholic beverages without a license, so far as the conduct of its business in the borough was concerned. It is too obvious to require comment that the inn, even though holding a license certificate issued to it by the township, could not lawfully operate thereunder in the borough. It follows, therefore, that the Princeton Inn, which exercises the privileges of a plenary retail consumption license in the borough, must be considered as holding a license (as distinguished from a license certificate) "existing in the municipality," thus exhausting the borough's quota of 12 consumption licenses based upon its population of 12,230.

This construction of the law accords with the legislative policy of restricting the number of licenses that may be issued by a municipality. The provisions of R. S. 33:1–16, quoted above, are not inconsistent with such policy. This section was designed merely to eliminate the unjust requirement, theretofore existing, of an applicant paying separate license fees to two municipalities for a single place of business located on the dividing line of those municipalities. It did not, however, eliminate the necessity for the submission of separate applications to each municipality and separate action thereon by them.

The problem may be seen in clearer focus if we were to assume that the borough had already issued 12 consumption license certificates and a new application were now to be made by the Princeton Inn for a consumption license. In that case, it would be crystal clear that the borough, having reached its maximum limit of 12 consumption licenses, could not authorize the operation of a licensed business on that portion of the premises of the Princeton Inn located in its municipality. The fact that we are here concerned with the reverse situation does not, of course, change the result.

You are advised that the answer to your inquiry is that, in the indicated circumstances, the Borough of Princeton is precluded from issuing a new plenary retail consumption license.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: SAMUEL B. HELFAND,
Deputy Attorney General.

SBH: MF

JULY 24, 1952.

HONORABLE WALTER R. DARBY,
Director of Local Government,
Commonwealth Building,
Trenton 8, New Jersey.

FORMAL OPINION—1952. No. 23.

DEAR MR. DARBY:

Your letter of July 10, 1952 has requested our opinion as to the manner in which the governing body of a municipality shall make an emergency appropriation for a Chapter 6 School District after the amount thereof has been certified to the governing body by the Board of School Estimate under R. S. 18:6–56.

We are of the opinion that such appropriation must be made in the manner prescribed by R. S. 40:2–31.

The question arises from the necessity of construing R. S. 18:6–57, which provides:

> "Upon receipt of the certificate of the board of school estimate delivered as required by section 18:6–56 of this Title, the governing body of the municipality shall immediately appropriate the sum or sums for the purpose or purposes and shall raise such sum or sums in the manner provided by law for the raising of such funds by the municipality in emergencies and the raising of the funds required by such certificate, in such a case, shall be considered an emergency."

The manner of raising of funds by a municipality in emergencies is provided for in R. S. 40:2–31, which sets forth two steps in the process: (1) making an appropriation, and (2) obtaining the money. The statute first authorizes the