

The statute is explicit in its definition of a hotel. If the conditions are met, the law applies. This being a statute in derogation of common law principles and public freedom, it must be strictly construed, and we are not at liberty to read into it an interpretation other than that expressly set forth by the legislators, who undoubtedly would have provided exemptions had such been their intent.

I am further of the opinion that nurses' homes such as confront you are not subject to this law, and no registration fee is necessary. The nurses' homes are in effect part of the hospital plan, and the accommodations offered are part of the nurses' salaries. As such, it appears that no rent is paid, which the statute holds to be an essential factor to designate such a building a hotel.

I trust that the foregoing answers the questions raised.

Very truly yours,

HENRY W. ECKEL, JR.,
Deputy Attorney General.

HWE/LL

OCTOBER 30, 1952.

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

FORMAL OPINION—1952. No. 38.

DEAR MR. DIGNAN:

Receipt is acknowledged of your letter in which you request my opinion as to the operation and effect of chapter 12 of the laws of 1952 entitled "An act to provide disability, death and medical and hospital benefits for civil defense volunteers who may suffer injury as a result of participation in authorized civil defense service."

You submit for my consideration and opinion three specific queries. Your queries and the answers thereto follow:

"Question Number 1. Can actual duties by Civil Defense volunteers with the regular police or fire departments constitute practice or training sessions and as same will the Civil Defense volunteers be covered by insurance under this bill?"

If the Civil Defense volunteers are expected to work with the local police and fire departments, in order to obtain practical training for meeting emergencies which might occur in connection with defense problems, then any injury arising out of and in the course of the performance of duty sustained by any of these volunteers would be compensable under the chapter. The practice or training should be bona fide practice or training sessions, and the local municipalities should not be permitted to take advantage of the services of the Civil Defense volunteers by utilizing

them for purely normal local police and fire department activities, in order to economize and save paying for regular employees to perform these services.

"Question Number 2. As to minors in Civil Defense, in the event of accident, etc., do they receive compensation the same as persons deemed unemployed inasmuch as they are students and therefore, not earning a salary per 'C. App. A 9-57-3, payt. of \$15.00 per week'."

The provisions of chapter 12 do not distinguish between minors and those legally competent as to the payment of benefits. If the minor, whether student or not, can produce proof of earnings entitling him to greater than the \$15.00 per week minimum benefits, he should be paid such greater benefits, otherwise, he is entitled to the \$15.00.

"Question Number 3. If in the event the volunteers carry private insurance covering hospital, medical or accidental, etc., as many do, or in the cases where industry carries this coverage for employees, will the Civil Defense volunteers benefits be reduced by the amounts of the private benefits or will they receive no aid due to the private coverage. Kindly clarify this section for us."

The question relating to whether or not benefits under chapter 12 would be affected by outside hospital, medical and accident insurance coverage is a difficult one to answer categorically, because in so many cases the answer depends upon the provisions of the insurance contract. Under the Blue Cross plan, hospital and medical benefits are not payable in cases covered by Workmen's Compensation liability. This is because of the express provisions in the Blue Cross contract. There is nothing in the Workmen's Compensation Act itself, or in chapter 12, which would bar the payment of benefits or require allowance for benefits paid under the outside insurance. Of course, where the Blue Cross or other hospital plan pays the hospital bills direct it does not seem that the plan is necessarily entitled to reimbursement, contra, if the State Department of Defense paid for the hospital and medical care, I find no provision in chapter 12 entitling the State to look to the Blue Cross or other insurance plan for reimbursement. In the absence of any provision in chapter 12 from which it can be deduced that an allowance must be granted for outside insurance coverage, whether expressly or by implication, such allowance is not required. Premiums for the insurance are privately paid and the employee is entitled to the benefits thereof.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk