sign not exceeding two square feet in area. The sign in question is somewhat greater than twenty-four square feet in area, and therefore the exemption does not obtain. The need for a permit and payment of fees is, therefore, required for the erection, use and maintenance of the sign in accordance with the statute.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: OSIE M. SILBER,
Deputy Attorney General.

oms;d

MARCH 19, 1953.

HON. RUTH A. PILGER,
Chairman of the Committee on Elections,
Assembly Chamber,
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 9.

DEAR MRS. PILGER:

Receipt is acknowledged of your request for my opinion as to the right of citizens of this State, in certain cases, to vote by absentee ballot.

Your inquiry states:

> "As Chairman of the Elections Committee in the House of Assembly several bills have been sent to my committee providing for the voting by citizens who are confined to their homes or who are out of the State, through the use of an absentee ballot.
>
> "I have been contacted by several lawyers concerning this legislation and several of them have advised me that voting through the use of absentee ballots is a proper subject of legislation and that all that is necessary is to amend Title 19 of the Revised Statutes to accomplish this purpose.
>
> "Several other lawyers, in whom I have equal confidence, have advised me that any bill amending Title 19 of the Revised Statutes would be unconstitutional because before legislation can be passed to permit voting by absentee ballot the Constitution will have to be amended. The advocates of this theory point out that Article II of the Constitution provides that no elector in actual military service of the State or the Untied States shall be deprived of his vote by reason of his absence from his election district, and the Legislature shall have the power to provide the manner in which such absent electors may vote, and because it mentions the fact that the Legislature shall have power to provide for ballots for people in military service, it thereby prohibits legislation to be passed enabling anyone else to vote by absentee ballot.
>
> "I am holding all of these bills in my committee until I receive your advice as to which legal theory is correct, * * *."

The State Constitution by Article II, paragraph 3 provides:

> "3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people."

I am of the opinion that it is within the power of the Legislature, to provide by appropriate amendments to the Election Law for the casting of absentee ballots.

In the early case of *Ransom* vs. *Black*, 54 N. J. L. 446, 449 (Supreme Court, 1892) in discussing the right of suffrage and the conditions surrounding the exercise thereof, the Court held:

> "The right conferred is the right to vote for all elective offices. As to when, where and how the voting is to take place, is left to the Legislature. Without the intervention of the Legislature the privilege conferred by the Constitution would be fruitless. A wide field, therefore, is left open for the exercise of legislative discretion. The days upon which elections are to be held, the hours of the day or night during which, or between which, votes shall be received, must be determined by the Legislature. So, too, the places where each election is to be held, and the size of the voting precinct, and whether the size shall be measured by territory or population, must also be settled by direct or delegated legislative authority. The widest field for the exercise of legislative wisdom and discussion is in adjusting the method by which the sentiments of the voter shall be obtained and canvassed. The Constitution does not even prescribe that the voting shall be done by ballot, and, in fact, long after the adoption of the present Constitution, township elections were conducted otherwise."

This case was affirmed by the Court of Errors and Appeals in 65 N. J. L. 688 (E. & A., 1902) and while the affirmance is on the opinion of Mr. Justice Dixon he nevertheless concurred in the reasoning of the Supreme Court, that legislation is necessary to determine who are legal voters, to provide for them the means of voting, to prevent all others from voting and to ascertain the result of the vote, holding that "all legislation conducive to these ends is, therefore, permissible."

In the case of *In re City Clerk of Paterson*, 88 Atl. 694 (Supreme Court, 1913) Chief Justice Gummere, in discussing the case of *Ransom* vs. *Black*, and approving the right of the Legislature to protect and regulate the manner of voting, held:

> "The case of *Ransom* vs. *Black* was a case of note which was decided by the Supreme Court in 1892. It went to the Court of Errors and was affirmed in the same year; but there was no note in our reports of decision until about ten years later, except a mere statement that the judgment was affirmed. Judge Reed read the prevailing opinion of the Supreme Court. Judge Dixon concurred in the result, but differed vitally upon the vital question in the case. In the Court of Errors the judgment was affirmed on the dissenting opinion of Judge Dixon. This is what Judge Dixon says in his opinion in 54 N. J. Law, 446, 24 Atl. 489, 1021, 16 L. R. A. 769, on the right of suffrage: 'It must be conceded that legislation is necessary to determine

who are legal voters, to provide for them the means of voting, to prevent all others from voting, and to ascertain the result of the vote. All legislation conducive to these ends is therefore permissible.'"

In the matter of *In re Ray,* 26 N. J. Misc. 56, 60, 61, the cases are collated and reviewed by Judge Proctor. In quoting from the opinion of Mr. Justice Kalisch in the case of *In re Freeholders of Hudson County,* 105 N. J. L. 57, he said:

"It is quite clear from the decisions of the courts of this State that though an individual falls within the class of those entitled to vote by virtue of the constitutional declaration, nevertheless, the manner in which and how he shall become entitled to exercise the right extended to him or her, is left to the sound discretion and wisdom of the lawmaking power of this State. * * *

"Cooley, in his authoritative treatise on Constitutional Limitations, volume 2, page 1368 (eighth edition), has set forth the rule which appears to be the philosophy of our courts (*In re Freeholders of Hudson County, supra*) as follows:

"'While it is true that the Legislature cannot add to the constitutional qualifications of electors, it must, nevertheless, devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein.'"

For many years our Election Law provided for absentee voting. The Election Law of 1920 (P. L. 1920, Chapter 349, p. 791) among other things provided:

"23. An absentee elector shall be deemed to be a qualified registered elector who by reason of inability through illness or absence from the county in which he resides is unable to cast his ballot on the day of the general election at the polling place in the election district in which he is registered."

"24. Any absentee elector desiring to vote at a general election shall make application for an official ballot to the municipal clerk in any municipality other than county seats in counties of the first class and in all municipalities in counties other than counties of the first class, or the county board of election of the county in which he resides. If said application is based upon illness it shall have attached to it a physician's certificate setting forth that such absentee elector's illness is such that he is or will be unable to go to the polling place or room to cast his ballot on election day. All applications shall be filed with said municipal clerk in any municipality other than county seats in counties of the first class and in all municipalities in counties other than counties of the first class or the county board of elections not later than the second Tuesday preceding the day of the general election. Said municipal clerk shall on the day following the receipt of said application file same with the county board of elections. The county board of elections shall, immediately upon receipt of said application and certificate, forward to said elector with a return stamped envelope enclosed, a formal application."

The statute further detailed a form of application, a form of affidavit and the procedure by which applications should be forwarded to the county board of elections; the form of the absentee elector's official ballot, for the mailing of the ballot, the method of distribution of ballots by the county board of elections and how

the absentee elector's official ballot should be cast. (P. L. 1920, Chapter 349, pp. 792, 793, 794, 795, 796.) This statute was later repealed.

The claim that an amendment to the Constitution is necessary in order to provide for a civilian absentee ballot is without merit.

The Constitution, by Article II, paragraph 3 prescribes the suffrage qualifications. Paragraph 4 of the same Article gives to the Legislature the right to provide for absentee voting by members of the Armed Forces.

These two paragraphs of Article II deal with distinct and severable propositions.

A consideration of the cited cases and of the legislative precedent and practice heretofore prevailing, with respect to the voting of absentee ballots, leads me to the conclusion that it is competent for the Legislature to provide for the participation of electors in elections, by the use of absentee ballots.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk

MARCH 16, 1953.

STATE INVESTMENT COUNCIL,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 10.

DEAR SIRS:

The State Investment Council has requested my opinion as to the investment jurisdiction of the Director of Investment, and the attendant supervisory responsibilities of the State Investment Council over the following items:

(a) One thousand eight hundred and eighty-seven shares of stock of the United New Jersey Railroad and Canal Company, held in the account of the General Treasury Fund;

(b) Certain riparian leases held in the account of the Trustees for the Support of Public Schools;

(c) Certain real estate and personal property held in certain Escheat Funds.

(a) *As to the shares of stock of the United New Jersey Railroad and Canal Company:*

Chapter 270, P. L. 1950, which established the State Investment Council and the Division of Investment, committed certain designated funds to the investment jurisdiction of the Director of Investment. The General Treasury Fund is not specifically mentioned. Chapter 270, P. L. 1950, however, does transfer to the Director of Investment, certain investment powers formerly vested in the State Treasurer by Chapter 148, P. L. 1944.