deemed to make an exception to the rule of Section 3, under the settled doctrine that a general regulation contained in a statute yields to the particular and is modified *pro tanto*. "The special provision is deemed an exception engrafted upon the general rule." *State* vs. *Masnik*, 125 N. J. L. 34, 36 (E. & A., 1940).

3. Even though a governing body may be satisfied with its present planning board organization, an existing planning board will not be able after July 1, 1954, to exercise any power concerning subdivision of land until such power is expressly granted to it by ordinance under the new act, and until compliance is had with the conditions, standards, procedures and regulations enumerated in the sections of the ordinance describing such power. A principal purpose of the new act is the establishment of standards which must be met by planning boards in exercising their powers with respect to subdivisions.

4. An existing planning board will under the new act possess the power to prepare and adopt a master plan without any further action by the governing body of the municipality, since the power with respect to master plans will be vested in the planning board by the new statute itself. Thus, Section 10 of the new act provides that "The planning board may prepare, and after public hearing, adopt, and from time to time amend, a master plan for the physical development of the municipality. . . ." By contrast, Section 14 provides that "The governing body may *by ordinance* provide for the regulation of subdivisions within the municipality. . . ." The last paragraph of Section 3 of the act, in my opinion, was intended to apply exclusively to those powers of a planning board which can be exercised only by virtue of an ordinance, i.e., powers relating to subdivision.

5. A master plan validly adopted prior to January 1, 1954, and any other action validly taken by the board prior to that date, will remain in effect by virtue of the first paragraph of Section 27, except as hereinbefore noted.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

tpc;b

NOVEMBER 5, 1953.

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

FORMAL OPINION—1953. No. 47.

DEAR COMMISSIONER BATES:

You have inquired whether an individual convicted of "assault with intent to commit" rape, sodomy or carnal abuse is to be dealt with in the manner provided for in N. J. S. 2A:164–3, commonly referred to as the Sex Offender Law.

Upon examination of the pertinent statutes involved, we are of the opinion and we advise you that persons convicted of "assault with intent to commit" rape, sodomy or carnal abuse are not within the purview of the aforementioned statute.

That portion of the Sex Offender Statute which enumerates those crimes which bring the person convicted thereof within the law is N. J. S. 2A:164–3 and reads as follows:

> "Whenever a person is convicted of the offense of rape, carnal abuse, sodomy, open lewdness, indecent exposure or impairing the morals of a minor, or of an attempt to commit any of the aforementioned offenses, the judge shall order the commitment of such person to the diagnostic center for a period not to exceed 60 days. While confined in the said diagnostic center, such person shall be given a complete physical and mental examination."

This is a penal statute which imposes specialized treatment on the offender and as Chief Justice Marshall said:

> "The rule that penal laws are to be construed strictly is perhaps not less old than construction itself. To determine that a case is within the intention of a statute its language must authorize us to say so." *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).

While it is provided that an "attempt to commit" any of the enumerated sex offenses will bring the individual within the operation of the law, there is no specific provision that conviction of "assault with intent to commit" certain sex offenses is contemplated.

The "attempt to commit" and "assault with intent to commit" are two different offenses in law in this jurisdiction. An "assault with intent" is denominated as a high misdemeanor in N. J. S. 2A:90–2, punishable by a fine of not more than $3,000 or by imprisonment for not more than 12 years, or both.

It is provided in N. J. S. 2A:85–5 as follows:

> "An attempt to commit an indictable offense is a misdemeanor, but the punishment shall not exceed that provided for the crime or offense attempted."

N. J. S. 2A:85–7 states that a misdemeanor shall be punishable by a fine of not more than $1,000 or by imprisonment of not more than three years, or both.

It may be said that the crime of "assault with intent" encompasses some of the elements of an "attempt" but with that proposition we are not now concerned for we must clearly find within the language of N. J. S. 2A:164–3, quoted at length above, that the Legislature intended to include therein conviction of "assault with intent" as this crime is found in N. J. S. 2A:90–2 and such is not the case.

Additionally, those persons coming within the purview of N. J. S. 2A:164–3 et seq., are subject to special treatment which denies to them certain rights and privileges afforded individuals convicted of crimes not within the Sex Offender Law, specifically that they have no minimum term of sentence but rather an indeterminate term the maximum of which is that provided by law for the crime of which convicted. They are denied the opportunity to reduce the maximum term of sentence by remission of sentence for commutation time for good behavior and for work performed. (See N. J. S. 2A:164–10.) When they are to be paroled, it must appear that recommendation for parole shall be made by a special classification review board appointed by the State Board of Control of Institutions and Agencies and that thereafter the Parole Board shall act upon the individual case. They may be transferred in the discretion of

the Commissioner of Institutions and Agencies to and from any institution within the jurisdiction of the said State Board of Control regardless of whether the institution is penal, correctional or hospital in character. Such is not the case with persons sentenced to imprisonment on minimum-maximum sentences wherein the transfer is governed by R. S. 30:4–82 upon order of a court of competent jurisdiction.

Because of the denial to individuals coming within the Sex Offender Law of these certain rights and privileges, it becomes more imperative that the statute be strictly construed and since the crime of "assault with intent" is not clearly denominated in N. J. S. 2A:164–3, we are of the opinion that persons so convicted are not to be dealt with in the manner provided for therein and must be sentenced to State Prison with a minimum-maximum sentence or to a reformatory, in the discretion of the court, in the manner provided by law.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

NOVEMBER 23, 1953.

MR. GORDON S. KERR, *Director,*
Division of Investment,
Department of the Treasury,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 48.

DEAR MR. KERR:

I acknowledge your letter of November 16, 1953 requesting my opinion as to the effect of Chapter 81, P. L. 1953 and Chapter 100, P. L. 1953 on the list of securities in which you, as Director of the Division of Investment, Department of the Treasury, may invest and re-invest.

Chapter 81, P. L. 1953 (R. S. 32:2–24.1) relates to certain obligations issued by the Port of New York Authority. The original law on this subject, namely, Chapter 83, P. L. 1937, made the general and refunding bonds of the Port of New York Authority, issued under that Authority's resolution of March 18, 1935, as amended on March 25, 1935, legal for investment by savings banks, among others.

The 1953 amendment made the Port Authority's consolidated bonds and notes, issued under the Authority's resolution of October 9, 1952, also legal for investment by savings banks.

We are informed that the consolidated bonds and notes will constitute the principal media of all future Port Authority financing.

Inasmuch as Chapter 81, P. L. 1953 makes the Authority's consolidated bonds and notes, issued under the Port Authority's resolution of October 9, 1952, legal for investment by savings banks, it follows, pursuant to the provisions of section 11 of Chapter 270, P. L. 1950, as amended (R. S. 52:18A–89) that you, as Director of the