Division of Investment, also may invest and reinvest in these same bonds and notes, provided you are so authorized by regulation of the State Investment Council. The latter statute, as you are aware, permits the Director of the Division of Investment, to invest and re-invest in such savings bank legals as the State Investment Council, by its regulation, may authorize or approve for investment purposes by the Director of the Division of Investment.

Your second question relates to the effect of Chapter 100, P. L. 1953 (R. S. 17:12A–151) on your investment powers. This act authorizes savings banks to invest in one or more accounts in any insured association or any Federal association whose principal office is located in New Jersey in any amount up to, but not exceeding the amounts for which such accounts are insured.

The original act, namely Chapter 56, P. L. 1946, prior to the 1953 amendment, did not specifically include savings banks among those persons and agencies who were authorized to invest in accounts of insured associations or accounts of Federal Savings and Loan Associations having their principal office in New Jersey.

Inasmuch as the act in question now authorizes this type of investment for savings banks, then it follows that you, as Director of the Division of Investment, likewise may invest and re-invest in accounts of insured associations, and accounts, as aforementioned, insured by the Federal Savings and Loan Corporation, provided you are so authorized, pursuant to the provisions of Chapter 270, P. L. 1950, as amended, by specific regulation of the State Investment Council.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: DANIEL DE BRIER,
Deputy Attorney General.

ddb;b

NOVEMBER 23, 1953.

MR. GEORGE M. BORDEN, *Secretary,*
State Employees' Retirement System,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 49.

DEAR MR. BORDEN:

I acknowledge your recent letter on the subject of Chapter 28, P. L. 1949 (R. S. 43:14–43), which extends to veterans, who are employees of the State, and members of the State Employees' Retirement System, the right to withdraw from the system at any time during the continuance of their employment.

You first inquire whether the Board of Trustees may, by rule, define a veteran as one having the same detailed qualifications, particularly as to the length and type of military service, as are set forth in Chapter 19, P. L. 1951 (R. S. 11:27–1).

R. S. 43:14–43 reads as follows:

"Any employee of the State, who is a veteran of any war and a member of the retirement system, may, at any time, apply to withdraw from the system during the continuance of his employment. Upon his making application, of which ten days' notice shall be given, he shall receive, upon demand, the amount of his payment, with regular interest, without prejudice to his right as a veteran to any benefit to which he may be entitled under any other law."

R. S. 11:27–1 defines "veteran" as:

" 'Veteran' means an honorably discharged soldier, sailor, marine or nurse who served in any army or navy of the allies of the United States in World War I, between July fourteenth, one thousand nine hundred and fourteen, and November eleventh, one thousand nine hundred and eighteen, or who served in any army or navy of the allies of the United States in World War II, between September first, one thousand nine hundred and thirty-nine, and September second, one thousand nine hundred and forty-five, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose his United States citizenship, and any soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions, or emergencies, and who has presented to the Civil Service Commission of New Jersey full and convincing evidence of such record of service on or before the announced closing date for filing applications for a particular examination: . . ."

and then goes on to list a series of hostilities, including:

"Emergency, at any time after June twenty-third, one thousand nine hundred and fifty, and prior to the date of termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or date of termination of the existence of such national emergency by appropriate action of the President or the Congress of the United States, who shall have served at least ninety days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman at one of the service academies, any part of which ninety days was served between said dates; provided, that any person receiving an actual service incurred injury or disability shall be classed as a veteran whether or not he has completed the ninety-day service as herein provided."

You will note, that the word "veteran" as defined in R. S. 11:27–1 quoted above, is so defined, "as used in this subtitle" (R. S. 11:27–1), namely, the statute extending to veterans certain preferences under our Civil Service Act.

On the other hand, the word "veteran" as used in the act you administer, namely R. S. 43:14–43, contains no defining or limiting words as to length or type of military service. All that is said is "a veteran of any war." It is to be assumed, therefore, that the Legislature meant the quoted words, as used in R. S. 43:14–43, to mean just what they mean in common acceptance, and without further qualification.

The rule you propose, namely to graft by rule, onto your statute, the detailed list of qualifications as to length and type of military service contained in R. S. 11:27–1 quoted above, in my opinion, would constitute the making of a law, rather than, as is properly the function of your Board of Trustees, the execution of a law. "Administrative implementation cannot deviate from the principle and policy of the Statute" *Abelson's Inc.* vs. *N. J. Board of Optometrists,* 5 N. J. 412, 424 (1950).

It is my opinion, therefore, that the rule proposed in your letter, although salutary, would be legislative in nature, and therefore surpasses the rule-making authority vested in the Board of Trustees by legislation. *Welsh Farms, Inc.* vs. *Bergsma,* 16 N. J. Super. 295; *Abelson's Inc.* vs. *New Jersey State Board of Optometrists,* 5 N. J. 412, and *Frigiola* vs. *State Board of Education and the Board of Trustees of the Teachers' Pension and Annuity Fund,* 25 N. J. Super. 75 (Appellate Division—September term, 1952).

Your second question is based on a letter addressed to you under date of November 9, 1953, by the Business Manager of the New Jersey State Hospital, Marlboro, inquiring whether State employees who served during the present Korean emergency are to be regarded as "veterans of any war," thereby having the right of withdrawal from the State Employees' Retirement Fund, pursuant to R. S. 43:14–43.

The historical background of the Korean emergency was well summarized, by Chief Justice Stern of the Supreme Court of Pennsylvania, in *Beley* vs. *Pennsylvania Mutual Life Insurance Co.,* 95 Atl. Rep, 2d Series, at 204 and 205, in which he stated:

> "The facts concerning the Korean situation are, briefly, as follows: By the charter of the United Nations there was established the principle of mutual assistance, and certain provisions were embodied therein for insuring effective and prompt action for the maintenance of international peace. In pursuance of that object Congress, in the Mutual Defense Assistance Act of October 6, 1949, 63 Stat. 716, 22 U. S. C. A. Sec. 1571 et seq., authorized the President to furnish military assistance, as therein provided, to the Republic of Korea and the Republic of the Philippines. On June 25, 1950, a commission having reported that North Korean forces had made an unprovoked assault upon the Republic of Korea, the Security Council denounced the attack as a breach of international peace, called upon the authorities of North Korea to withdraw their armed forces forthwith, and asked all members of the United Nations to render every assistance in the execution of the resolution. On June 27, 1950, the President made a public statement in which he referred to this call by the Security Council and stated that under such circumstances he had ordered United States air and sea forces to give the Korean government troops cover and support. On that same day the Security Council by a second resolution recommended that the members of the United Nations furnish whatever assistance to the Republic of Korea as might be necessary in order to repel the armed attack and to restore international peace and security in the area. On July 7, 1950, still another resolution of the Security Council recommended that all members provide military forces and other assistance for a unified command under the United States, requested

the United States to designate the commander of such forces, and authorized the use of the United Nations' flag in the action against the North Korean invaders.

Although Congress has, in certain enactments, recognized that military forces of the United States are operating in Korea and has appropriated funds for the support of the armed forces there, it is obvious from the above recital of events that there was not, nor ever has been, any declaration of war by Congress against any other country, state or nation, but merely a dispatch to Korea by Presidential order of military, naval and air forces of the United States in accordance with the provisions of the Charter of the United Nations and the recommendations of the Security Council. Since, therefore, it is Congress that has the power under the Constitution to declare war, and since that power is exclusive, *Youngstown Sheet & Tube Co.* vs. *Sawyer,* 343 U. S. 579, 642, 72 S. Ct. 863, 96 L. Ed. 1153, it is clear that the action being waged in Korea is not a 'war' within what may be termed the 'constitutional' or 'legal' sense of that term."

In the decision, cited above, the question before the Pennsylvania Court was whether the struggle in Korea was to be regarded as a "war" within the meaning of that term as employed in a certain life insurance policy. The majority of the Court held that the Korean hostilities were not to be regarded as a "war" in the political sense, reasoning thusly:

"The existence or nonexistence of a state of war is a political, not a judicial, question, and it is only if and when a formal declaration of war has been made by the political department of the government that judicial cognizance may be taken thereof; when so made it becomes binding upon the judiciary. *Bishop* vs. *Jones & Petty,* 28 Tex. 294, 319, 320; *Perkins* vs. *Rogers,* 35 Ind. 124, 167; *Hamilton* vs. *McClaughry, C. C.,* 136 F. 445, 449; *Verano* vs. *De Angelis Coal Co.,* D. C. 41 F. Supp. 954. An exact question involving the application of this principle arose in connection with the Japanese surprise attack on Pearl Harbor on December 7, 1941, war with Japan not being officially declared by Congress until the day following, December 8. As we all know, an appalling number of lives were lost in that infamous attack, and yet, in a majority of the cases involving the interpretation of the word 'war' as employed in life insurance policies similar to the one here in question, it was held that war did not exist on December 7, and therefore the beneficiaries of such policies were entitled to recover. *West* vs. *Palmetto State Life Insurance Co.,* 202 S. C. 422, 25 S. E. 2d 475, 145 A. L. R. 1461; *Rosenau* vs. *Idaho Mutual Benefit Association,* 65 Idaho 408, 145 P 2d 227; *Savage* vs. *Sun Life Assurance Co. of Canada,* D. C., 57 F. Supp. 620; *Pang* vs. *Sun Life Assurance Co. of Canada,* 37 Haw. 208, 14 C. C. H. Life Cases 496."

Two of the six members of the Pennsylvania Court dissented from the views of the majority.

Justice Chidsey in his separate dissenting opinion in the *Beley* case, and speaking of the Korean hostilities, stated:

"The word 'war' used without limitation or restriction, in my opinion should be construed as the word would ordinarily be used and understood

and calls for no technical construction. Certainly a major conflict between the armed forces of two nations under authority of their respective governments would be commonly regarded as war."

Another dissenting opinion was filed by Justice Bell, which will be cited subsequently in this opinion.

A similar question was presented to our Courts in the case of *Stanbery* vs. *Aetna Life Insurance Co.*, 26 N. J. Super. 498 (1953). In this case the beneficiary of a life insurance policy issued by the defendant, sought to recover double indemnity benefits. The facts disclosed that the insured, a United States Army captain, had been killed while on active duty in Korea on March 27, 1952, from a mine explosion while he was on reconnaissance. The policy provided for double indemnity if accidental death "does not result from military or naval service in time of war."

Judge Leyden, in the opinion cited, held that the insured had met his death in Korea while engaged in military service in time of war within the intent of the parties, and therefore gave judgment in favor of the defendant insurance company.

In reaching this result, on the question as to whether the Korean conflict is to be regarded as a war, the Court stated:

"In determining the ordinary and usual meaning of the word 'war' there are a number of definitions which might be quoted. A few will suffice. The New Century Dictionary (1940 ed.), vol. 2, page 2172, defines 'war' as follows: 'Conflict carried on by force of arms, as between nations or states ("international war" or "public war") or between parties within a state ("civil war"); warfare (by land, by sea, or in the air); also, a contest carried on by force of arms, as in a series of battles or campaigns (see phrases below); hence in general, conflict, or active hostility or contention; a contest, a struggle, or contention. * * *' In the *Prize* cases (The Army Warwick) 2 Black 635, 67 U. S. 635, 17 L. Ed. 459 (Sup. Ct., 1862) the Court defined 'war' as follows:

"War has been well defined to be, 'that state in which a nation prosecuted its right by force.'"

In 56 Am. Jur., page 133, section 2, "war" is defined as follows:

"War is an armed struggle or contest by force carried on for any purpose between two or more nations or states exercising at least de facto authority over persons within a given territory and commanding an army prepared to observe the ordinary laws of war."

In *Dole* vs. *Merchants Mut. Marine Insurance Company*, 51 Me. 465 (Sup. Ct., 1863), the Court said at page 470:

"Every forcible contest between two governments de facto or de jure is war. War is an existing fact and not a legislative decree."

Some of the authorities on international law have defined the word "war" as follows:

"War is essentially a struggle between states, involving the application of force." Wheaton's International Law (6th Ed. A. Keith, 1929), 630.

"War is the contention between two or more states through their armed forces for the purposes of overpowering each other and imposing such conditions of peace as the victor please." Oppenheim's International Law (6th ed. Lauterpacht, 1944), sec. 54. "When differences between states reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look upon as a breach of the peace, the regulation of war is set up, in which the combatants may use regulated violence against each other until one of the two has been brought to accept such terms as his enemy is willing to grant." Hall, A Treatise on International Law (6th ed., Atlay, 1909).

Funk & Wagnalls New Standard Dictionary (1946) defines "war" as follows:

"A contest, as between nations or states, or between different parties in the same state, carried on by force and with arms, commonly either for defense, for avenging insults and redressing wrongs, for the extension of commerce and acquisition of territory, or to obtain and establish the superiority and dominion of one of the belligerents over the other; also, the condition of things created by such a contest."

O'Neill vs. *Central Leather Co., supra* [87 N. J. L. 552, 94 A. 790] quoting Professor Beale, defines war as follows (9 Harv. L. Rev. 407):

"War, in law, is not a mere contest of physical force, on however large a scale. It must be an armed struggle, carried on between two political bodies, each of which exercises de facto authority over persons within a determinate territory, and commands an army which is prepared to observe the ordinary laws of war. . . .

The conflict still raging in Korea is a war in the ordinary and usual meaning of the word, and it was such on March 27, 1952, when the insured met his untimely death. See *Weissman* vs. *Metropolitan Life Insurance Co.*, 112 F. Supp. 420 (D. C. S. D. Cal. 1953). To hold otherwise and rule the Korean war is not a war seems to me inexplainable and absurd. Borrowing the language of Mr. Justice Bell in his dissenting opinion in the *Beley* case, *supra* [373 Pa. 231, 95 A. 2d 207] . . .

"Every man, woman and child in America is informed by the newspapers and radio and knows that there are many thousands of American soldiers, sailors, marines and airmen who are now and for several years have been engaged with soldiers of North Korea and of China in open actual warfare. Our Navy is constantly patrolling and bombarding the coasts of North Korea; Our Air Force is having daily dog fights with the enemy, and our soldiers are daily killing the enemy and being killed. We have for over two years been engaged in negotiations for a truce and are vainly trying to exchange prisoners of war. The United States casualties exceed 128,000. How is it humanly possible to say that the Korean War is not war? * * * In this case the mere fact that President Truman has declared the

> Korean War to be a 'police action' does not, irrespective of his motives, make it so in construing a private contract of insurance. Although for political or international reasons, or to save the 'position' of their leader, the majority in Congress have not formally declared war against the North Koreans or Red China, the Congress (as well as every person in the civilized world) knows that the United States is at war in Korea."

The decision of Judge Leyden in the *Stanbery* case involved, as has been indicated, the interpretation of the word "war," as it appears in a life insurance policy. In the matter before us, we are concerned with the interpretation of that word as it appears in a statute, namely, R. S. 43:14–43.

Should the guides of "realistic interpretation" and "ordinary, usual and realistic meaning" referred to by Judge Leyden in the *Stanbery* case, be abandoned by us, in the matter before us, simply because we are dealing with a statute? In the present matter, I think not.

It is my opinion that the statute before us, in the absence of a decision by our Courts to the contrary, should be construed in harmony with the following rule discussed by Mr. Justice Heher in *Fischer* vs. *Fischer,* 13 N. J. at 168:

> "A statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context. The reason of the statute prevails over the literal sense of terms; the obvious policy is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. *Edgewater* vs. *Corn Products Refining Co.,* 136 N. J. L. 664 (E. & A., 1948); *Maritime Petroleum Corporation* vs. *City of Jersey City,* 1 N. J. 287 (1949). The spirit of a statute gives character and meaning to particular terms. The reason of the law, i.e., the motive which led to the making of it, is one of the most certain means of establishing the true sense. It is not the words of the law, but the internal sense of it that makes the law. The declared policy is the true key to open the understanding of the statute. *Valenti* vs. *Board of Review of the Unemployment Compensation Commission of New Jersey,* 4 N. J. 287 (1950). Words are but symbols of thought and expression which necessarily take color and significance from their associated surroundings and the evident policy and purpose of the whole statute."

The obvious intent of R. S. 43:14–43 is to permit those who may be entitled to the benefits of the Veterans' Pension Act (R. S. 43:4–1 to 43:4–5, inc.) to withdraw their payments, with interest, from the State Employees' Retirement System, should they desire to avail themselves of the non-contributory veterans' pension established by the Veterans' Pension Act. It will be recalled that the Veterans' Pension Act provides in R. S. 43:4–3, that no person may retire under both the Veterans' Pension Act, and any other pension act of our State, the act requiring the retiring veteran to either waive his pension under any other law, or his pension under the Veterans' Pension Act.

I find nothing in R. S. 43:14–43, that would lead me to believe that the Legislature meant to limit the word "war," as it appears in this statute to a legalistic or technical sense. I think that what was meant was the realistic or literal meaning of the word—namely, actual hostilities between the armed forces of two or more

nations—and this, precisely, is what we have had in Korea, at least up to the time of the present uneasy truce.

I therefore recommend that the Board of Trustees of the State Employees' Retirement System recognize veterans of the Korean situation, as having the right of withdrawal extended to "veterans of any war" by R. S. 43:14–43.

You and I have discussed this problem on several occasions. In view of the narrow question presented, and the differing views expressed by Courts of various States, I can only repeat what I have stated heretofore, namely, that the entire situation should be clarified, once and for all, by legislation, categorically defining the term "veteran," as it appears in both R. S. 43:14–43, and R. S. 43:4–1 (The Veterans' Pension Act). Such definition should incorporate the same wording that appears in R. S. 11:27–1, particularly that which recognizes the status as a veteran, of those who have served in the Korean hostilities, namely, "at any time after June twenty-third, one thousand nine hundred and fifty, and prior to the date of termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or date of termination of the existence of such national emergency by appropriate action of the President or the Congress of the United States, who shall have served at least ninety days in such active service . . .," exclusive of certain training or educational phases of such service. To the same effect see Chapter 89, P. L. 1951 (R. S. 38:23B–7) and Chapter 231, P. L. 1952 (R. S. 54:4–3.12i) wherein our Legislature extended to those participating in the Korean conflict, the various veterans' preferences authorized by the acts cited.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DANIEL DE BRIER,
Deputy Attorney General.

ddb;b

DECEMBER 11, 1953.

WILLIAM O. NICOL, *Secretary,*
Bureau of Tenement House Supervision,
1060 Broad Street,
Newark, New Jersey.

FORMAL OPINION—1953. No. 50.

DEAR MAJOR NICOL:

Your memorandum dated November 24, 1953, requesting a formal opinion, received.

The question presented is whether or not buildings formerly under the Tenement House Act but which have been arranged so that rooms are rented either to individuals or families, with kitchen privileges, are subject to the Tenement House Act. I assume that you refer to a central kitchen used by all rental units.

Unless each unit has kitchen facilities specifically assigned to same and unused by other occupants, my opinion is that the building is not subject to the Tenement House Act.