not be permissible. Such an attempt would amount to a violation of the statutory requirement that such a class be determined by "conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness." R. S. 17:34—31, as amended.

In view of the position we have taken it will not be necessary to determine whether the inclusion of residents of New Jersey within the protection of the type of policy under consideration, if issued and delivered in another state, would amount to a violation of our statutes, unless the Commissioner determines the question of the incontestability clause adversely to the insurer.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.

b.

MARCH 29, 1955.

DR. F. LOVELL BIXBY,
Acting Commissioner, of the Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 12.

DEAR DR. BIXBY:

We have your request for an opinion as to whether the several counties are required by law to make payments to the State Board of Child Welfare to cover the cost of the welfare program known as Home Life Assistance.

It is our opinion, and we so advise you, that the several counties are authorized and obligated to pay a share of the cost of the New Jersey program for Home Life Assistance to children. It is our further opinion that the county share of such cost is 25% of the amount allowable under the Federal program in those cases where Federal aid is available plus one-half of the excess of such payments over the amount allowable under the Federal program, as provided in R. S. 30:5—7 and 8, (sections of the law which are still in full force and effect insofar as the Home Life Assistance program is concerned). In those cases where no Federal aid is available, the state and the county share the cost equally. Opinion of Attorney General No. 86, dated November 30, 1950.

The question here presented has apparently arisen because of inquiries received from county welfare boards as to the meaning and effect of P. L. 1951, c. 138, which amended and revised the then existing programs for maintenance of children.

The statutory provisions for maintenance of, and assistance to, children, as it existed immediately prior to the adoption of P. L. 1951, c. 138 was contained in Chapter 5 of Title 30 of the Revised Statutes. Chapter 5, made up of four articles, was originally enacted as P. L. 1936, c. 33. It set up two separate and distinct programs of aid for children. One program, dealt with in Article III, provided for the "Care, Custody, Guardianship and Support of Abandoned Children." Under this program, the State Board of Children's Guardians, the predecessor of the present State Board of Child Welfare, acquired legal custody of such children and could place the children in homes, or temporarily in institutions.

The other program, dealt with in Article IV, was the "Home Life Assistance Program". It provided for payments of assistance to the mother or other female standing in *loco parentis* in whose custody the child remained.

Articles I and II of Chapter 5 contained provisions for the administration of both programs, including in Article II thereof provisions for the financing thereof and for the contributions to be made by the county and State respectively.
R. S. 30:5—6 provided:

"Subject to payments of the counties' share as provided in section 30:5—7 of this title, and subject to payment of the state's share as provided in section 30:5—8 of this title, payments of assistance authorized under both article 3 and article 4 of this chapter shall be made by the state board of children's guardians.

"The treasurer of the state board of children's guardians is hereby empowered to receive from the county treasurer of each county such sums as shall represent the county's share, and to receive from the state treasurer such sums as shall represent the state's share, and shall cause such sums to be set up in a special account or accounts subject to disbursement by the state board of children's guardians in accordance with this chapter."

So, too, as to both programs, R. S. 30:5—7 provided for the amount of assistance chargeable to counties, and how those payments were to be made; R. S. 30:5—8 provided for the amount of assistance chargeable to the State and how those payments were to be made; and R. S. 30:5—9 authorized negotiations with the Federal Government for financial assistance to the State, as authorized under the Federal Social Security Act, for the carrying out of the two programs.

R. S. 30: 5—7, as amended, and R. S. 30:5—8, as amended, dealing with the respective contributions to be made by the State and county, provided, at the time of the adoption of P. L. 1951, c. 138, for the county to contribute 25% of the amount allowable under the Federal program in those cases where Federal aid is available, plus ½ of the excess of such payments over the amount allowable under the Federal program. Further, if Federal aid were not available, the State and county were to share the cost equally. The State's share under these statutory provisions was ¾ of the amount allowable under the Federal program where Federal aid to the State was available and ½ of the cost in other cases.

By P. L. 1951, c. 138, (N. J. S. A. 30:4C—1 et seq.) the program for the "Care, Custody, Guardianship and Support of Abandoned Children" found in Article III of Chapter 5 of Title 30 was repealed and there was substituted therefor a new comprehensive program for the "Care, Custody, Guardianship and Support of Abandoned and Neglected Children".

As part of that repeal and the substitution of the new program, the legislature repealed Articles I and II of Chapter 5 insofar as they were applicable to the administration and financing of the old program for the "Care, Custody, Guardianship and Support of Abandoned Children" found in Article III which was also repealed.

But the legislature left intact and did not repeal the "Home Life Assistance Program" found in Article IV of Chapter 5 of Title 30. On the contrary, P. L. 1951, c. 138 expressly recognized that that program was to continue, providing in section 2 thereof (N. J. S. A. 30:4C—2) that:

"The term 'assistance' means money payments made to, or in behalf of, persons determined to be eligible therefor in accordance with the provisions of Article IV, chapter five, Title 30, of the Revised Statutes."

Nor did P. L. 1951, c. 138 repeal Articles I and II of Chapter 5 insofar as they were applicable to the administration and financing of the Home Life Assistance Program found in Article IV.

It is true that section 38 of P. L. 1951, c. 138 (N. J. S. A. 30:4C—38) does provide in part as follows:

"The following acts and statutes together with all amendments thereof and supplements thereto are repealed:

"Articles one, two and three of chapter five of Title 30 of the Revised Statutes;"

* * * *

"An act concerning the care, maintenance, supervision and guardianship of dependent and neglected children, promoting home life therefor, providing penalties for violation thereof, and amending sections 30:5—7 and 30:5—8 of the Revised Statutes', approved May sixth, one thousand nine hundred and forty-two (P. L. 1942, c. 140);"

But it is not sufficient nor legally proper to deal with this repealing section as if it were an independent enactment separate and apart from the remainder of the act. A clause in a statute purporting to repeal other statutes is subject to the same rules of interpretation and construction as are other provisions of the statute; the act must be read as a whole. The intent must prevail over literal interpretation; other parts of the act are to be referred to in determining the meaning and effect of the repealer section. (*Smith v. People,* 47 N. Y. 330 (1872); *Attorney General v. Duncan,* 76 N. H. 11, 78 Atl. 925, 927 (Sup. Ct. 1911); *Golden Valley County v. Lundin,* 52 N. D. 420, 203 N. W. 317, 319, 320 (Sup. Ct. 1925); *State v. Moorhouse,* 5 N. D. 412, 67 N. W. 140 (Sup. Ct. 1896); *State v. Joyce,* 307 Mo. 49, 269, S. W. 623, 624 (Sup. Ct. 1925); *Hogg v. Board of Commissioners,* 57 Colo. 463, 141, P. 478, 480 (Sup. Ct. 1914); *Indianapolis Union R. Co. v. Waddington,* 169 Ind. 448, 82 N. E. 1030, 1032 (Sup. Ct. 1907); *Cory v. Nethery,* 19 Wash. 2d 326, 142 P. 2d 488, 491 (Sup. Ct. 1943); *Ex Parte Copeland,* 130 Tex. Co. R. 59, 91 S. W. 2d 700 (Ct. of Crim. App. 1936); 59 C. J. 901, 1103, Statutes † 502, 652; 82 C. J. S. 474, 914 Statutes † 282, 386; 50 Am. Jur. Statutes s 518, 519; 1 Sutherland, Statutory Construction s 2006.)

This settled rule is stated in 50 Am. Jur. 527, Statutes, Section 518 as follows:

"* * * in determining whether a repeal has been effected, the intention of the legislature in enacting the alleged repealing act, is controlling. Such intent even prevails over the literal import of the words used, the general rule that a statute must be construed as a whole, being applicable."

In the leading case of *Smith v. People,* supra, the New York Court of Appeals said, in holding that an express repealer should not be given literal effect, at page 336 of 47 N. Y.:

". . . The practical effect of a judgment giving full and literal effect to the repealing clause in the act of 1870, would be to annul all the proceedings in, and judgments of both courts for the last two years, and the consequences would seriously affect the public as well as individuals. A statute should not be so construed as to work a public mischief, unless required by words of the most explicit and unequivocal import. . . .

"In the construction of statutes, effect must be given to the intent of the legislature whenever it can be discerned, though such construction seem contrary to the letter of the statute. That intent must be primarily sought in the language of the statute, and if the words employed have a well understood meaning, are of themselves precise and unambiguous, in most cases

no more can be necessary than to expound them in their natural and ordinary sense. The words in such case ordinarily, best declare the intention of the legislature . . . *These rules are elementary, but it is equally well settled that words, absolute of themselves, and language the most broad and comprehensive, may be qualified and restricted by reference to other parts of the same statute in which they are used, and to the circumstances and facts existing at the time, and to which they relate, or are applied.* A literal interpretation of words in most common use, and having a well defined meaning as ordinarily used, would not unfrequently defeat rather than accomplish the intent of the party using them. If in reading a statute in connection with other statutes passed at, or about the same time, a doubt exists as to the force and effect the legislature intended to give to particular terms, that is as to the meaning which it was intended they should bear and have in the connection in which they are used, it is also competent to refer to the circumstances under which, and the purposes for which a statute is passed, to ascertain the intent of the legislature. The ground and cause of the making of a statute explains the intent. . . ."

pages 338 to 339:

". . . The question whether a repeal of a prior statute, absolute in terms, can be limited in its operation and effect for any reason has frequently arisen; and the decisions of the courts have been uniform, that while the language of the repealing clause must be accepted as the expression of the will of the legislature, and effect given to it according to its terms, unless it appears although the language of the repeal was general and unqualified that it was intended to be used in a qualified or limited sense; that whenever that intent is discovered effect must be given to it, as in the interpretation of other acts. . . .

"If the repeal of a statute is by express and positive terms, and there is no legitimate evidence in or out of the act of an intent to qualify and restrict the operation, that is, no limitation or qualification, express or implied, the only question is as to the effect of the repeal, and the rule is that for all purposes the law repealed is as if it had never existed. . . . *A clause in a statute purporting to repeal other statutes is subject to the same rules of interpretation as other enactments, and the intent must prevail over literal interpretation. One part of an act of the legislature may be referred to in aid of the interpretation of other parts of the same act.* So in case of doubt or uncertainty, acts *in pari materia,* passed before or after, and whether repealed or unrepealed, may be referred to in order to discern the intent of the legislature in the use of particular terms; and within the same rule, and the reason of it, cotemporaneous legislation, although not precisely in *pari materia,* may be referred to for the same purpose. Statutes in *pari materia* relate to the same subject, the same person or thing, or the same class of persons or things, and are to be read together, for the reason that it is to be implied that a code of statutes relating to one subject is governed by the same spirit, and are intended to be harmonious and consistent. They are to be taken together as if they were one in law, as one statute . . ."

and on page 341:

". . . The last act reflects light upon the first, and is a very significant indication that the legislature did not intend by the comprehensive terms of repeal to abrogate the organizing law of the criminal courts in New York, which had a place in the acts purporting in terms to be repealed, and did not suppose that the organization of these courts had been affected. Both

acts can stand together by giving the repealing clause a qualified and restricted operation in harmony with the evident intent of the legislature, and not otherwise. . . ."

In determining the legislative intent,

"An arbitrary construction is not true exegesis. The meaning of a statute is not ruled by the strict letter, but rather by the sense and meaning fairly deducible from the context. The reason of the provision prevails over the literal sense of the words; the obvious policy is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. The spirit gives character and meaning to the particular symbols of expression. The evident policy is the true key to open the understanding of the act. *Fischer v. Fischer,* 13 N. J. 162 (1953)." *In re Roche,* 16 N. J. 579 at 584 (1954) per Mr. Justice Oliphant.

To construe the language of Section 38 as having the effect of completely repealing the provisions of Articles I and II of Chapter 5 would be to nullify the clear legislative intent that the Home Life Assistance program, set forth in Article IV of Chapter 5 of Title 30, should continue. If R. S. 30:5—7, R. S. 30:5—8 and R. S. 30:5—9 are no longer in effect insofar as the Home Life Assistance program is concerned, then there exists no provision for financing that program either by the State, by the county, or through Federal aid under the social security act.

The provisions for the Home Life Assistance program found in Article IV, which the legislature expressly continued in existence, provide that those benefits are to be paid out of the funds raised pursuant to the provisions of R. S. 30:5—7, 8 and 9. R. S. 30:5—36, which deals specifically with the benefits under the Home Life Assistance Program, provides, in part, as follows.

"* * * there shall be paid to the mother through the State Board of Children's Guardians from funds provided as set forth in sections 30:5—5 to 30:5—8 of this Title for the support of her child * * *"

In our opinion, an examination of Chapter 138 of the Laws of 1951 as a whole clearly establishes that the repealing language in section 38 thereof, although absolute in terms, is actually limited in its operation and effect to the repeal of the administrative and financing provisions of Articles I and II as they apply to the maintenance program which had been set up under Article III, which was thereupon repealed and superseded. The repealer does not and was not intended to affect Article I and II in its applicability to the Home Life Assistance program under Article IV.

The construction reached by us from an analysis of the statute itself is confirmed by an examination of the legislative history of Senate Bill No. 215 of 1951, which became Chapter 138 of the Laws of 1951.

At the time of the introduction of Senate Bill No. 215 in the Legislature, there was pending a companion measure, Assembly Bill No. 17, providing for the replacement of the Home Life Assistance program. As the two bills were drawn, the express repealer of Article IV of Chapter 5 setting forth the Home Life Assistance program was contained in Senate Bill No. 215, along with the express repealers of the other articles of Chapter 5. When it became apparent that Assembly Bill No. 17 might fail of enactment, it became necessary to amend Senate Bill No. 215 to preserve the existing Home Life Assistance program. Amendments were thereafter introduced under the caption "Suggested Amendments (To provide for continuation of the present program of Home Life Assistance if Assembly Bill No. 17 should fail of legislative support.)" These amendments deleted the prior repealer of the

entire Chapter 5 in order to preserve the Home Life Assistance program. Article IV was saved from repeal in toto. In addition, there were deleted express repealers of several specific statutes which had amended portions of Articles I and II which contain provisions for the financing and administration of the Home Life Assistance program set up in Article IV. The acts thus saved from repeal included P. L. 1947, c. 128, P. L. 1944, c. 194, P. L. 1940, c. 118, P. L. 1939, c. 377, and P. L. 1938, c. 151. These, it will be noted, included the most recent amendments to R. S. 30: 5—7 and R. S. 30:5—8.

Further, the practical construction adopted by the State, county and federal agencies concerned with the administration of the Home Life Assistance program since the adoption of P. L. 1951, c. 138 is in accordance with the opinion we have expressed herein. It is a well established principle of law that the interpretation placed upon statutes by officials charged with their administration or application will receive considerable weight in resolving any ambiguity which may be thought to inhere in a statute. See *Weinacht v. Board of Chosen Freeholders,* 3 N. J. 330 (1949); *Ford Motor Company v. N. J. Department of Labor and Industry,* 7 N. J. Super. 30 (App. Div. 1950), aff'd. 5 N. J. 494 (1950).

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General,

By: HAROLD KOLOVSKY,
Assistant Attorney General.

MARCH 30, 1955.

MR. STEVEN E. SCHANES,
Bureau of Public Employees' Pensions,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 13.

DEAR MR. SCHANES:

You have asked our opinion as to whether, under P.L. 1954, Chapter 84, providing for the Public Employees' Retirement System, personnel of the State Militia or New Jersey National Guard, who serve in the Department of Defense in a permanent capacity, are entitled to "prior service credit" for time spent, prior to their so becoming state employees, in the active military service of the United States in time of war.

You have advised us that such credit has been claimed by virtue of R.S. 38:14-9. This legislation was originally enacted as Section 9 of Chapter 49 of the Public Laws of 1937, entitled "An Act concerning the militia of the State." It provides as follows:

> "For all purposes, officers and enlisted men who entered the active service of the United States in time of war by appointment or enlistment, or under call, order or draft by the president, or who shall hereafter enter such service under like conditions, shall be entitled to credit for the time served in the active service of the Unitetd States, as if such service had been rendered in the state."