APRIL 7, 1955.

HONORABLE WILLIAM F. KELLY, JR.,
President, Civil Service Commission,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 14.

DEAR PRESIDENT KELLY:

You have requested advice as to whether municipal employees of a Veterans Housing Project are covered by the Civil Service Law in a municipality which has adopted Civil Service by referendum. Your letter states.

> "This Department has consistently held that such employees are not under civil service based on the advice of former Deputy Attorney General Theodore Backes in a letter dated February 14, 1949 and addressed to Paul T. Stafford, Acting Chief Examiner and Secretary. This same matter with reference to State employees are considered and determined in Formal Opinion No. 27 of 1949, issued from your Department.
>
> By Memorandum dated October 22, 1953, this Department requested a review of this formal opinion with the hope that it might be reversed, but such action was deemed inadvisable.
>
> In the light of the above, I do not believe that this Department has any alternative other than to affirm our ruling in the present case, unless some other determination is made by your office.
>
> I would appreciate your advising me as to whether or not you are inclined to effect a reconsideration and redetermination of this matter, so that we may advise the local authorities."

We have ascertained that the employees about whom you have inquired are employed by the City of Perth Amboy which, by a contractual arrangement, see N.J.S.A. 55:14G-17, manages the housing project for the Commissioner of Conservation and Economic Development. This being the case, it is clear that the employment of such persons is not specifically excluded from the provisions of the Civil Service Law by the terms of N.J.S.A. 55:14G-12 "b" and "c". The latter section has application only to persons employed by the Commissioner of Conservation and Economic Development.

Your letter states that the City of Perth Amboy elected, on November 13, 1953, to be governed by the provisions of the Civil Service Law. That statute provides that upon the adoption of its provisions by the voters of a municipality all persons in the classified service shall continue to hold their offices and employments subject to the provision of the subtitle relating to municipalities, R. S. 11:21-6. The effect of this section is to "blanket in," as eligible to the protection afforded by the Civil Service Law, all those who are not unclassified employees as defined by R. S. 11:22-2, as amended. Finding no provision in the latter section which would place the subject employees in the unclassified service, we conclude that they are in the classified service, R. S. 11:22-3. As previously indicated, those who were employed prior to the adoption of the Civil Service Law by the voters of Perth Amboy and who continued to serve thereafter were automatically brought within the protection of the Civil Service Law. The employment of individuals at a subsequent date would have to comply with the procedures set down in the Civil Service Law. Thus, if persons have been hired for work at the Veterans Housing Project subsequent to November 3, 1953, an examination of their status should be made and

steps taken to fill the positions from eligible lists after examination or such other means of selection as the Commission deems appropriate for the position concerned. It should be borne in mind that temporary appointments in the municipal service are limited in duration to a period of two months with only one two-month renewal permitted, R. S. 11:22-15.

Formal Opinion 1949 No. 27, advised you that State employees of the Veterans Emergency Housing Program, in the State Department of Conservation and Economic Development were not subject to the provisions of the Civil Service Law. The reason assigned was that the statutory provisions setting up the program were designed to expire by their own limitation and, consequently, the employees were regarded as temporary. The opinion states,

> "From the foregoing, it will be seen that Chapter 323 of the Laws of 1946 is to expire by its own limitation and, in my opinion, the employees of that department not now under civil service or under tenure by Chapter 435 of the Laws of 1948, are temporary employees and in nowise subject to the jurisdiction of the Civil Service Commission."

We have reexamined the above opinion in the light of the statutory provisions relating to temporary appointments and have concluded that the opinion is erroneous. In the state service, temporary appointments are governed by the provisions of R. S. 11:11-1, which provides as follows,

> "The appointing authority shall, when by reason of pressure of work he determines that an extra position in the classified service must be established for a period of not more than six months, notify the chief examiner and secretary of that fact stating the cause therefor, the probable length of time such position will be required and the duties the appointee is to perform. The chief examiner and secretary shall thereupon make such investigation as he deems necessary to satisfy himself as to whether the extra position must, in fact, be established and if he finds that it must, he shall, with the approval of the commission, issue the certificate provided by section 11:7-5 of this title and shall thereupon authorize the appointment of a qualified person with or without competitive tests. Temporary appointment to extra positions shall be made, as far as practicable, following certification from re-employment and employment lists. No such appointment shall be authorized for a period exceeding three months or renewed more than once within a fiscal year."

It will be noted that such temporary appointments are permitted only when, by reason of pressure of work, it is necessary to establish an extra position for a period not to exceed six months. The appointments are limited, by the terms of the above quoted section, to periods of three months with only one renewal permitted. The positions, created to carry out the terms of Chapter 323, P. L. 1946, N.J.S.A. 55:14G-1 et seq., must have been intended to continue for a greater period than six months. The program established by the statute was to continue from its effective date, October 1, 1946 to July 1, 1948. Section 26, Chapter 323, P. L. 1946, N.J.S.A. 55:14G-26. From time to time, however, the expiration date of the program was extended by the Legislature, Chapter 12, P. L. 1948, Chapter 5, P. L. 1949, Chapter 186, P. L. 1949, Chapter 25, P. L. 1954, Chapter 206, P. L. 1954. It is thus seen that the program was originally set up for a period longer in duration than six months and, in fact, it has continued for a much longer period. These facts do not justify any sweeping conclusion that all of the employees engaged in such a program are to be regarded as temporary employees. In order to have been so regarded, it would have been necessary to comply with the provisions of R. S. 11:11-1, supra, by the issuance of the certificate, to which reference is made therein,

and by the authorization of a temporary appointment. At the end of a six month period, after appointment to such a position, it would have been necessary, if it was determined to continue the position, for the appointing authority to have reported his intention to establish the position, R. S. 11:7-3, for the Chief Examiner to have certified that the position was necessary, R. S. 11:7-5, for the position to have been classified, R. S. 11:7-3, N.J.S.A. 11:7-11, 11:7-12, and the requisite employment list to have been prepared in the appropriate manner, R. S. 11:7-3, R. S. 11:9-9 and R. S. 11.10-1.

At the time Formal Opinion 1949 No. 27 was written, the statute, Chapter 323, P. L. 1946, authorizing the administrator (Commissioner of the Department of Economic Development) to hire employees, was silent as to the manner of selection of employees. In such a circumstance, the provisions of the Civil Service Law should have been complied with. Article VII, Section II, Paragraph II, of the New Jersey Constitution requires that appointments in the civil service of the State "* * * shall be made according to merit and fitness to be ascertained, as far as practicable, by examination * * *." This provision would seem to require that appointments should be made in accordance with the Civil Service Law unless there has been a legislative determination by statute or an administrative determination of the Civil Service Commission that it is not practicable to determine merit and fitness by examination. We know of no such legislative or administrative determination concerning these positions. Subsequently, on May 21, 1949, shortly after the date of Formal Opinion 1949 No. 27, Chapter 186, P. L. 1949 was enacted. The amendment provided, among other things, that the employment of the state employees authorized should not be subject to the Civil Service Law, N. J. S. A. 55:14G-12, paragraphs "b" and "c". After that date it was no longer necessary to comply with the provisions of the Civil Service Law as to the selection of new state employees of the Veterans Emergency Housing Program in the State Department of Conservation and Economic Development. The statute, however, continued to remain silent as to the manner of the selection of municipal employees engaged in the management of such Housing Projects.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.

APRIL 15, 1955.

HON. HARRY A. WALSH,
Chief Examiner and Secretary,
Department of Civil Service,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 15.

DEAR MR. WALSH:

You have requested advice as to whether an examination for the position of Chief of the Fire Department of the Town of Morristown should be limited to the paid members of the Fire Department or extended to include the volunteer members as well. R. S. 40:47—21 provides as follows: