June 30, 1955.

HON. FREDERICK J. GASSERT, JR.,
Director, Division of Motor Vehicles,
State House,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 27.

DEAR MR. GASSERT:

You have requested our opinion as to the effect of chapter 86 of the Laws of 1955, which amended N. J. S. A. 39:3—84.3 to modify the scale of penalties to be imposed for violation of the overloading and overweight provisions of the Motor Vehicle Law, on prosecutions for offenses which occurred prior to June 21, 1955, the effective date of P. L. 1955, c. 86.

We advise you that the penalty to be imposed for a violation of N. J. S. A. 39:3—84.3 which occurred prior to the effective date of P. L. 1955 c. 86 is that provided for in the statute prior to such amendment.

Chapter 86 of the Laws of 1955 provides that it is to take effect immediately but it contains no declaration that it is to apply to any prior offense and therefore does not apply to any violation of N. J. S. A. 39:3—84.3 theretofore committed. (*R. S. 1:1—15; State v. Low,* 18 N. J. 179 (1955), affirming 31 N. J. Super. 566 (Law Division, 1954); *State v. Crusius,* 57 N. J. L. 279 (Sup. Ct. 1894); *State v. Startup,* 39 N. J. L. 423, Sup. Ct. 1877).

R. S. 1:1—15, which is dispositive of the question raised, provides in part as follows:

> "No offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred, previous to the time of the repeal or alteration "of any act or part of any act, * * * by any act heretofore or hereafter enacted, shall be discharged, released or affected by the repeal or alteration of the statute under which such offense, liability, penalty or forfeiture was incurred, unless it is expressly declared in the act by which such repeal or alteration is effectuated, that an offense, liability, penalty or forfeiture already committed or incurred shall be thereby discharged, released or affected; and indictments, prosecutions and actions for such offenses, liabilities, penalties or forfeitures already committed or incurred shall be commenced or continued and be proceeded with in all respects as if the act or part of an act had not been repealed or altered, * * *".

Very truly yours,
GROVER C. RICHMAN, JR.,
Attorney General.
By: HAROLD KOLOVSKY,
Assistant Attorney General.

HK: MG

JULY 6, 1955.

MR. W. LEWIS BAMBRICK,
Unsatisfied Claim and Judgment Fund Board,
222 West State Street,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 28.

DEAR MR. BAMBRICK:

You have asked our opinion as to whether the Unsatisfied Claim and Judgment Fund Board may accept as timely notice under N. J. S. A. 39:6—65, a notice bearing a postmarked date which is within thirty days after an accident, but which is not received by the Unsatisfied Claim and Pension Fund Board within said thirty day period.

N. J. S. A. 39:6—65 provides as follows:

"Any qualified person, or the personal representative of such person, who suffers damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this State on or after the first day of April, one thousand nine hundred and fifty-five, and whose damages may be satisfied in whole or in part from the fund, shall, within thirty days after the accident, as a condition precedent to the right thereafter to apply for payment from the fund, give notice to the board, on a form prescribed by it, of his intention to make a claim thereon for such damages if otherwise uncollectible and otherwise comply with the provisions of this section;" . . .

In *Poetz v. Mix,* 7 N. J. 436 (Sup. Ct. 1951), the Court considered the question of when a pleading may be considered as "filed". The Court stated:

". . . In contemplation of law, a paper or pleading is considered as filed when delivered to the proper custodian and received by him to be kept on file. . ."

It should be noted that N. J. S. A. 36:6—65 does not require that a prospective claimant against the Unsatisfied Claim and Judgment Fund "file" his claim within thirty days from an accident, but merely that he "give notice to the board" within said period. However, there are several cases which rule that where a statute requires a notice to be given within a certain number of days after a certain event, the notice must be actually received, and not merely mailed, within the prescribed period of time.

In *Rapid Motor Lines v. Cox,* 134 Conn. 235, 56 A 2d 519 (Conn. Sup. Ct. of Err. 1947), where a statute provided that no action would lie against the state highway commission for damages caused by a defect in the highway unless notice of injury "shall have been given within thirty days thereafter to the highway commissioner," the court said:

". . . the clause 'notice shall be given' requires a completed act within the number of days prescribed by the statute . . . It is our conclusion that these words require that the notice shall be delivered to the commissioner within the sixty day period specified in the statute, and that sending on the sixtieth day a notice which is not received by him until the sixty-first day does not constitute compliance with the statute."

In *Chase v. Surry,* 88 Maine 468, 34 Atl. 270 (1896) where a statute required that the claimant "notify" municipal officers by letter or otherwise in writing, the Court stated:

"The statute expressly provides the time in which such notice may be given, and also the manner of giving it . . . The writing and mailing a notice within the time is not notifying the officers of the town as the statute requires."

In the above case the Court rejected the contention that the mailing of the notice, properly addressed within the prescribed period of time, was a legal notification, whether or not it was actually received by the town officers.

In *O'Neil v. Boston,* 257 Mass. 414 (1926), a notice to a municipality of an injury due to a defective condition on a sidewalk, which notice was mailed on the tenth day after the injury, but not received until the eleventh day, was held not a sufficient compliance with a statute requiring notice within ten days after the injury as a condition precedent to the maintenance of an action against the city.

We have also found that, with regard to cases involving the question of whether or not notice was given within the time limited by an insurance policy, the weight of authority is to the effect that notice must actually be received, not merely mailed, within the prescribed time. No cases in New Jersey are to be found on the general subject, with the exception of cases involving "filing" of a paper or pleading with a court. (Poetz v. Mix, supra).

In view of the foregoing, it is our opinion that the Unsatisfied Claim and Judgment Fund Board may not accept as timely notice under N. J. S. A. 39:6—65, a notice bearing a postmarked date which is within thirty days after an accident, but which is not actually received by the Unsatisfied Claim and Judgment Fund Board within said thirty day period.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

csj;b

JULY 13, 1955.

MR. STEVEN E. SCHANES,
Administrative Secretary,
Public Employees' Retirement System,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 29.

DEAR MR. SCHANES:

You have asked our opinion as to whether a holder of a "Discharge from Draft" should be entitled to be treated as a veteran under Chapter 15A of Title 43, the Public Employees' Retirement Act. You have attached to your request for an opinion letters from several state employees who hold such documents, as well as a photostatic copy of such a document issued on September 5, 1918 to Mr. Anthony F. Vitoritto, who is now a state employee.

We are advised that this type of document was issued during World War I, but not thereafter. In World War I, a person drafted into military service was sent to an army camp where he underwent a medical examination. In the event he failed to pass such medical examination, he was returned to civilian life, and given a "Discharge from Draft".

We have considered the photostatic copy of the document which you have furnished us concerning Mr. Vitoritto. It is specifically entitled "Discharge from Draft", and although it states that the holder of same "is hereby discharged from the military service of the United States by reason of defective vision", a footnote at the bottom thereof states as follows:

> "This form will be used for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc.
>
> It will not be used in cases of men who have been accepted for military service and are subsequently discharged."