JULY 18, 1955.

CHARLES J. TYNE, ESQ., *Chief Counsel,*
N. J. Law Enforcement Council,
1060 Broad Street,
Newark 2, New Jersey.

FORMAL OPINION—1955. No. 30.

DEAR MR. TYNE:

We have your letter of July 13, 1955 in which you advise that the Law Enforcement Council has requested our opinion on the following questions which concern them in view of the suit instituted by the Attorney General against Katherine K. Neuberger, Halsey W. Stickel, Evelyn N. Seufert and Harrison L. Todd, (hereinafter referred to as the "defendants"), viz:

"1. The right of the Council to continue its activities under the law.
2. Its right to make expenditures of funds in the usual manner, and
3. the validity of its acts pending determination of the suit instituted against the four members of the Council."

Basically, the three questions raise one single issue, whether action taken by the Law Enforcement Council since July 1, 1955 may be successfully attacked by the public or interested third parties if it should be determined in the pending suit that the terms of office of the defendants as members of the Law Enforcement Council expired on July 1, 1955.

In our opinion, the terms of office of the defendants as members of the Law Enforcement Council expired on July 1, 1955 and so much of P. L. 1955, C. 68 as provides that, "The terms of the members of the council now in office are hereby extended until July 1, 1956" is unconstitutional and invalid. Nevertheless, it must be recognized that the defendants are *de facto* officers, whose acts are valid so far as the public and interested third parties are concerned. (*Erwin v. Jersey City,* 60 N. J. L. 141 (E. & A. 1897); *Beattie v. Passaic Tax Board,* 96 N. J. L. 72, 74 (Sup. Ct. 1921); *State v. Zeller,* 83 N. J. L. 666 (E. & A. 1912); see also *Byrnes v. Boulevard Commissioners* 121 N. J. L. 497 (E. & A. 1938).

The settled rule is thus stated in the Annotation in 71 A. L. R. 849:

"After the expiration of his term of office, a person holding over and continuing to perform the functions and duties of the office without legal authority, but with a color of right or title to the office, is a defacto officer, whose acts are valid so far as the public and interested third persons are concerned."

So, too, Chief Justice Magie said in *Erwin v. Jersey City, supra,* at 60 N.J.L. 144:

"When an official person or body has apparent authority to appoint to public office, and apparently exercises such authority, and the person so appointed enters upon and performs the duties of such office, his acts will be held valid in respect to the public, whom he represents, and to third persons, with whom he deals officially, notwithstanding there was a want of power to appoint him in the person or body which professed to do so."

In *Beattie v. Passaic Tax Board,* supra, the Secretary of the Tax Board held over after the expiration of his term relying on an appointment by the President of the board, which the court held to be invalid. In that case, Mr. Justice Minturn said, at 96 N.J.L. 74:

"As between the public and the board the prosecutor was therefore a de facto officer, whose acts in the performance of public duty were binding upon the board and conclusive upon co-ordinate public bodies dealing with the board, but his legal status could be adjusted by the board only in the manner prescribed by the statute. Pending such adjustment he was holding over and performing the duties not as a de jure but as de facto officer." *Salter v. Burk,* 83 N.J.L. 52; *State v. Poulin,* 74 Atl. Rep. 119; *Murphy v. Freeholders,* 91 N.J.L. 40.

We therefore advise you that, in our opinion, action taken by the Law Enforcement Council between July 1, 1955 and the date of entry of judgment in the pending suit will not be subject to successful attack by the public or interested third parties even though it is determined in the pending suit that the defendants' terms did expire on July 1, 1955.

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

K;p—

JULY 28, 1955.

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

FORMAL OPINION—1955. No. 31.

DEAR MR. GASSERT:

You have asked our opinion as to whether, when a statute requires that certain notice be given by means of registered mail, the use of certified mail will constitute compliance with such statute.

Certified mail is a new postal service which was put into effect on June 7, 1955, by the Post Office Department. It is designed for the use of dispatchers of mail who require proof of delivery of mail that has no intrinsic value. The cost of certified mail is fifteen cents. Until the adoption of the certified mail system, there was a minimum registry fee of thirty cents for so-called "no value mail." This minimum fee of thirty cents has now been eliminated, and the lowest fee for registered mail, covering an indemnity up to $5.00, is forty cents. Certified mail is handled as first class mail, without the security, handling precautions attendant upon registry mail.

There is no doubt that the newly adopted system of certified mail serves the same purpose as registered mail insofar as proof of delivery is concerned. However, it does not replace the system of registered mail, even for items having no intrinsic value. Postal Bulletin No. 19843 issued on May 17, 1955 contains the following:

"After the 30 cents fee has been discontinued, articles having no intrinsic value may be registered on payment of the 40 cent fee or any of the higher fees which provide insurance coverage."

It is our opinion that since registered mail is still available for items having no intrinsic value, this type of postal service must be utilized to comply with statutes which provide for the use of "registered mail." This conclusion is fortified by the fact that the Supreme Court considered it necessary to amend its