"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.

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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 fortifiied by the fact that the Supreme Court considered it necessary to amend its

rules in order to allow the use of certified mail or registered mail in certain cases where registered mail was heretofore required by the Supreme Court Rules, and in at least one case maintained the necessity of registered mail only. The Court has adopted amendments to the Supreme Court Rules, which will become effective Septemeber 7, 1955, allowing certified mail to be used in most cases in which registered mail has heretofore been required by the Rules. The Supreme Court also adopted an order on June 27, 1955, that "pending the effective date of the amendments to the Rules promulgated to be effective September 7, 1955, certified mail will be permitted wherever registered mail is prescribed by the Rules, except that certified mail shall not be permitted under Rule 4:96-4(c)." Rule 4:96-4(c) pertains to service of a copy of the complaint upon the defendant in an action for divorce or nullity when the defendant cannot be served personally within the state.

The legislature may, of course, in its discretion, enact general legislation providing that, with regard to any statute requiring the use of registered mail, certified mail may be used on or after a prescribed date. Until such time as such legislation is enacted, however, the use of certified mail cannot be regarded as compliance with a statute which provides for the use of registered mail.

Very truly yours,
GROVER C. RICHMAN, JR.,
Attorney General.
By: CHARLES S. JOELSON,
Deputy Attorney General.

csj ;b

AUGUST 15, 1955.

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

FORMAL OPINION—1955. No. 32.

DEAR MR. SCHANES:

On March 30, 1955, we rendered an opinion advising you that personnel of the State Militia or New Jersey National Guard, who serve in the Department of Defense in a permanent capacity, are not entitled to prior service credit in the Public Employees' Retirement System for time spent in the active military service of the United States in time of war, if such service in time of war was at a time prior to their becoming permanent personnel as above set forth.

You now ask if such personnel would be entitled to prior service credit for time spent in the active military service of the United States in time of war, subsequent to their becoming state employees as members of the State Militia or New Jersey National Guard who served in the Department of Defense in a permanent capacity.

R. S. 38:12-8 provids as follows:

> "Officers and enlisted men serving the State in a permanent duty status shall be eligible for the disability and retirement privileges and benefiits available to all other employees of the State . . ."

R. S. 38:1-8, which is part of Chapter 95 of the Public Laws of 1939 dealing with the organization of the New Jersey National Guard, constitutes officers and enlisted men who serve in a permanent duty status as state employees for retirement purposes. They should, therefore, be accorded the same rights to prior