

AUGUST 31, 1955.

HONORABLE CHARLES R. HOWELL,  
*Commissioner of Banking and Insurance,*  
State House Annex,  
Trenton, New Jersey.

## FORMAL OPINION—1955. No. 33.

DEAR COMMISSIONER HOWELL:

You have recently requested our advice as to the propriety of a course of operation contemplated by Hospital Service Plan of New Jersey, hereinafter called the Plan. The correspondence attached to your letter indicates that the Plan proposes to contract with a foreign corporation, Health Service, Inc., hereinafter called Health Service. Health Service has issued a group health and accident policy covering employees of a New Jersey industry. The contract between Health Service and the Plan would provide that the plan would pay for hospital services rendered to policyholders of Health Service and that Health Service would subsequently reimburse the Plan and in addition pay charges for services rendered by the Plan.

The Plan was organized as a non-profit corporation under the provisions of legislation now contained in Title 15 of the Revised Statutes. Subsequently it qualified and was authorized to operate a non-profit hospital service plan under the provisions of N. J. S. A. 17:48-1 et seq.

The term hospital service plan is defined as a "plan whereby hospital service is provided by a hospital service corporation or by a hospital with which the corporation has a contract for such hospital service *to persons who become subscribers under contracts with the corporation*" (emphasis supplied) N. J. S. A. 17:48-1. The proposed arrangement thus would not come within the definition of a hospital service plan since the hospital services would be rendered to beneficiaries of a policy issued by a different corporation, not subscribers to the plan.

This would also contravene the intent of N. J. S. A. 17:48-2. That section provides "Every such corporation shall be operated for the benefit of the subscribers with whom it has contracted to provide hospital service." We think this is intended to preclude activities not directly related to the rendering of services to subscribers.

It cannot be contended that the proposed arrangement is authorized under the general powers of non-profit corporations. It is only as a hospital service corporation that the Plan can contract for the furnishing of hospital services. N. J. S. A. 17:48-2 provides that "No person, firm, association or corporation, other than a hospital service corporation, or an insurance company \* \* \* shall establish, maintain or operate a hospital service plan *or otherwise contract in this State with persons to furnish hospital service.*" (emphasis supplied)

You also pose another question: whether a non-profit corporation other than a hospital service corporation could contract in the manner outlined for the furnishing of hospital services? This question is also answered in the negative by reference to the above quoted portion of N. J. S. A. 17:48-2. Only a hospital service corporation or an insurance company may contract for the furnishing of hospital services.

We advise you accordingly that the proposed arrangement of the Plan would not be permitted under our law.

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By. JOHN F. CRANE,  
*Deputy Attorney General.*

The constitutional intention is thus seen to permit the Legislature to appoint commission to aid it in its legislative functions, but to prohibit it from making appointments to executive bodies. The manner of the appointment of the members of the various commissions is thus significant. Bearing these considerations in mind, we shall attempt to categorize the agencies concerning which you have requested advice.

#### SOUTH JERSEY PORT COMMISSION

The Commission was created by Chapter 336, P. L. 1926: It was continued by R. S. 12:11—3 and by Chapter 167, P. L. 1942. R. S. 12:11—3 placed the appointive power in the governor with the advice and consent of the senate; Chapter 167, P. L. 1942, amending R. S. 12:11—3, provided that the members of the commission should be elected by the Legislature by concurrent resolution. The latter provision became ineffective on the adoption of the Constitution of 1947 in view of the above-cited provisions. Subsequently, appointments have been made by the chief executive pursuant to the power vested in him by Article 5, Section 1, Paragraph 1, vesting the executive power in him, Article 5, Section 1, Paragraph 11, enjoining him to "take care that the laws be faithfully executed" and Article 5, Section 1, Paragraph 12, giving him the power to "appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

Governor Driscoll made appointments to the South Jersey Port Commission with confirmation following by the Senate during the years 1949 to 1953. Those so appointed are:

Archibald W. Brown  
 J. Oscar Hunt  
 Charles E. Gant  
 William De Long, Jr.  
 Carl R. Youngberg  
 William W. Chalmers

R. S. 12.11-6, as amended, gives the commission

"\* \* \* authority subject to the approval of the board of commerce and navigation, over the survey, development, control and operation of port facilities in the district and the coordination of the same with existing or future agencies of transportation \* \* \*. It shall make an annual report to the legislature."

R. S. 12:11-7 sets forth the general powers and duties of the commission. That section grants power to confer with municipal bodies, to confer with railroad, steamship, warehouse and other officials in the district on transportation facilities, to determine the location; type; size and construction of requisite port facilities, to acquire real property, to regulate construction and operation, to expend monies when appropriated and to employ clerical and engineering assistants. R. S. 12:11-8 permits it to make recommendations to the legislature and to Congress. R. S. 12:11-10 permits the commission to make orders to municipalities, corporations or individuals concerning the development of the district. R. S. 12:11-11 authorizes it to make investigations.

An analysis of the above functions and powers leads to the conclusion that the commission is essentially an administrative body exercising executive powers. We, therefore, are of the opinion that its fiscal control lies with the Treasury Department rather than with the Legislative Budget and Finance Director.

examining the records to inquire further as to whether approval of the action taken was intended. Your signature, of course, does not indicate that the minutes accurately reflect what took place at the meeting. That function should be performed by the individual acting as secretary of the particular council.

Yours very truly,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: JOHN F. CRANE,  
*Deputy Attorney General.* L

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JANUARY 12, 1955.

MR. GEORGE BORDEN, *Secretary,*  
*State Employees' Retirement System of New Jersey,*  
State House Annex,  
Trenton, New Jersey.

### MEMORANDUM OPINION P-1.

DEAR MR. BORDEN:

This is in answer to your letter of December 23, 1954, in which you ask whether a person drawing a "free veteran's pension" is eligible to apply for an additional veteran's retirement under the new Public Employees' Retirement System.

The employee in question is apparently now drawing his pension pursuant to R. S. 43:4-1, 43:4-2 and 43:4-3. R. S. 43:4-2 provides as follows:

"When an honorably discharged soldier, sailor or marine has or shall have been for twenty years continuously or in the aggregate in office, position or employment of this State or of a county, municipality or school district or board of education, the body, board or officer having power to appoint his successor in case of vacancy may, with his assent, order his retirement from such service, or he may be retired on his own request . . ."  
R. S. 43:4-3 provides as follows:

"A person so retired shall be entitled, for and during his natural life, to receive by way of pension, one half of the compensation then being received by him for his service . . ."

"*In case of retirement with pension from office or Position under any other law of this State, the person retiring shall waive either his pension under that law or his pension under this article.*" (Underscoring supplied)  
R. S. 43:3-1, as amended, provides:

"Any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State, shall be ineligible to hold any public position or employment other than elective in the State or in any county, municipality or school district, unless he shall have previously notified and authorized the proper authorities of said State, county, municipality or school district, from which he is receiving or entitled to receive the pension that, for the duration of the term of office of his public position or employment he elects to receive (1) his pension or (2) the salary or com-