

AUGUST 31, 1955.

HON. CARL HOLDERMAN, COMMISSIONER,
Department of Labor and Industry,
1035 Parkway Avenue,
Trenton 25, New Jersey.

FORMAL OPINION—1955. No. 34.

DEAR COMMISSIONER HOLDERMAN:

You have asked for our opinion concerning the effect to be given Chapter 196, P. L. 1955 which became effective August 5, 1955, upon its approval by the Governor. More particularly, you state. "Heretofore, papers normally filed on a Saturday have been filed as of Saturday. Because of the new statute, it would appear that any papers normally received on Saturday should be filed as of the following Monday, unless Monday happens to be a holiday, in which event the papers would be filed as of Tuesday." You then ask: "Will you kindly inform us whether our understanding is correct?"

Prior to the 1955 amendment, N. J. S. A. 36:1-1.1, as amended, provided: "Each Saturday between June 15 and September 15 in each year shall, for all purposes whatsoever as regards the transaction of business in the public offices of this State, and the counties and municipalities in this State, be considered as the first day of the week, commonly called Sunday, and as public holidays." (P. L. 1946, c. 129, sec. 1, as amended P. L. 1954, c. 196, sec. 1). It became effective July 23, 1954, upon approval by the Governor. The present enactment (Ch. 196, P. L. 1955) is amendatory thereof, the extent of the amendment being the deletion of the phrase "between June 15 and September 15." Thus, the new law makes effective all year long the summer-time practice you had been following during the stated summer period.

As pointed out by the Assistant Attorney General in his letter to you of August 15, 1955, the statutory language expressly provides that Saturday be considered Sunday "for all purposes whatsoever as regards the transaction of business in the public offices of this State."

Therefore, in answer to your question, if for some valid reason your offices are open on Saturdays for the receipt of papers, such papers should be filed as of the Monday immediately following; if the Monday immediately following is a legal holiday, then they should be filed as of the next day, Tuesday.

Since Saturday is to be treated as Sunday within the statutory intendment, the following brief observations regarding Sunday may be helpful.

Sunday is recognized by our courts to be *dies non juridicus*. In *State v. Rhodes*, 11 N. J. 515 (1953), it was said, at 521: "* * * * our courts have consistently described Sunday as *dies non* and have in manifold circumstances sanctioned legal action on the following Monday when the last day prescribed therefore fell on Sunday." In that case, the Supreme Court held an indictment to be timely found within the two-year limitational period where the indictment was returned on a Monday, the Sunday immediately preceding which was the last day of the two-year period. In the earlier case of *City of Newark v. Smith*, 120 N. J. L. 56, 59 (Sup. Ct. 1938), Heher J. stated: "* * * * Sunday is *dies non juridicus*. This is a general policy that has always pervaded our law * * *". There, the Essex Circuit Court Judge by formal order of December 2, 1932, had fixed December 9, 1932, as the time for hearing objections to commissioners' assessments for local improvements in Newark, and directed that notice thereof be given to the affected property owners by publication "in at least two of the official papers of the city of Newark, for five successive days prior to such date." The prescribed notice was published on December 3, 5, 6, 7, and 8. No publication was had on Sunday, December 4. The statute there in question provided that the Circuit Court "shall cause such

notice to be given as it shall direct." The Court found no merit in the claim of non-compliance with the direction of the order that the notice be published "for five successive days."

In *Poetz v. Mix*, 7 N. J. 436 (1951), the effect to be given R. S. 36:1-1.1 was directly involved. (At that time, the statute related only to Saturdays in July and August, but otherwise was the same.) The question for decision was whether the action had been timely commenced within the two-year limitation period (then contained in R. S. 2:24-2). *Inter alia*, the Court held that if a clerk accepts a paper or pleading for filing without payment of filing fee until a later date, the paper or pleading shall be considered filed upon its receipt by the clerk notwithstanding that the fee has not yet been paid. Plaintiff's cause of action having accrued on July 16, 1947, the two-year limitation period established by the statute was reached on July 16, 1949, a Saturday. At 445, the Court stated it to be "well settled in this State that where, by statute, an act is due arithmetically on a day which turns out to be a Sunday or legal holiday, it may be lawfully performed on the following day, and if that day be also a *dies non* on which the public offices are closed to the transaction of business, according to the 'holiday acts' *supra*, a similar rule applies cognizant of the conflict of authority in other jurisdictions regarding the statute of limitations, the Court accepted as "the better view * * * that where the last day of the period prescribed by statute of limitation for commencing an action (in the absence of a controlling statute to the contrary) falls on a Sunday or a legal holiday (Saturdays during July and August by R. S. 36:1-1.1) when public offices are legally closed to the transactions of business, such an action commenced on the next day which is not a *dies non* is not too late" (at 446). The complaint was held to be timely filed.

In *Potter v. Brady Transfer & Storage Co.*, 21, N. J. Super., 175 (App. Div. 1952) the question was stated to be: "Whether, when the last day in which to commence an action under the New Jersey Workmen's Compensation Act, R. S. 34:15-51 N. J. S. A., falls on a Sunday, and a claim petition is filed on the following day, the Division of Workmen's Compensation of the Department of Labor and Industry has jurisdiction to hear and dispose of the claim of the petitioner?" The respondent attempted to distinguish between the ruling in *Poetz v. Mix*, *supra* and the situation presented in the above question "upon the circumstance that the provision of the compensation law fixing the time for filing is not an ordinary statute of limitations but rather goes to the jurisdiction of the tribunal." The Court found the distinction untenable and concluded: "In construing the compensation statute the court must read it with the statute making Sunday a holiday for the reason that both statutes are in *pari materia*. Whenever the Legislature fixes a time period, it should be assumed that it is enacting the law in the light of those other statutes. Otherwise, each such statute would have to have tagged onto it words 'or upon the following business day when the last day falls on a legal holiday' or words to a similar purport."

It might be noted that Supreme Court Rules 1:27, 7:19-4 and 8:12-4 have been amended effective September 7, 1955, to give Saturdays the same status as Sundays and legal holidays for the purposes set out in the rules.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: LAWRENCE E. STERN,
Deputy Attorney General.