Since it is our understanding that in none of the cases in your office at the present time which concern applications to purchase credit toward retirement for a period of time covering a leave of absence of more than three months prior to January 1, 1955, was such leave of absence approved by the head of the department involved and the board of trustees of the State Employees' Retirement System at the time such leave of absence was granted, we are not required to deal with the problem of whether or not such a leave of absence if it had been so approved, could be computed toward retirement by the purchase of credit therefor at the present time.

It is, therefore, our opinion that the Board of Trustees of the Public Employees' Retirement System should deny applications presently under consideration for the purchase of credit towards retirement for a period of time covering leaves of absence without pay which exceeded three months.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

December 8, 1955.

HONORABLE JOHN P. MILLIGAN,
Director, Division Against Discrimination,
Department of Education,
162 West State Street,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 42.

DEAR MR. MILLIGAN:

You have requested our opinion as to whether the Law Against Discrimination (N. J. S. A. 18:25-1 et seq.) applies to summer camps operated by bona fide religious or sectarian institutions. We understand that your inquiry refers to summer camps maintained for children of school age rather than to recreational vacation facilities for adults.

We have reached the conclusion that if such a camp caters to the public generally, it is covered by the Law Against Discrimination as a "place of public accommodation"; but if attendance at the camp is limited to members of a certain creed or of a particular religious or sectarian institution, it is not subject to that law.

The law prohibits discrimination because of race, creed or color in the admission of persons to "any place of public accommodation" (N. J. S. A. 18:25-12(f)). Section 18:25-5(j) of the law provides in part as follows:

> "'A place of public accommodation' shall include any tavern, roadhouse, or hotel, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; * * * swimming pool, amusement and recreation park * * * gymnasium * * * kindergarten,

primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include, or to apply to, any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed."

The term "place of public accommodation" is clearly broad enough to include summer camps for children. The word "accommodation" has been defined as "whatever supplies a want or affords ease, refreshment, or convenience; anything furnished which is desired or needful." *Powell v. Utz,* 87 F. Supp. 811, 814 (D. C. Wash. 1949). In construing the term "place of public accommodation, resort or amusment" in the old civil rights statute of New York, which was penal and therefore strictly construed, the New York Court of Appeals used the following broad language (*Johnson v. Auburn & Syracuse Electric R. Co.* 119 N.E. 72, 73, 222 N.Y. 443 (1918)):

> "Those places include each of those utilities, facilities and agencies created and operated for the common advantage, aid, and benefit of the people, the denial of which to any person would be a discriminatory obstruction or deprivation in achieving prosperity, health, development, or happiness."

The New Jersey law provides (N. J. S. A. 18:25-27) that the act "shall be construed fairly and justly with due regard to the interests of all parties." Since our Law Against Discrimination is not penal, and in view of the mandate of the Legislature just quoted, the term "place of public accommodation" should be contrued as embracing all facilities which can fairly be brought within its range.

Summer camps are not mentioned in the long list of facilities contained in Section 18:25-5(j). This fact is not controlling, however, because the enumeration in that section is not all-inclusive. See *State v. Rosecliff Realty Co.,* 1 N. J. Super. 94 (App. Div. 1948), where the Appellate Division held that swimming pools were within the orbit of the old Civil Rights Law (R. S. 10:1-2, 5) even though not specifically mentioned therein.

According to the Court, the Legislature intended that "broad scope" should be given to the phrase "place of public accommodation, rest or amusement," and that any facility reasonably falling within that broad scope was subject to the law.

Adopting that view here, we think that summer camps for children, if open to the public, come within the purview of the Law Against Discrimination. The maxim *ejusdem generis,* applied to the construction of our statute, leads to the same result, since summer camps have many attributes in common with hotels, swimming pools, recreation parks and schools, all of which are included in the statutory definition as examples of places of public accommodation.

Our conclusion is further supported by *Camp-of-the-Pines, Inc. v. New York Times Co.,* 184 Misc. 389, 53 N. Y. S. 2d 475 (Sup. Ct. 1945), where the New York Court ruled that the civil rights law of New York applied to a vacation camp in the Adirondack Mountains. The court found that such a camp was a "place of public accommodation, resort or amusement" within the meaning of that law, even though not specifically defined therein as such.

We turn now to the two exceptions contained in the above quoted proviso to section 18:25-5(j): (1) any institution, bona fide club, or place of accommodation, which is in its nature distinctly private"; and (2) "any educational facility operated or maintained by a bona fide religious or sectarian institution."

We will not attempt to discuss here what circumstances might bring a summer camp for children within the exception of a "place of accommodation, which is in its nature distinctly private." This subject frequently presents difficulties, and the question can only be answered satisfactorily in the light of the particular setting in which it arises. We can say, however, that if attendance at the camp is confined to the members of a bona fide religious or sectarian institutiton, it would be "distinctly private" within the meaning of the exception. On the other hand, the camp would not be exempt merely because of its operation by an agency or institution which itself may be private. It is the nature of the facility in question, rather than the agency maintaining it, that determines whether or not the Law Against Discrimination is applicable. *Delaney v. Central Valley Golf Club,* 289 N. Y. 577, 43 N. E. 2nd 716 (1942).

On the question of whether a summer camp for children is an "educational facility" within the meaning of the exception hereinabove quoted, a broad use of those words might well require an affirmative answer, since the term "education" can denote the developing or cultivating of the entire personality of the individual—body, mind and heart. *In Re Moses' Estate,* 138 App. Div. 525, 123 N. Y. S. 443 (1910). We are persuaded, however, that as used in the above quoted proviso, the phrase "educational facility" refers back to aand denotes only the facilities enumerated in Section 18:25-5(j), i.e. any kindergarten, primary or secondary school, etc.

The statutory phrase "educational facility" appears to have been used synonomously with the term "educational institutiton", the ordinary meaning of which is a place where classes are conducted, such as schools and colleges. *Board of National Missions v. Neeld,* 9 N. J. 349, 354 (1952); *Lois Grunow Memorial Clinic v. Oglesby,* 22 P. 2d 1076, 1078, 42 Ariz. 98 (1933), and cases there cited.

In view of the beneficent purposes of the statute, the language of the exceptiton should not be given a broader import than its ordinary connotation.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: THOMAS P. COOK.
Deputy Attorney General.