

The New Jersey position accords with the weight of authority. In *Delaware, Lackawanna, and Western Railroad Company et al v. Mehrof Bros. Co.*, 53 N. J. L. 205 (Err & App, 1890) the court stated:

"Between two days does not mean on one or both of the two days. When the word is predicable of time, it excludes both terminal days."

In *Melis et al v. Goldstein et al* 4 N. J. Misc 364 (Circuit Ct. 1926), the Court states:

"It is settled in this State that a period of time defined as between two certain dates does not include either of the terminal dates."

It should be pointed out that in the old New Jersey case of *Morris & Essex Railroad Company v. Central Railroad Company of New Jersey*, 31 N. J. L. 205 (Sup. Ct. 1865), the Court held that the word "between" should be treated inclusively where a railroad was chartered to operate "between Phillipsburg and Easton." In that case, the Court was of the opinion that what it termed a "rigidly verbal interpretation of the clause . . . will fall short of the evident and undeniable object of the law makers."

Nevertheless, the courts of New Jersey and the great majority of the courts of other jurisdictions treat the word "between" as indicating an exclusion in cases involving dates rather than distances.

It is, therefore, our opinion that the claim of the applicant for veteran's status within the meaning of Chapter 84 of the laws of 1954 must be denied.

Returned herewith are the documents with which you furnished us.

Very truly yours,

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

By: CHARLES S. JOELSON,  
*Deputy Attorney General.*

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FEBRUARY 1, 1955.

HON. DWIGHT PALMER,  
*State Highway Commissioner,*  
1035 Parkway Avenue,  
Trenton, New Jersey.

### MEMORANDUM OPINION P-3.

DEAR COMMISSIONER PALMER:

Your recent request for advice asks whether employees of your department may lawfully engage in outside employment and if so, whether there are any limitations on such employment.

Since your request was phrased in general terms our advice must be of a general nature. You are advised that employees of your department may engage in outside employment during a time other than their regular working hours so long as they are able to perform their duties with your department in an efficient and satisfactory manner and so long as such employment does not involve a conflict with the interests of the State. See 35 Am. Jur. 516, 517; 56 C. J. S. 481. Engaging

in activity inimical to the interests of the state, however, might well form the basis of disciplinary action under the provisions of Civil Service Rules 58 and 59. See 56 C. J. S. 430. "An employee commits a breach of duty if he engages in a business or renders services conflicting with his duties to his employer \* \* \*." Note 13 A. L. R. 909. Such conduct, in our opinion, would include the preparation of bids on state projects for private contractors, the preparation of plans or other work for contractors doing work for the state, work for a county or a municipality in a situation in which the State contributes to the cost of the project. In short any situation in which a state employee might possibly be influenced in his official capacity by interests arising out of his private employment should be avoided.

The State is entitled to the complete and undivided loyalty of each of its employees.

"There is an implied agreement on the part of the employee in every contract of service that he will serve his employer honestly and faithfully. It is his duty to communicate to him all facts which he ought to know." 56 C. J. S. 480.

Language found in the case of *Elco Shoe Manufacturers v. Sisk*, 260 N. Y. 100, 183 N. E. 191 (Ct. App. N. Y. 1932) seems particularly appropriate. At 183 N. E. 192 the court said,

"\* \* \* no man can serve two masters with equal fidelity when rival interests come into existence. Agents are bound at all times to exercise the utmost good faith toward their principals. They must act in accordance with the highest and truest principles of morality."

It should be pointed out that you have the power under the provisions of R. S. 27:1-8 to "\* \* \* adopt rules and regulations and prescribe duties for the efficient conduct of the business, work and general administration of the department, its officers and employees." If you have specific problems of a recurring nature you may wish to consider the advisability of promulgating rules and regulations on this subject. Since, as has been pointed out above, an employee owes the duty to his employer to disclose facts the employer should know, you may require full disclosure of the outside employment of your employees so that you can determine whether or not such activities are in conflict with the employee's duty to the department.

The foregoing advice is intended to apply generally to all of the officers and employees of your department. One of the officers, however, namely the State Highway Engineer, is required to "\* \* \* devote his entire time and attention to the duties of his office." R. S. 27:1-14, as amended. This requirement effectively bars him from engaging in any other gainful pursuit. See, *First Calumet Trust and Savings Bank v. Rogers*, 289 Fed. 953, 958 (7 Cir. 1923); Cf. *Sheppard Pub. Co. v. Harkins*, 9 Ont. L. Rep. 504, 508 (Div. Ct. 1905).

Yours very truly,

GROVER C. RICHMAN, JR.,  
Attorney General.

By: JOHN F. CRANE,  
Deputy Attorney General.

FEBRUARY 17, 1955.

HON. ARCHIBALD S. ALEXANDER,  
State Treasurer,  
State House,  
Trenton, N. J.

## MEMORANDUM OPINION P-4.

DEAR MR. ALEXANDER:

You have asked whether the State of New Jersey can become a member of and have an interest in a mutual insurance company and whether the fact that an insurance policy issued by a mutual insurance company states that the policy is non-assessable and there is no contingent liability, would eliminate the possibility of an assessment against the State as a member of such a mutual insurance company.

Our opinion is that the State of New Jersey can become a member of and have an interest in a mutual insurance company where the insurance contract states that the policy is non-assessable and that there is no contingent liability, provided that such provision in the insurance contract is authorized by the statutes of the state in which the insurance company is incorporated and by the constitution and bylaws of such a mutual insurance company.

The statute governing the purchase of insurance by the State is N. J. S. A. 52:27B-62:

"The director (referring to the Director of the Division of Purchase and Property) shall, subject to the approval of the commissioner, (referring to the former office of State Commissioner of Taxation whose powers in this respect are now vested in the State Treasurer (N. J. S. A. 52:18A-32), effect and maintain insurance against loss or damage by fire upon the State House and the contents thereof in such sum as may be deemed necessary. The director is hereby authorized, and it shall be his duty, after consultation with the heads of State departments and agencies, to purchase and secure all necessary casualty insurance, marine insurance, fire insurance, fidelity bonds, and any other insurance necessary for the safeguarding of the interest of the State. He is hereby authorized, subject to the commissioner's supervision and approval, to establish in the Division of Purchase and Property, a bureau to administer a centralized system of insurance for all departments and agencies of the State Government."

In the case of *State v. Community Health Service, Inc.*, 129 N. J. L. 427, 429 (E. & A. 1943), the Court approved the following definition of insurance:

"\* \* \* an agreement by which one party for a consideration promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss or injury of something in which the other party has an interest."

Neither the statute itself nor the common-law definition of the term "insurance" limits the term "insurance" to any particular type thereof.

The distinguishing feature of mutual insurance companies, is the power of mutual insurance companies to levy assessments against their members. The question then arises whether a mutual insurance company, by a provision in its contract with a member, can issue a policy which is non-assessable.