

JULY 6, 1955.

MR. W. LEWIS BAMBRICK,
Unsatisfied Claim and Judgment Fund Board,
 222 West State Street,
 Trenton, New Jersey.

MEMORANDUM OPINION P-17.

DEAR MR. BAMBRICK:

You have asked our opinion as to whether the Unsatisfied Claim and Judgment Fund Board may accept as timely notice under N. J. S. A. 39:6-65, a notice bearing a postmarked date which is within thirty days after an accident, but which is not received by the Unsatisfied Claim and Pension Fund Board within said thirty day period.

N. J. S. A. 39:6-65 provides as follows:

"Any qualified person, or the personal representative of such person, who suffers damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this State on or after the first day of April, one thousand nine hundred and fifty-five, and whose damages may be satisfied in whole or in part from the fund, shall, within thirty days after the accident, as a condition precedent to the right thereafter to apply for payment from the fund, give notice to the board, on a form prescribed by it, of his intention to make a claim thereon for such damages if otherwise uncollectible and otherwise comply with the provisions of this section;" . . .

In *Poetz v. Mix*, 7 N. J. 436 (Sup. Ct. 1951), the Court considered the question of when a pleading may be considered as "filed". The Court stated:

". . . In contemplation of law, a paper or pleading is considered as filed when delivered to the proper custodian and received by him to be kept on file . . ."

It should be noted that N. J. S. A. 36:6-65 does not require that a prospective claimant against the Unsatisfied Claim and Judgment Fund "file" his claim within thirty days from an accident, but merely that he "give notice to the board" within said period. However, there are several cases which rule that where a statute requires a notice to be given within a certain number of days after a certain event, the notice must be actually received, and not merely mailed, within the prescribed period of time.

In *Rapid Motor Lines v. Cor.*, 134 Conn. 235, 56 A 2d 519 (Conn. Sup. Ct. of Err. 1947), where a statute provided that no action would lie against the state highway commission for damages caused by a defect in the highway unless notice of injury "shall have been given within thirty days thereafter to the highway commissioner," the court said:

". . . the clause 'notice shall be given' requires a completed act within the number of days prescribed by the statute . . . It is our conclusion that these words require that the notice shall be delivered to the commissioner within the sixty day period specified in the statute, and that sending on the sixtieth day a notice which is not received by him until the sixty-first day does not constitute compliance with the statute."

In *Chase v. Surry*, 88 Maine 468, 34 Atl. 270 (1896) where a statute required that the claimant "notify" municipal officers by letter or otherwise in writing, the Court stated:

"The statute expressly provides the time in which such notice may be given, and also the manner of giving it . . . The writing and mailing a notice within the time is not notifying the officers of the town as the statute requires."

In the above case the Court rejected the contention that the mailing of the notice, properly addressed within the prescribed period of time, was a legal notification, whether or not it was actually received by the town officers.

In *O'Neil v. Boston*, 257 Mass. 414 (1926), a notice to a municipality of an injury due to a defective condition on a sidewalk, which notice was mailed on the tenth day after the injury, but not received until the eleventh day, was held not a sufficient compliance with a statute requiring notice within ten days after the injury as a condition precedent to the maintenance of an action against the city.

We have also found that, with regard to cases involving the question of whether or not notice was given within the time limited by an insurance policy, the weight of authority is to the effect that notice must actually be received, not merely mailed, within the prescribed time. No cases in New Jersey are to be found on the general subject, with the exception of cases involving "filing" of a paper or pleading with a court. (*Poetz v. Mix*, *supra*).

In view of the foregoing, it is our opinion that the Unsatisfied Claim and Judgment Fund Board may not accept as timely notice under N. J. S. A. 39:6-65, a notice bearing a postmarked date which is within thirty days after an accident, but which is not actually received by the Unsatisfied Claim and Judgment Fund Board within said thirty day period.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES S. JOELSON,
Deputy Attorney General.

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JULY 7, 1955.

HON. CHARLES F. SULLIVAN,
Director, Division of Purchase and Property,
State House,
Trenton 7, New Jersey.

MEMORANDUM OPINION P-18.

Re: 200-Bed Housing Unit and New Kitchen Addition—
New Jersey State Hospital, Marlboro, New Jersey.

DEAR DIRECTOR SULLIVAN:

We have your letter of June 27th last, together with its enclosures relating to the above entitled matter.

It is to be noted that you desire our opinion as to whether the proposal of Anthony Lewis, Inc. of 14-22 Newark Way, Maplewood, New Jersey, the lowest responsible bidder on General Construction Work at New Jersey State Hospital, Marlboro, New Jersey, should be rejected in view of its request to be relieved of