

"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

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all obligations by reason of an error made in estimating the cost of performing the job or whether the State should pursue its remedies under the performance bond posted by the bidder in the amount of \$35,000.00.

It appears from your letter that on April 19, 1955, sealed proposals were received, after advertisement, for construction of a 200-Bed Housing Unit and New Kitchen Addition at the New Jersey State Hospital, Marlboro, New Jersey. It further appears that the difference between the Lewis' bid and the next low bidder is \$63,585.00.

It is noted that time is of the essence since the job to be performed is of an urgent nature.

Anthony Lewis, Inc. cannot exculpate itself from liability because it made an error in estimating the cost of the General Construction Work. It conformed to the requirements of notice to bidders and therefore is the lowest bidder. *Tufano v. Boro of Cliffside Park*, 110 N. J. L. 370 (Sup. Ct. 1932) 165 A. 628. The award of the contract was made to it pursuant to N. J. S. A. 52:34-12 (d) which provides that the

"\* \* \* award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered. Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do."

This section also provides for the rejection of any or all bids by the Treasurer or the Director of the Division of Purchase and Property in the exercise of sound discretion.

We are of the opinion that the State may hold Anthony Lewis, Inc. and its surety to the responsibility of proceeding with the contract. The State is not responsible for the bidder's miscalculation or error in making estimates as to the costs of construction of a particular project when notice has been duly given with respect to the requirements of the contract alike to all bidders. However, as indicated by N. J. S. A. 52:34-12 (d) the State may reject any or all bids and advertise anew, if it is determined that the exigencies of the situation require, in the public interest, that such action be undertaken.

Very truly yours,

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

By: ROGER M. YANCEY,  
*Deputy Attorney General.*