It must be conceded that there is no express repeal in this instance.

A uniform line of decision in this State has established the principle that repeal by implication is not favored. In the case of *Scancarella* v. *Dept. of Civil Service*, 24 N. J. Super. 65, (A. D. 1952), the court observes on Page 70:

> "Implied repealers are not favored in the law and are not declared to exist unless the later statute is 'plainly repugnant to the former and is designed to be a complete substitute for the former.' *Goff* v. *Hunt*, 6 N. J. 600, 606 (1951.)"

Furthermore, the State Constitution by Article IV, Section VII, Paragraph 11, provides:

> "11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law."

We are of the opinion, therefore, that the municipality retains its right to erect the election districts in the new wards, but that your Board has the authority to revise and re-adjust election districts for the reasons contained in R. S. 19:4-7, provided your Board makes a finding, based upon substantial facts, that a serious inconvenience has been caused.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: JOSEPH LANIGAN
Deputy Attorney General

JL:MG

MARCH 15, 1956

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

MEMORANDUM OPINION—P-10

DEAR MR. BAMBRICK:

You have requested our opinion concerning an application for payment from the Unsatisfied Claim and Judgement Fund which has been made to the Essex County District Court pursuant to R.S. 39:6-61 et seq.

You have informed us that the applicant suffered personal injuries and property damage in a motor vehicle accident, filed proper notice of the accident and an intention to file a claim against an uninsured driver of a motor vehicle, required by R.S.

39:6-65, and sued for his damages in the Essex County District Court where judgment in the amount of one thousand dollars ($1,000.00) was entered in his favor on October 4, 1955. The plaintiff-applicant thereupon filed an application for payment of the judgment under the provisions of R.S. 39:6-69 which states that:

> "When any qualified person recovers a valid judgment for an amount in excess of two hundred dollars ($200.00), exclusive of interest and costs, in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons or for damages to property, except property of others in charge of such operator or owner or such operator's or owner's employees. arising out of the ownership, maintenance or use of the motor vehicle in this State on or after the first day of April, one thousand nine hundred and fifty-five, and any amount in excess of two hundred dollars ($200.00) remains unpaid thereon, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the board may apply to the court for an order directing payment out of the fund of the amount unpaid upon such judgment, which exceeds the sum of two hundred dollars ($200.00) and does not exceed * * * (certain maximum amounts not at issue herein) * * *."

R.S. 39:6-70 directs the court to proceed upon the application in a summary manner and to examine the judgment creditor as to whether he has complied with certain conditions stated therein to the effect that he has made a diligent search and has been assured that the judgment debtor has no assets with which to pay any part of the judgment. Upon being satisfied that the claim is valid, the court may make an order directing the State Treasurer to make payment from the Unsatisfied Claim and Judgment Fund (R.S. 39:6-71).

In order to satisfy the requirements of R.S. 39:6-70 the applicant, in his attempt to show the court that he has diligently attempted to find assets which could be recovered in payment of the judgment which was unsuccessful, has stated in his affidavit submitted to the court, paragraph 6, that:

> "On October 4, 1955 a judgment was entered in the Essex County District Court in the sum of $1,000.00 and the amount owing at this time is the sum of $1,000.00 exclusive of a separate agreement whereby the defendant paid $200.00 to be applied over and above the $800.00 that the Unsatisfied Claim and Judgment Fund Board would pay after the assignment of the judgment to them. The said $200.00 by the said agreement was to be applied after he had faithfully and fully made his payments to the said Board and was to be held by myself as the share that the Unsatisfied Claim and Judgment Fund would not reimburse me for until and when they were successful in collecting the amount of money due the Fund by the assignment of this judgment."

In effect, the applicant is stating that he has received previous payment from the uninsured defendant of two hundred dollars ($200.00) which he intends to apply over and above the maximum amount that he could receive from the court on the application of eight hundred dollars ($800.00) because of the provisions of R.S.

39:6-73 which provides for a deduction of two hundred dollars ($200.00) from the total amount of the judgment (R.S. 39:6-73 (c)). It is our opinion that the position of the plainff-applicant that he is entitled to the full eight hundred dollars ($800.00) instead of six hundred dollars ($600.00) is untenable in light of the intent and meaning of the statute.

R.S. 39:6-70 (h) requires the applicant to show that:

> "(h) He has caused to be issued a writ of execution upon said judgment and the sheriff or officer executing the same has made a return showing that no personal or real property of the judgment debtor, liable to be levied upon in satisfaction of the judgment, could be found or that the amount realized on the sale of them or of such of them as were found, under said execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized,"

Subsection (j) of the same section further requires him to show that:

> "(j) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of personal or real property or other assets, liable to be sold or applied in satisfaction of the judgment,"

and subsection (k) provides that:

> "(k) By such search he has discovered no personal or real property or other assets, liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so sold and applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized,".

The statutory provision dealing with the procedure which the court follows in making an order directing the treasurer to make payment to the applicant from the fund, R.S. 39:6-71, requires the court to be satisfied:

> "* * * (a) of the truth of all matters required to be shown by the applicant by section 10 * * * (R.S. 39:6-70) * * *."

The plaintiff-appellant, by the very terms of his own affidavit, has shown that he has not complied with subsection (k) of R.S. 39:6-70 which requires him to show the court that he has discovered no personal property of the defendant which may be applied to the judgment. In fact, he has recovered the sum of two hundred dollars in advance of his application to the court.

This sum should be applied to reducing the judgment before the order of the court is entered directing the treasurer to pay the unsatisfied portion of the judgment. Any other construction of the intention of the Legislature as expressed in these provisions would defeat the purpose of the fund. If any other construction would be made, applicants could easily make arrangements to defeat the purpose of the requirement set forth in R.S. 39:6-70 (Cf. also R.S. 39:6-71 (b) (1) and (2)).

When the intent of the Legislature is clearly and plainly expressed, it must be

carried out by the court. *Dacunzo* v. *Edgye,* 19 N.J. 443, 451 (1955). It is clear that the Legislature intended to make funds available to applicants, attempting to obtain money from indigent defendants of sums over the amount of two hundred dollars (R.S. 39:6-73 (c)), and further intended that the balance of that two hundred dollars should be collected after payment had been made out of the fund, but not before. The statute is clear and unambiguous in this respect and should be so interpreted *Barthalf* v. *Board of Review,* 36 N. J. Super. 349, 360 (App. Div. 1955); see also *Bravand* v. *Neeld,* 35 N.J. Super. 42, 52 (App. Div. 1955)).

Furthermore, plaintiff cannot contend that an arrangement such as he has entered into with the judgment debtor is a payment in escrow which takes effect *after* an order to pay out of the fund is made by the court. In *Mantel* v. *Landau,* 134 N.J. Eq. 194 (Ch. 1943), a mortgagee in a chattel mortgage proceeding stated in his affidavit of true consideration that the sum loaned by him was $12,500, and that $2,500 of that amount represented a premium for making the loan. In a bill filed by the assignee for the benefit of creditors to set aside the chattel mortgage, the mortgage was attacked primarily on the ground that the affidavit did not truthfully set forth the true consideration as required by R.S. 46:28-5. The reason set forth was that of the $10,000.00 loaned, $2,000.00 was deposited by the mortgagee with his attorney, in escrow, for delivery to the mortgagor as soon as certain old liens were cancelled of record, and this the assignee claimed was not actually loaned on the day the affidavit was made and that, therefore, the affidavit was false and the mortgage invalid.

The court in this case said at p. 195:

> "A deposit in escrow is irrevocable except by consent of both parties. Upon performance of the condition mentioned in the escrow agreement, the depositary is bound to make delivery pursuant to the agreement, and if he fails to do so, he becomes personally liable for his breach of duty. The delivery of the escrow by the depositary to the person entitled to receive it, will be related back to the original delivery to the depositary, when necessary to effectuate the intention of the parties, or to promote justice. *Fred* v. *Fred,* 50 Atl. Rep. 776; *Kelly* v. *Chinich,* 91 N.J. Eq. 97; *Mecray* v. *Goldman,* 102 N.J. Eq. 559; 105 N. J. Eq. 583; *First National Bank* v. *Scott,* 109 N.J. Eq. 244."

For these reasons it is our conclusion that the applicant is only entitled to six hundred dollars as a payment from the fund.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID M. SATZ, JR.
Deputy Attorney General

GCR:DMS/kms