by the fact that P.L. 1949 c. 305, which amended section 8 of the Act to add subsection 14 which authorized a limited-dividend housing corporation to obtain financing through Federal guaranteed or insured mortgages, also amended N.J.S.A. 55:16-17 to add the following language which now precedes the limitations in event of foreclosure hereinbefore referred to, viz: "Subject to the terms of any applicable contract, agreement, guarantee or insurance entered into or obtained pursuant to subsection (14) of section eight hereof".

It is our opinion that except for the formal requirement of the joinder of the Housing Authority and the municipality as parties defendants to the foreclosure, the mortgagor limited-dividend housing corporation can, under our law, with the approval of the Public Housing and Development Authority of New Jersey, waive the other restrictions on the foreclosure proceedings referred to in the letter of the Federal Housing Administration.

Very truly yours,

GROVER C. RICHMAN, JR.
*Attorney General*

By: STANLEY COHEN
*Deputy Attorney General*

SC:MG

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APRIL 13, 1956

HON. E. POWERS MINCHER
*Assistant to the Commissioner*
*New Jersey State Department of Health*
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR MR. MINCHER:

You have requested our opinion concerning the effect on the birth certificate of child born out of wedlock in New Jersey of a judgment of the Superior Court of Arizona declaring the child to be legitimate.

Your letter sets forth the following case:

> "X was born out of wedlock in Newark in December, 1954, the child of Y, whose putative father is Z. Subsequently, Y brought an action against Z under Art. 27, Sect. 402 of the Arizona Civil Code in the Superior Court of the State of Arizona in and for the County of Maricopa. That honorable Court, on November 30, 1955, rendered judgment declaring Z to be the father of X and entitling X to bear the surname of Z."

Your question is: "Must the Bureau of Vital Statistics correct or amend the birth certificate on the basis of this judgment alone."

The Registrar of Vital Statistics is authorized to alter, amend or correct birth certificates only where he is expressly given that power by statute, or pursuant to a court order.

The pertinent New Jersey Statute is R.S. 26:8-40 which states:

> "When a child born out of the bonds of matrimony has been legitimated by the marriage of its natural parents as prescribed by law and there shall be submitted to the state registrar or any local registrar proof of the marriage of the parents, the state registrar and any local registrar of vital statistics shall be authorized to accept from the father and mother of the child a correction or amendment to the original birth record giving the child the father's surname and adding to the record the information concerning the father, now required by law upon birth certificates. After the acceptance of such a correction or amendment no information regarding the illegitimacy shall be disclosed."

It is clear from the language of this statute that prior to the legitimation of a child by the subsequent remarriage of his parents, the child may not use the father's surname. This restriction as to use of the father's surname is covered in a previous opinion by the Attorney General dated September 13, 1939.

It is claimed by the attorney for the mother that while the above is the law, full faith and credit should be given to a judgment of the Superior Court of Arizona rendered in a proceeding brought under Section 402 of the Arizona Code which states:

> "The mother of a child born out of wedlock may within one year after the birth of such child bring a civil action in the Superior Court to establish the parentage of said child. Such action shall be commenced by the mother as plaintiff against the alleged natural father as defendant, and the same proceedings had therein as in other civil actions. The parentage may be proved like any other fact, except that the mother of said child shall not be a competent witness if the alleged natural father of said child is dead at the time of the trial, provided, however, that a statement in writing may be made by the parents of said child admitting the parentage thereof and upon which judgment may be entered. Such action shall be deemed cumulative to the remedies provided in the subsequent sections of this chapter".

However, the question whether an illegitimate will be regarded as legitimated by virtue of acts performed in another state in which the parent and child were then domiciled is one of comity and is not controlled by the constitutional provisions as to full faith and credit. *In re Lund's Estate,* 26 Cal. 2d 472, 162 A.L.R. 606, 159 P. 2d 643; see also *Olmsted* v. *Olmsted,* 216 U.S. 386, 30 S. Ct. 292 (1909).

Speaking generally of the effect of the full faith and credit clause, the United States Supreme Court said in *Pacific Insurance Co.* v. *Industrial Accident Commission,* 306 U.S. 493, 59 S. Ct. 629, at p. 633:

> "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy. See *Wisconsin* v. *Pelican Insurance Co.,* 127 U.S. 265, 8 S. Ct. 1370, 32 L. Ed. 239; *Huntington* v. *Attrill,* 146 U.S. 657, 13 S. Ct. 224, 36 L. Ed. 1123; *Finney* v. *Guy,* 189 U.S. 335, 23 S. Ct. 558, 47 L. Ed. 839; *Milwaukee County* v. *White Co.,* supra, page 273, et seq., 56 S. Ct. page 232 et seq.; see, also, *Clarke* v. *Clarke,* 178 U.S. 186, 20 S. Ct. 873, 44 L. Ed. 1028; *Olmsted* v. *Olmsted,* 216 U.S. 386, 30 S. Ct. 292, 54 L. Ed. 530,

> 25 L.R.A., N.S., 1292; *Hood* v. *McGehee,* 237 U.S. 611, 35 S. Ct. 718, 59 L. Ed. 1144; cf. *Gasquet* v. *Fenner,* 247 U.S. 16, 38 S. Ct. 416, 62 L. Ed. 956. And in the case of statutes, the extra-state effect of which Congress has not prescribed, as it may under the constitutional provision, we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events."

Furthermore, the Arizona courts themselves have construed judgment under this law to be in the nature of declaratory judgments. *In re Cook's Estate,* Arizona 63 Ariz. 78, 159 P. 2d 797, 801.

A declaratory judgment simply declares the rights of the parties or expresses opinions of court on a question of law without ordering anything to be done, its distinctive characteristic being that the declaration stands by itself and no executory process follows as of course and no execution is sought from the opposing party. *Burgess* v. *Burgess,* 210 Ga. 380, 80 S.E. 2d 280.

The judgment in the instant case orders, adjudges and decrees that the defendant Z is the father of male child X, born of plaintiff Y in the City of Newark, State of New Jersey on December 8, 1954 and that X be entitled to bear the surname of Z. There is no executory provision whatsoever in the judgment.

We advise you that, under the circumstances, you have no power to change the records in your charge on the basis of the Arizona judgment.

Very truly yours,

GROVER C. RICHMAN, JR.
*Attorney General*

By: HAROLD KOLOVSKY
*Assistant Attorney General*

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APRIL 17, 1956

HONORABLE CARL HOLDERMAN
*Commissioner of Labor and Industry*
1035 Parkway Avenue
Trenton, New Jersey

MEMORANDUM OPINION—P-16

Re: Removal of appointed members from the Rehabilitation Commission

DEAR COMMISSIONER HOLDERMAN:

We have your request for an opinion concerning the authority of the Rehabilitation Commission or the Governor to remove appointed members of the Commission whose record of consecutive absences from the regular meetings of the Commission seriously hampers its operations.

N.J.S.A. 34:16-25 provide that:

"The governor may at any time remove for inefficiency or neglect of