Reiterating, it is our opinion that under N.J.S.A. 43:15A-41c neither a corporation nor a charitable organization can be designated.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

LES:ba

JUNE 28, 1956

THE HONORABLE JOHN W. TRAMBURG, *Commissioner*
Department Institutions and Agencies
State Office Building
Trenton, New Jersey

MEMORANDUM OPINION—P-22

DEAR COMMISSIONER TRAMBURG:

You have requested a legal opinion concerning the authority of the State Board of Child Welfare to utilize funds of a ward committed to its guardianship for reimbursement to the public treasury of tax monies expended for support and maintenance of said ward. It appears in the particular situation you describe that the ward had no funds when the expenditures for care and maintenance were made but did subsequently acquire funds at a time when expenditures were no longer being made.

It is our opinion and we advise that such reimbursement of public monies can be made for the reasons and in the manner which we outline herein.

We have examined R.S. 30:4C-22 (Chap. 138, P.L. 1951, sec. 22) which provides that the State Board shall have authority "to apply funds other than earnings of any ward against expenditures for the maintenance of such ward." This is clear legislative intent that a ward of the State Board of Child Welfare if possessed of sufficient funds shall be obliged to reimburse the public treasury for monies expended in its behalf for maintenance, education and support.

It seems basic in the legislation of this jurisdiction dealing with public welfare that this type of reimbursement shall be had wherever possible. (See R.S. 44:7-14 on grants of assistance to aged persons; R.S. 30:4-66 and 30:4-74, maintenance of mental incompetents in State and county institutions.)

A guardian of a minor, other than an agency of the State, such as the State Board of Child Welfare, is obliged to make application to a court of competent jurisdiction for leave to utilize income or principal from the estate of a minor for support and education of the ward. (See N.J.S. 3A:20.1, et seq.) This requirement seems to be dispensed with in the statute under review for the legislature has empowered the board "to apply funds****of any ward against expenditures for the maintenance of such ward."

R.S. 30:4C-22 became effective on May 31, 1951 and has no retroactive application prior to its effective date. Our courts have spoken on the subject matter of retrospective legislation in a number of cases and most recently in *Lascari* v. *Bd. of Education of Lodi,* 36 N.J. Super 426 (App. Div. 1955), where it was said:

"Words in a statute ought not to have a retrospective operation unless they are so clear, strong and imperative that no other meaning can be annexed to them". See also *Nichols* v. *Bd. of Education of Jersey City,* 9 N.J. 248 (1952).

As to expeditures made for support and maintenance of a ward of the board prior to May 31, 1951, the remedy available to the board for reimbursement of such costs is suggested in the case of *Alling* v. *Alling,* 52 N. J. Eq. 92 (Chancery Court 1893), where it was determined that an order for reimbursement on a retroactive basis is contemplated but that such repayment shall consist of the actual costs of maintenance and support of the ward which in the matter under discussion would be the precise amount of monies expended from the public treasury.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: EUGENE T. URBANIAK
Deputy Attorney General

ETU:HH:mjd

JULY 12, 1956

HONORABLE ROBERT L. FINLEY
Deputy State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-23

Re: Application of collateral where bank becomes insolvent

DEAR MR. FINLEY:

You have requested our advice regarding the effect of collateral on a depositor's claim in the event of the insolvency of a bank. The question is important in determining the amount of collateral which you should require to secure the deposit of State funds.

To illustrate the question, you have put the case where the State has deposited $5,000,000 in a bank, against which collateral of $4,000,000 has been posted by the depository. In the event of a bank's insolvency, the question is whether you could prove a claim for the entire $5,000,000, receiving a dividend of, let us say, 60%, or $3,000,000, and applying the $4,000,000 of collateral as needed to make up the deficiency; or whether you must first apply the collateral to the debt, and prove a claim only for the balance of $1,000,000 in which event presupposing a 60% dividend, the State would lose $400,000.

Our examination of the law leads to the conclusion that in the case of New Jersey banking corporations the matter is governed by the so-called "bankruptcy rule", which requires the depositor first to apply his collateral against the debt and then to prove only for the balance. *Butler* v. *Commonwealth Tobacco Co.,* 70 N.J. Eq. 423 (E. & A. 1908); *Nutz* v. *A. W. Crone & Sons,* 109 N.J. Eq. 95, 98 (E. & A.

1931). The liquidation of insolvent New Jersey banks is covered by R.S. 17:9A-284, which provides that "the proceeds of the liquidation of the assets of a bank, the property and business of which the Commissioner has taken possession, shall be distributed according to the priorities and preferences provided by Chapter 14 of Title 14 of the Revised Statutes * * * ". The pertinent section of Chapter 14 of Title 14 is R.S. 14:14-23, which provides in part:

> "After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors."

The two decisions above cited hold that the statute just referred to is "essentially a bankruptcy act," requiring the practice of "applying collateral securities to the liquidation of a debt against an insolvent corporation, and of proving only for the balance". See *Nutz* v. *A. J. Crone & Sons,* supra., 109 N.J. Eq. at pages 99, 100. Furthermore, the State of New Jersey does not possess the Crown's common law prerogative to have debts due it paid before debts due other creditors. *Freeholders of Middlesex County* v. *State Bank at New Brunswick,* 29 N.J. Eq. 268 (Ch. 1878), aff'd. 30 N.J. Eq. 311; *Bowes* v. *United States,* 127 N.J. Eq. 132, 140 (Ch. 1940). Nor has any statute given to the state any such priority in its favor with regard to State funds deposited in State banks.

It follows that where the State Treasurer deposits funds in banks organized under the New Jersey law, he should require collateral or other satisfactory security in the full amount of the deposit; otherwise some loss of the State funds deposited in that bank would be most probable in the event of insolvency.

On the other hand, banks organized under the National Banking Act are governed by the so-called "equity rule", under which a secured creditor may prove and receive dividends on the full amount due him at the date of insolvency without regard to his collateral, provided only that the total sum received by way of dividends and from collateral does not exceed the entire debt. His claim is not limited to the unsecured portion of his debt. *Merrill* v. *National Bank of Jacksonville,* 173 U.S. 131 (1899); *Aldrich* v. *Chemical National Bank,* 176 U.S. 618 (1900); *American Surety Co. of N. Y.* v. *Bethlehem National Bank,* 314 U.S. 314 (1941); *Butler* v. *Commonwealth Tobacco Co., supra.* Liquidation of an insolvent national bank is controlled by the National Banking Act (12 U.S.C.A. Sec. 191, 192), and the method provided by that Act is exclusive. *Liberty National Bank* v. *McIntosh,* 16 F. 2d 906, 909 (C.C.A. 4th, 1927), Appeal dismissed 273 U.S. 783, *Way* v. *Camden Safe Deposit & Trust Co.,* 21 F. Supp. 700, 702 (1937), and cases there cited; *Cox* v. *Nance,* 143 S.W. 2d 897 (Tenn. App. 1940). The National Bankruptcy Act (11 U.S.C.A., Sec. 22) specifically excludes any "banking corporation" as either a voluntary or involuntary bankrupt.

Accordingly, in the case of deposits which the State Treasurer may make with national banks, it would appear less important to require collateral for the full amount of the deposit. The amount of collateral required in any particular case should be sufficient, in the judgment of the Treasurer, to cover any reasonably foreseeable