"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 "essentjally 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

deficiency which might be left after all liquidating dividends have been paid.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

TPC:MG

AUGUST 8, 1956

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

MEMORANDUM OPINION—P-24

DEAR COMMISSIONER HOLDERMAN:

You have requested an opinion as to whether an employer will violate R.S. 34:2-24 if he allows a female employee one day off per calendar week but permits such an employee to work more than six consecutive days.

R.S. 34:2-24 provides that:

> "No female shall be employed or permitted to work in any manufacturing or mercantile establishment, bakery, laundry or restaurant more than ten hours in any one day or *more than six days* or fifty-four hours *in any one week.*" (Italics ours)

The answer to your inquiry turns on the meaning of the word "week" as found in this statute. In 86 *C. J. S., Time,* Sec. 11, the following comment is made concerning that word:

> ". . . in its usual and ordinary and most accurate sense it denotes a period of time of seven consecutive days; any seven consecutive days of a month or year; a period of seven consecutive days beginning with any day; and in some states the term is defined by statute. Such a week is sometimes called a 'statutory week' or a 'secular week.'
>
> "In its other sense, the word 'week' means a calendar week . . .
> ". . . its meaning in any particular instance will depend on the context in which it appears and the object sought to be obtained by its use."

The legislation here under consideration seeks to protect the health and well-being of female employees. This is clearly pointed out by the court in *Toohey* v. *Abromowitz Department Store, Inc.,* 124 N.J.L. 209 (Sup. Ct. 1940), where the court states:

> "Public policy requires that there should be control over the hours of work in certain occupations. The public interest is not served by the physical injury resulting from labor too long continued. The statute further forbids

more than six days' labor in any one week. This has been regarded as good practice for men as well as women from the earliest time."

It is our conclusion that the phrase "in any one week" as used in this statute means "in any period of seven consecutive days." Any other construction of these words would do violence to the apparent legislative intention. If the construction of calendar week is adopted, an employer would be able to work a female employee up to twelve consecutive days without violating R.S. 34:2-24. Clearly such a result was not intended by the legislature.

In *U. S.* v. *Southern Pacific Co.,* 209 Fed. 562 (C.C.A. 8th 1913), the court construed a provision which stated in part that an employee could work up to thirteen hours during a twenty-four hour period on "not exceeding three days in any week." At page 567 they state:

"We also think that the word 'week' in the statute was intended to mean a period of 7 days, and not necessarily a calendar week, and that the statute is not violated if no employee worked overtime more than 3 days out of 7."

A similar construction is reached in *Danielson v. Industrial Commission of Colorado,* 96 Colo. 522, 44 P. 2d 1011 (1935).

In our opinion, an employer who permits a female employee to work more than six consecutive days, even though the female employed is allowed one day off per calendar week, is in violation of the law.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS L. FRANKLIN
Deputy Attorney General

TLF:lc

AUGUST 10, 1956

HON. WILLIAM F. KELLY, JR., *President*
Department of Civil Service
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-25

DEAR MR. KELLY:

You have requested our advice and opinion as to whether your Department is authorized or required by statute to hold a promotion test for a state employee who was on military leave from State service at the time the test was held. The basis for this request is N.J.S.A. 38:23-4, which provides in part:

"During the period of such leave of absence such person shall be entitled to all the rights, privileges and benefits that he would have had or acquired if he had actually served in such office, position or employment during such period of leave of absence . . . ."