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 . . . ."

The specific facts were these:

While the employee, a motor vehicle examiner, was on military leave from September 18, 1950 to August 16, 1953, a competitive promotion test for "Supervisor, Testing Division, Motor Vehicle" was announced under Civil Service Rule 24 and was held on May 2, 1952. A list of 53 eligibles was promulgated in October, 1952, and expired after the statutory maximum of three years had run in October, 1955. Eight of the fifty-three eligibles on the list were actually promoted during these three years. The list was not extended, and under R.S. 11:9-10 it can no longer be extended. On May 26, 1956, approximately nine months following the expiration of the list of eligibles, and almost three years following his return from the military to State employ, this employee made application to take the promotion test held on May 2, 1952.

It is our opinion that the Civil Service Commission has no authority to grant this request and that, if granted, it would constitute unauthorized preferential treatment for the employee in question.

N.J.S.A. 38:23-4 does not grant the employee greater rights than he would have had by taking the May 1952 test. Had this employee passed that test he would have been placed on the list of eligibles which was promulgated in October 1952. Since this list has now expired, and can no longer be reopened, a right to be placed on such list, or a test to acquire that right is meaningless.

Thus, if this employee were to pass a special test, such as that suggested, he would necessarily be the sole eligible on a new list, because the previous list has expired. This would do more than grant him equality with his fellow employees who took the May 1952 exam. It would place him in a preferred position with respect to the forty-five eligibles who remained on the previous list when it expired.

If any right existed, it is clear that it expired along with the eligible list in October 1955. There was ample opportunity to make application before expiration of the list.

For the above reasons, we must advise you that the Department of Civil Service should not authorize this promotional test.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID LANDAU
Deputy Attorney General

DL:jo

AUGUST 24, 1956

HON. ROBERT L. FINLEY
Deputy State Treasurer
State House
Trenton 7, New Jersey

MEMORANDUM OPINION—P-26

DEAR MR. FINLEY:

You have requested our opinion as to whether war veteran members of the Teachers' Pension & Annuity Fund who are entitled to the refund of their accumulated deductions pursuant to P. L. 1955, c. 37, §70 are entitled to receive, as part of their