APRIL 5, 1957

HON. EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 2

DEAR MR. PATTEN:

You have requested our opinion as to whether persons who have religious scruples against riding and writing on Tuesday, April 16, 1957 may vote by absentee ballot at the Primary Election to be held on that day.

The Absentee Voting Law (1953) permits voting by absentee ballot by civilians (1) who expect to be or may be absent outside the State on the day on which the election is held or (2) who will be unable to cast ballots on the day of the election because of illness or physical disability.

The statute makes no provision for absentee voting by citizens who have religious objections to marking ballots or signature copy registers at the polling places within the election districts on the day of the election.

We therefore advise you that persons can not vote by absentee ballot at the forthcoming Primary Election to be held on April 16, 1957 unless meeting or expecting to meet the statutory conditions for eligibility of absence outside the State, sickness or physical disability.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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MAY 1, 1957

LT. COLONEL SAMUEL F. BRINK
Adjutant General
Department of Defense
Armory
Trenton, New Jersey

FORMAL OPINION, 1957—No. 3

DEAR COLONEL BRINK:

You have requested our opinion concerning the application of Section 13 of the Municipal Planning Act of 1953, *L.* 1953, *c.* 433, *sec.* 13, N.J.S.A. 40:55-1.13 to the Department of Defense in cases where it constructs buildings upon State-owned lands. For the reasons hereinafter stated it is our opinion that the cited statute does not apply to the Department of Defense and that the latter is not required to comply with its terms.

N.J.S.A. 40:55-1.13 reads in pertinent part as follows:

> "Whenever the planning board after public hearing shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of one or more projects thereof, shall refer action involving such specific project or projects to the planning board for review and recommendation, and shall not act thereon without such recommendation or until forty-five days after such reference have elapsed without such recommendation. *This requirement shall apply to action by a housing, parking, highway or other authority, redevelopment agency, school board, or other similar public agency, Federal, State, county or municipal.*" (Italics supplied).

To paraphrase N.J.S.A. 40:55-1.13, whenever the governing body or other public agency having jurisdiction over the subject matter contemplates action incidental to the location, character or extent of a project which requires the expenditure of public funds it must, if a master plan has been adopted in the municipality, refer the matter to the planning board for review and recommendation. In a word, the statute is applicable in the stated circumstances to a "governing body or other public agency."

The term "governing body" is defined in N.J.S.A. 40:55-1.2 to mean "the chief legislative body of the municipality. In cities having a board of public works 'governing body' means such board." While the statute does not specifically define "public agency", the latter term is explained by that part of N.J.S.A. 40:55-1.13 which is underscored in the above excerpt. It is clear that the Department of Defense is not "a housing, parking, highway or other authority, redevelopment agency [or] school board." The question remains, however, whether it comes within the meaning of the phrase "or other similar public agency, Federal, State, county or municipal."

It is clear from a reading of N.J.S.A. 40:55-1.13 that the Legislature did not intend all public bodies to be subject to the Act. If such had been its intention it would have employed more general language rather than spell out the specific types of public bodies to which the Act was to apply.

It is commonly said that where general words follow particular words in an enumeration describing the subject the general words are, under the rule of *ejusdem generis,* construed to embrace only objects similar in nature to those enumerated by the antecedent specific words. *Salomon* v. *Jersey City*, 12 N.J. 379 (1953); *In re Armour,* 11 N.J. 257 (1953). The application of this aid to statutory construction leads to the conclusion that the Department of Defense is not a public agency within the meaning of the statute. The same result is reached regardless of whether this rule is applied since the modification of the term "public agency" by the words "other similar" likewise delimits the term. Housing, parking and highway authorities as well as redevelopment agencies all are concerned primarily with the use of land and the construction of projects upon land. Even school boards, while they cannot be considered to be engaged primarily in construction, are concerned to a large extent with the use of lands and the construction of buildings thereon. The Department of Defense on the other hand does not have a similar statewide impact upon the use of land and therefore cannot be regarded as a public agency of the type dealt with in N.J.S.A. 40:55-1.13. A further basic distinction between the types of agencies enumerated in N.J.S.A. 40:55-1.13 and the Department of Defense is that the former are public instrumentalities vested with independent or autonomous powers and not departments of the Federal, State, county or municipal governments.

For the foregoing reasons it is our opinion and you are advised that the Department of Defense is not affected by and therefore need not comply with Section 13 of the Municipal Planning Act of 1953,*L.* 1953, *c.* 433, *sec.* 13, N.J.S.A. 40:55-1.13.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

CB:MG

MAY 23, 1957

HONORABLE AARON K. NEELD
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 4

Re: P. L. 1955, c. 261, § 5 (N.J.S.A. 43:15A-7c)

DEAR MR. NEELD:

Former Deputy State Treasurer Finley requested our opinion as to (1) whether an employee who earns a combination of salaries aggregating $500 or more can be permitted to join the Public Employees' Retirement System if no single salary amounts to $500 and (2) whether an employee who earns an annual salary of $500 or more in one employment, office or position and less than $500 in another shall contribute on the basis of both salaries or only upon the salary of $500 or more.

P.L. 1955, c. 261, § 5, provides in part:

> ". . . No person in employment, office or position, for which the annual salary or remuneration is fixed at less than $500.00 shall be eligible to become a member of the retirement system". (N.J.S.A. 43:15A-7c).

An examination of the legislative history of this particular provision discloses that prior to the enactment of P.L. 1955, c. 261, the Board of Trustees of the Public Employees' Retirement System, pursuant to the authority of N.J.S.A. 43:15A-17, had adopted Rule E-5, which is still in effect and provides in part:

> "In the case of a public employee who is employed by one or more public employers, membership shall be optional with the employee . . . provided he received an annual salary of at least $500 *from any one participating employer* . . ." (emphasis supplied).

The plain and unambiguous terms of P.L. 1955, c. 261, § 5 restrict eligibility in the Public Employees' Retirement System to persons in an employment, office or position for which the annual salary is $500 or more. It is our opinion that public employees earning an aggregate of $500 or more but less than $500 in any single public employment, office or position are not eligible to join the Public Employees' Retirement System.