JULY 12, 1957

HONORABLE AARON K. NEELD
State Treasurer
Department of the Treasury
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 11

DEAR MR. NEELD:

You have been requested to waive the advertising requirements of Chapter 48 of the Laws of 1954 in connection with the execution of certain contracts between the Department of Health and various private hospitals. It is undisputed that the nature of the services to be rendered under these contracts is of a technical and professional nature but you question whether, in view of the fact that the services are to be performed by a corporate entity, the contract comes within the statutory language of N.J.S.A. 52:34-9(a) which reads as follows:

> "Any such purchase, contract or agreement may be made, negotiated or awarded pursuant to section 3 of this act when the subject matter thereof consists of
>
> "(a) services to be performed by the contractor personally which are (a) of a technical and professional nature,* * *."

In construing a statute, the inquiry must be to determine the purpose and intent of the Legislature. The word "personally" standing in certain contexts might connote individual conduct as distinguished from performance by an association, partnership or corporation. But it is not so here. The obvious legislative purpose was to exclude from the advertising requirements of *N.J.S.A.* 52:34-6, *et seq.* contracts requiring scientific knowledge and professional skill.

There is in *N.J.S.A.* 52:34-9(a) a legislative recognition of the generally accepted principle that contracts of a technical and professional nature do not come within the provisions of statutes and ordinances requiring advertising and competitive bidding. *Heston* v. *Atlantic City,* 93 *N.J.L.* 317 *(Sup. Ct.* 1919) [accounting company employed to audit municipal records]; *Franklin* v. *Horton,* 97 *N.J.L.* 25 *(Sup. Ct.* 1922), affirmed 98 *N.J.L.* 262 *(E. & A.* 1922) [preparation of plans and specifications for municipality]; *Hordin* v. *City of Cleveland, 77 Ohio App.* 491, 62 *N.E. 2d* 889 (Ct. App. 1945) [municipal contract with partnership of advertising specialists]; *Jeffersontown* v. *Cassin,* 267 *Ky.* 568, 102 *S. W. 2d* 1001 *(Ct. App.* 1937) [municipal contract with partnership to make surveys, estimates, plans]; *City of Cleveland* v. *Lausche, Mayor,* 71 *Ohio App.* 273, 49 *N.E. 2d* 207 *(Ct. App.* 1943) [municipal contract with corporation for operation of zoo]; *Cochran County* v. *West Audit Co.,* 10 *S.W. 2d* 229 *(Tex. Civ. App.* 1928) [county contract with accounting corporation for audit of books]; *Harlem Gaslight Co.* v. *Mayor, etc., of New York,* 33 *N.Y.* 309 *(Ct. App.* 1865) [municipal contract with corporation for supplying gas]; 10 *McQuillin, Municipal Corporations* (*3rd ed.* 1950) § 29.35; *p.* 281; see cases collected in *Annotations* 44 *A.L.R.* 1150 and 142 *A.L.R.* 542.

We submit, as the cases seem to demonstrate, that it is not the status of the entity that controls, but the nature of the service to be performed. If the service be so intricate and complex as to demand highly specialized skill, knowledge, training and

experience, it is outside the operation of the advertising and competitive bidding statutes or ordinances, whether that service is to be rendered by an individual, partnership, association, or corporation. To say that *N.J.S.A.* 52:34-9(a) created an exception with respect to individuals without the intent similarly to except associations, partnerships or corporations flies in the face of the plain legislative purpose in creating the exception. The Supreme Court said in *In re Roche,* 16 *N.J.* 579, 587 (1954):

> "The meaning of the statute is not to be ruled by the strict letter, but rather by the sense and meaning fairly deducible from the context. The reason of the provision prevails over the literal sense of the words; the obvious policy is an implied limitation on the sense of general terms, *and a touchstone for the expansion of narrower terms.* The spirit gives character and meaning to the particular symbols of expression. The evident policy is the true key to open the understanding of the act." [*emphasis supplied*]

Other recent expressions of the judicial attitude on liberal statutory construction include *Morss* v. *Forbes,* 24 *N.J.* 341, 357 (1957) and *Lane* v. *Holderman,* 23 *N.J.* 304 (1957).

It is our opinion that the word "personally" as used in *N.J.S.A.* 52:34-9(a) connotes a performance that is without the intervention of another, *i.e.* direct from the contractor, himself or itself, to the State; it matters not whether the contractor be an individual, association, partnership or corporation. Accordingly you are advised that a waiver may be properly executed with respect to the pending contracts between the Department of Health and various private hospitals for technical professional services.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD J. ASHBY
Legal Assistant

HJA:tb

AUGUST 7, 1957

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

FORMAL OPINION, 1957—No. 12

DEAR MR. NEELD:

You have requested an opinion on the following two questions:

(1) Can a war veteran member of the Police and Firemen's Retirement System resign from public employment upon attaining the age of 62 and having 20 years of service and thereby receive a refund of his contributions to the Retirement System, and subsequently, retire under the provisions of the free Veterans' Retirement Act, R.S. 43:4-1 et seq.?