

This is a fact question which must be resolved by the Bureau. If an inspection reveals the existence of cooking facilities, such as a "one burner" apparatus, and in addition, there are other indicia that cooking is being or can be done upon the premises such as the existence of a refrigerator, sink, cupboards, pots and pans, dishes, etc., then you are advised that this creates a prima facie presumption that cooking is being done on the premises within the meaning of the statute and that, therefore, it should be classified as a tenement house. If, however, an inspection of the premises reveals merely the existence of a cooking facility such as a "one burner plate" and none of the other facilities mentioned above then the Bureau must make a factual determination whether cooking is or is not being done on the premises.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: JOHN W. NOONAN  
*Deputy Attorney General*

JWN:sk

AUGUST 30, 1957

HON. W. LEWIS BAMBRICK, *Manager*  
*Unsatisfied Claim and Judgment Fund Board*  
222 West State Street  
Trenton, New Jersey

FORMAL OPINION, 1957—No. 15

DEAR MR. BAMBRICK:

You have requested our opinion as to whether the recourse afforded residents of the State of New Jersey by Chapter 655 of the Laws of 1956 of the State of New York is substantially similar in character to the recourse provided for residents of New Jersey by the Unsatisfied Claim and Judgment Fund Law of the State of New Jersey contained in R.S. 39:6.61 to 39:6.91 inclusive. This question is important because R.S. 39:6.62 defines as a person qualified to secure recovery from the Unsatisfied Claim and Judgment Fund; ". . . a resident of another State, territory or Federal district of the United States or Province of the Dominion of Canada, or foreign country, in which recourse is afforded, to residents of this State, of substantially similar character to that provided for by this act."

Under the Unsatisfied Claim and Judgment Fund Law of the State of New Jersey, a fund was created out of which those suffering damage or injury by reason of the operation or use by others of a motor vehicle in the State of New Jersey might recover provided they were free from fault as to the cause of the damage or injury, and provided no other means or source of recovery for the damage or injury is available. The fact that the damage or injury was caused by a hit and run driver, the operator of a stolen motor vehicle, or the operator of a motor vehicle used without permission in no way affects the innocent victim's right to recover from the fund. If the operator of the motor vehicle responsible for the damage had no liability insurance and is unable to respond financially, and there is no other source of recovery, the innocent victim is entitled to payment from the fund provided he meets the other requirements of the law, which are not pertinent to this inquiry.

The above cited New York statute, known as the "Motor Vehicle Financial Security Act", provides that no motor vehicle shall be registered in New York unless the application for such registration is accompanied by proof of financial security which shall be evidenced by a certificate of insurance, or evidence of a financial security bond, a financial security deposit, or qualification as a self-insurer under the act. Violations of the act are discouraged by the imposition of penalties, but no fund is created to provide a source of recovery for the innocent victims who suffer damage or injury by reason of the operation or use of a motor vehicle without complying with the act by one who is financially irresponsible. The New York statute offers no recourse for those who suffer damage or injury at the hands of a hit and run driver, the operator of a stolen motor vehicle, or the operator of a motor vehicle used without the owner's permission. There is no fund of any kind established under the New York statute; therefore, if damage or injury is caused by the operation or use of a motor vehicle and there is no liability insurance in effect or there is no financial deposit or bond and the person causing the damage or injury is financially irresponsible, the innocent victim has no recourse. Under the New Jersey statute the Unsatisfied Claim and Judgment Fund was created for the express purpose of providing a recourse for these innocent victims. The New York statute attempts to decrease the number of persons who find themselves placed in such a predicament by requiring proof of financial security from all who seek to register a motor vehicle in New York, but no recourse is provided for one who finds himself in a position where financial recovery for his injury or damage is impossible. The New York statute imposes penalties against the wrongdoer but it does not afford relief to the innocent victim.

You are, therefore, advised that Chapter 655 of the Laws of 1956 of the State of New York does not afford to New Jersey residents recourse substantially similar in character to the recourse provided for New Jersey residents by R.S. 39:6-61 to 39:6-91 inclusive and that New York residents therefore fail to meet the statutory definition of qualified persons under the Unsatisfied Claim and Judgment Fund Law.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: GEORGE H. BARBOUR  
*Deputy Attorney General*

GHB:jeb

SEPTEMBER 11, 1957

HONORABLE PHILIP ALAMPI, *Secretary*  
*Department of Agriculture*  
1 West State Street  
Trenton, New Jersey

FORMAL OPINION, 1957—No. 16

DEAR MR. ALAMPI:

You have requested an opinion from this office as to whether certain employees in your Department may accept after-hours employment.

The facts, as we understand them, are as follows: The Department of Agriculture,