APRIL 24, 1957

MR. THOMAS KOCLAS, *Secretary*
Morris County Board of Elections
Hall of Records
Morristown, New Jersey

MEMORANDUM OPINION—P-14

DEAR MR. KOCLAS:

You have asked for a ruling as to the voting status of the wife of a military serviceman, who travels with her husband, under certain facts: (1) the wife has been a resident of Morris County but no longer maintains a residence there, and (2) the couple owns a dwelling house in Morris County which is rented.

The qualifications for voting in the State of New Jersey are fixed in Art. II, par. 3 of the State Constitution. Citizenship, attainment of age 21 and residence within the State for one year and within the county for five months are the constitutional prerequisites. As construed by the Supreme Court in *State* v. *Benny*, 20 N.J. 238 (1955) residence under Art. II, par. 3 connotes domicile or the true, fixed, permanent home to which a person, whenever absent, intends to return. Residence in fact and the intention to establish a permanent home are the two elements of domicile. *State* v. *Benny, supra.*

The wives of military service personnel who are not residents in fact of Morris County are not eligible to vote in Morris County. Property ownership is not a qualification for voting in this State; the ownership of a dwelling house which is rented is therefore immaterial to the issue of the eligibility of the owner to vote. Only domiciliaries with residence in fact within the State and county are qualified to vote.

We therefore advise you that under the stated facts, the wives of military service personnel, who have abandoned their residences in Morris County, may not register or vote in Morris County and their names should be removed from the registration lists.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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APRIL 24, 1957

HONORABLE FREDERICK J. GASSERT, JR.
Director of Motor Vehicles
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR DIRECTOR GASSERT:

You have requested our opinion concerning the applicability of R.S. 39:3-31, providing for the issuance of duplicate registration certificates and driver's licenses upon

the payment of a fee of one dollar, to situations in which licensees who have applied for a renewal of their driver's license by mail advise you that they have not received such license. For the reasons hereinafter set forth it is our opinion that R.S. 39:3-31 is not applicable to such situations and that a replacement license should be issued by you without further charge.

R.S. 39:3-10, as amended by *L.* 1955, *c.* 76, *sec.* 1, which provides for the issuance of renewals of driver's licenses by mail, reads in pertinent part as follows:

> "All applications for renewals of licenses shall be made on forms prescribed by the director, which forms shall be mailed by the director from the central office of the division to the last addresses of the licensed drivers as they appear on the records of the division. Upon the return by mail of such forms, accompanied by the requisite fees, the director shall issue renewals of such licenses by mail from the central office of the division."

It is established in this jurisdiction that adequate and uncontradicted evidence showing that a letter has been mailed in due course raises a presumption that it was received. *New York Central R. Co.* v. *Petrozzo,* 92 N.J.L. 425 (E. & A. 1918). Moreover, it may well be that the issuance of renewal licenses under the cited statute is completed upon proper mailing, irrespective of receipt. *Womack* v. *Fenton,* 28 N.J. Super. 345 (App. Div. 1953); *Loeloff* v. *Kelly Press Division,* 10 N.J. Misc. 1156 (Comm. Pls. 1932) (not officially reported).

As concerns the type of evidence required to prove mailing, it was held in *Cook* v. *Phillips,* 109 N.J.L. 371 (E. & A. 1932), that "the mere dictation or writing of a letter, coupled with evidence of an office custom with reference to the mailing of letters, is [not] sufficient to constitute proof of mailing of same, in the absence of some proof or corroborating circumstance sufficient to establish the fact that the custom in the particular instance has in fact been followed." The court concluded that the testimony of two employees to the effect that they had dictated and signed the notice alleged to have been mailed and had left it upon their desks to be collected by another employee whose duty it was to take letters to the mailing department where they would be sealed, stamped and mailed was insufficient to constitute the required corroborating evidence. In this connection the court held in *Borgia* v. *Board of Review,* 21 N.J. Super. 462 (App. Div. 1952), that a notation on a notice of determination which showed the date of mailing was insufficient to prove such mailing. Cf. *Womack* v. *Fenton, supra,* where the court held that the defendant insurer had proved a proper mailing of its cancellation of an insurance contract by "definite and precise evidence."

It is our understanding that because of the large numbers of renewal licenses issued by you by mail, it is impossible to obtain evidence of mailing of the type referred to in the above-cited cases. Because you would be unable to prove such mailing to the satisfaction of a court, we believe that as an administrative matter you may, and indeed should, treat licenses which are asserted not to have been received as licenses which have in fact not been issued by you, at least for the purpose of determining what charge should be made for the issuance of a replacement license. In this connection, R.S. 39:3-31 reads as follows:

> "The commissioner, upon presentation of a statement duly sworn to, stating that the original registration certificate or driver's license has been destroyed, lost or stolen, may, if he is satisfied that the facts as set forth in

the statement are substantially true, issue a duplicate registration certificate or driver's license to the original holder thereof, upon the payment to the commissioner of a fee of one dollar for each duplicate registration certificate or driver's license so issued."

R.S. 39:3-31 was first enacted in 1921 as *L.* 1921, *c.* 208. Thus even if it were otherwise applicable, it was not designed to be applied to situations of the type here involved. Rather, until March 1, 1956, the effective date of *L.* 1955, *c.* 76, both registration certificates and driver's licenses were issued by motor vehicle agencies and were delivered directly to the owner or driver. The destroyed, lost or stolen certificate or license for the replacement of which R.S. 39:3-31 prescribes a fee of one dollar was a certificate or license which was destroyed, lost or stolen after it had actually been delivered to the owner or driver. The same situation would not necessarily prevail if this statute were applied to licenses issued by mail in the above-stated circumstances.

However, while we believe that R.S. 39:3-31 would in a proper case be applicable to licenses issued by mail—cases in which such licenses can be proved to have been delivered or, at the very least, mailed—it is our view that it should not be invoked unless such proof exists. To take a contrary position would result in different treatment of this problem at the administrative level than it would receive in the courts, a consequence which we feel should be avoided.

Since it appears from the information supplied us that you would be unable to *prove* either a delivery or a mailing, it is our opinion and you are advised that R.S. 39:3-31 is inapplicable to the case of a licensee to whom—so far as your records disclose—a renewal license has been mailed, but who asserts that it has not been received.

We wish to add parenthetically that although a replacement of such license should be issued without further charge, it would be a good practice to obtain a sworn statement similar to the type referred to in R.S. 39:3-31 (but drawn to deal with the situation here presented) from applicants who assert that they did not receive their renewal license by mail. Such a statement would serve the dual purpose of discouraging false claims and of furnishing you with a record upon which to base the issuance of replacement licenses.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

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