Since Congress has seen fit to state that men who enlist pursuant to section 262 of the Reserve Forces Act of 1955 are not to have veterans' preference, we are of the opinion that men enlisting pursuant to this program enlist in the reserve forces of the United States and therefore, are not to be considered as serving on active duty so as to entitle them to be considered veterans under N.J.S.A. 18:13–112.4(r).

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: FRANK A. VERGA
Deputy Attorney General

FEBRUARY 5, 1958

HON. CARL HOLDERMAN, *Commissioner*
Department of Labor and Industry
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 3

DEAR COMMISSIONER HOLDERMAN:

You have requested our opinion as to the construction of the industrial homework law (L. 1941, c. 308; N.J.S.A. 34:6–136.1 et seq.). More specifically, you ask whether manufacturing under the following conditions constitutes industrial homework under that act:

First, the individual operates in an outbuilding situated in the rear of his house; as, for example, a garage or chicken house used as a work room.

Second, the individual operates in an outbuilding of the above type in the rear of a house in which other persons dwell but in which he does not dwell.

Third, an individual operates in the building in which he dwells but in a room separate from his living quarters but with entrance to his home and to his work room from a common hallway.

Fourth, the individual operates in a room in the house in which he dwells where the room for the manufacturing operations is so separated from his living quarters that an entrance to the work room from the living quarters can be effected only by going out of doors from the living quarters and entering into the work room from an outside door.

N.J.S.A. 34:6–136.2(e) provides:

"(e) 'Industrial homework' means any manufacture, in a home, of materials or articles for an employer, but shall not be construed to mean or include any manufacture performed for an employer by any person employed by him at the place of manufacture, where such place is used for manufacturing only, and who does not dwell in the building where the manufacture is performed, even though persons may dwell in other parts of such building; provided, however, that where persons dwell in such building, the living quarters shall be entirely separate and independent from the part of the build-

ing where the manufacture is performed and have independent entrances separated by open air. A place of manufacture shall not be construed to be a cellar or basement of a house or an outbuilding."

Manufacturing in a "home" is an essential feature of "industrial homework." A "home" is defined in N.J.S.A. 34:6-136.2(c) as follows:

> "(c) 'Home' means any room, house, apartment or other premises, whichever is most extensive, used in whole or in part as a place of dwelling; and includes outbuildings upon premises that are primarily used as a place of dwelling, where such outbuildings are under the control of the persons dwelling on such premises."

Paragraph (e) of N.J.S.A. 34:6-136.2, after defining "industrial homework" as "* * * any manufacture, in a home, of materials or articles for an employer," then goes on to exclude from the definition, manufacturing performed under certain conditions. Paragraph (e) concludes with the following sentence: "A place of manufacture shall not be construed to be a cellar or basement of a house or an outbuilding." Thus, the provisions of paragraph (e), which exclude from the definition of industrial homework, certain manufacturing, are not applicable to manufacturing in an outbuilding.

Therefore, in answer to your questions dealing with outbuildings, the necessary determination to be made is whether the outbuildings to which you refer satisfy the definition of a "home" so as to render manufacturing in them, "industrial homework." Paragraph (c) of N.J.S.A. 34:6-136.2 provides that an outbuilding is a "home" if the outbuilding is under the control of the persons dwelling upon the premises upon which the outbuilding is situate, and if such premises are primarily used as a place of dwelling.

With this understanding of the statute involved, we will take up the first two questions which you have presented.

Your first question is directed to an individual operating in an outbuilding situated in the rear of his house. Since this is an outbuilding upon premises that are primarily used as a place of dwelling, the outbuilding, if it is under the control of the person dwelling on the premises, constitutes a "home" and, therefore, manufacturing in such an outbuilding is "industrial homework" under the act.

Your second question is directed to an individual operating in an outbuilding in the rear of a house dwelt in by persons other than himself. Here, only if the persons dwelling in this house have control of the outbuilding, would the manufacturing be homework under the terms of the act.

Your third and fourth questions necessitates a further analysis of the industrial homework law. This law as originally enacted in 1941 provided in N.J.S.A. 34:6-136.2(e):

> "(e) 'Industrial homework' means any manufacture, in a home, of materials or articles for an employer."

The additional language presently appearing in paragraph (e) and quoted at the outset of this opinion was added by L. 1942, c. 307. The reason for this amendment is made clear in the statement attached to the 1942 act:

> "The industrial home work law of 1941 defines a home to be every building where a person dwells and prohibits certain types of manufacturing in

such a building except by persons who dwell therein. This definition prohibits manufacturing by an employer in any building where any person resides unless all of the employees also reside in the same building. To comply with the law such employers must either discharge all employees who do not live on the premises or move their plants to new buildings where there are no living quarters.

This situation drastically affects buildings designed and built to include manufacturing space as well as living quarters. The embroidery industry, in particular, which industry, following a custom of many years standing, operated looms on the ground floor of a building, the upper floors of which are used for living quarters. Manufacturing of this type in an industrial plant was not and is not intended to be industrial homework.

The purpose of this amendment is to remedy this condition, and it does not in any way weaken the control or regulation of industrial homework as such."

The situation referred to in the statement resulted from the operation of N.J.S.A. 34:6–136.12(1) prohibiting the issuance of a home worker's certificate to non-residents of the home in which work was to be done. What the amendment sought to do was to remove from the coverage of the act work performed under conditions and circumstances outlined in the statement attached to the 1942 amendment. *Deaney* v. *Linen Thread Co.*, 19 N.J. 578 (1955). Thus, those workers to whom a certificate could not theretofore be issued, i.e., workers who did not dwell in the home in which the work was done, are, by the 1942 amendment, not only permitted to perform such work, but are exempt from the provisions of the act so long as the other conditions appearing in the exempting portion of paragraph (e) of N.J.S.A. 34:6–136.2 are met.

With respect to your third and fourth questions, you ask to whom the word "who" refers in the phrase "who does not dwell in the building in which manufacturing is performed" as it appears in paragraph (e) of N.J.S.A. 34:6–136.2. It is our opinion, for the reasons discussed above, that the word "who" refers to an employee.

With this further analysis of the industrial homework law, we will now consider the third and fourth questions which you have presented.

Your third question is directed to an individual operating in the building in which he dwells but in a room separate from his living quarters but with an entrance to his home and to his work room from a common hallway. Since this individual does dwell in the building in which he works, the condition of non-residence required in the exemption in paragraph (e) of N.J.S.A. 34:6–136.2 is not met. As a result, the work described in your third question constitutes manufacturing in a home under sections (c) and (e) of N.J.S.A. 34:6–136.2 and is, therefore, industrial homework under the act.

Your fourth question is directed to an individual operating in the house in which he dwells where the room for the manufacturing operations is so separated from his living quarters that an entrance to the work room from the living quarters can be effectuated only by going outdoors from the living quarters and entering into the work room from an outside door. Here, too, as in your third question, the individual, by dwelling in the building in which he works, falls without the exemption in para-

graph (e) of N.J.S.A. 34:6–136.2. Thus, the work described in your fourth question likewise constitutes manufacturing in a home under sections (c) and (e) of N.J.S.A. 34:6–136.2 and is, therefore, also industrial homework under the act.

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: MARTIN L. GREENBERG
Legal Assistant

FEBRUARY 19, 1958

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

FORMAL OPINION 1958—No. 4

DEAR MR. NEELD:

You have sought the opinion of the Attorney General as to the construction of certain provisions of Chapter 145 of the Laws of 1957 amending R.S. 43:3–5, the statute granting exemptions from R.S. 43:3–1, which prohibits public pensioners from holding public employment in this State except upon waiver of the pension or the salary or compensation allotted to the office or employment.

The enactment of 1957 was intended to make public pensioners eligible for part-time public employment at salaries not exceeding $1,200.00 per year, according to its introductory statement. The specific language of the amendment is as follows:

> "The provisions of this Chapter shall not apply * * * to the employment, by the State or by any county, municipality or school district in any position or employment, to the duties of which the holder thereof is not required to devote his full time, at a salary or compensation of not more than $1,200.00 per calendar year, of any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State * * *. The provisions of this section shall not authorize the employment as a policeman or fireman of any person who is receiving or shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State as a result of services as a member of a police department or a fire department."

You ask first for a definition of "full time" as applied in the foregoing Chapter 157. We advise you that "full time" signifies the normal and customary period of employment per day, per week and per year in the government service, i.e., 7 to 8 hours per day in a 5-day work week throughout the year, with vacation and sick leave privileges. The definition of "full time" in *Beaver Dam Co.* v. *Hocker*, 202 Ky. 398,