unknown to science when reference to manufacturing was originally made, are not to be excluded from such a categorization merely on the basis of their newness or the degree of technical skill involved.

Our further opinion is that if any research activity, not involving some change in materials or elements as they exist in nature so as to render them more subject to man's control or more serviceable to his use, is carried on in conjunction with, or accompanied by, research which does work such change, then the entire research program and any activity incidental thereto falls within the legislative classification termed "manufacturing." Formal Opinion 1952—No. 30, December 1, 1952.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MARTIN L. GREENBERG
Deputy Attorney General

SEPTEMBER 29, 1958

COLONEL JOSEPH D. RUTTER
Superintendent
Division of State Police
Trenton, New Jersey

FORMAL OPINION 1958—No. 14

DEAR COLONEL RUTTER:

You have requested our opinion as to the legal validity of a system of warning citations which carry no penalty, to be issued by State Police and Motor Vehicle Inspectors in the enforcement of the motor vehicle laws (R.S. 39:1-1 *et seq.*). In your request, you have summarized several advantages of such a system from the standpoint of effective traffic law enforcement.

1. The authority of a law enforcement officer to issue warnings, in addition to summonses, increases his potential for both education and enforcement. The effect of a warning on a driver can be both corrective and deterrent. There are many bad driving practices which can and often do cause serious accidents. A law enforcement officer with only the authority to issue a summons often hesitates to take such action when he observes a bad driving practice, because he has not secured sufficient evidence to convict the motorist of any violation beyond a reasonable doubt, as the law requires, or because he determines that the violation is minor and not an immediate threat to safety on the highway or street. By issuing a warning citation, the officer would stress to the driver the specific bad driving practice and its possible dangerous consequences.

   As an example, a driver approaches a stop sign and fails to come to a complete halt. He has made reasonable observation to his right and left, and no other vehicles are approaching the intersection. While the law has been technically violated, the issuance of a warning here, with an explanation by the issuing officer that the practice can result in a careless habit leading to accidents, may appear to the officer to have the best possi-

ble effect on the driver. If the officer ignores the occurrence, the driver may assume that the practice was proper and legal. If, on the other hand, he issues a summons, the driver may fail to realize the potential seriousness of his bad driving practice. The ability to issue warning citations would vastly increase, therefore, the number of contacts between trained law enforcement officers and the driving public with every indication of bringing greater safety to our highways.

2. The experience of other States, specifically Arkansas, Connecticut, Georgia, Kansas, Minnesota, South Carolina, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin, where warnings are now issued, as well as the past experience of 27 years of use of such a system in New Jersey, are concrete evidence of the effectiveness of such a system. Nearly one and three-quarter million warnings were issued by the State Police of New Jersey alone and they had a marked effect in improving driving practices.

3. The increase in contacts between law enforcement officers and drivers, which a warning citation system would provide, can, in many instances, lead to discovery of other serious violations, some criminal in nature. Enforcement of revocation of license and detection of contraband goods and concealed weapons would be substantially increased by this system.

4. In dealing with equipment violations, not of a serious nature, such as a defective tail light or a crack in the windshield, a warning system would have particular advantages. A warning could be issued requiring repair of the defect within a specified period of time; if the defect were not corrected, a summons could then issue or auxiliary administrative remedy be instituted. This system would assure that the defect was speedily corrected and the vehicle put in good operating condition and not a continuing potential threat to highway safety.

In your request you advise also that you would permit such warnings to be issued by your officers only under strict control and supervision; and that under no circumstances would you permit the issuance of warnings for any serious motor vehicle violation, such as drunken driving or reckless driving.

You point out further your general conclusion that driver attitude is the single most significant factor in the reduction of traffic accidents and fatalities. Drivers who are inattentive, careless and lacking in courtesy are accident prone. Education in safe driving attitude and courtesy is their paramount need. Such drivers detected in a borderline violation may learn nothing from an arrest and conviction, but resent what they consider technical and rigid enforcement. In your opinion, a warning would serve to educate such drivers and to instill an attitude of cooperation and responsibility, with an understanding of the terrible risks to person and property in the careless operation of motor vehicles.

The warning system, as outlined by you, would impose no penalties. You recommend written warnings, however, as a record of individual State policemen's activities, as an additional factor in statistical studies, which are particularly important in the work of traffic safety improvement, and as a possible basis for physical reexamination of drivers receiving multiple warnings.

Your request raises two legal questions: (1) the authority of a State police officer to stop a motor vehicle and to issue a warning when he determines that there is

not sufficient evidence to arrest for a violation; and (2) the authority of a State police officer to stop a motor vehicle and to issue a warning when he determines that there is sufficient evidence to arrest for a violation.

Our answers to both these questions will apply to motor vehicle inspectors as well as State police, because the State police exercise the powers of motor vehicle inspectors in the enforcement of the motor vehicle law (R. S. 53:2-1).

There is specific statutory authority granting a motor vehicle inspector and a State police officer the power to stop a motor vehicle without observance of a violation of the law. R.S. 39:2-9 provides in part:

> "Motor vehicle inspectors * * * shall have power to stop any motor vehicle and examine the same to see that it complies with the requirements of this subtitle, whether in the matter of equipment, identification or otherwise, to require the production of the license of the driver and the certificate of registration of the motor vehicle from the driver thereof, * * *."

Law enforcement officers who stop motor vehicles to admonish errant drivers are, in addition, shielded from liability for false arrest, false imprisonment or related civil tort actions because of the recognized immunity of police officers acting in good faith and with a color of authority. *Earl* v. *Winne*, 14 N.J. 119, 128 (1953); *Pine* v. *Okzewski*, 112 N.J.L. 429 (E. & A. 1934); *Pollack* v. *Newark*, 147 F. Supp. 35, 38 (D. N.J. 1956).

We advise you in response to the first legal question that State police officers in the performance of their duties may stop motor vehicles and issue warnings for bad driving practices despite the absence of sufficient proof to arrest and convict. A typical example may be cited. A driver is observed by the police officer to be speeding but in the opposite direction. The police officer makes a U-turn but when he overtakes the driver, he is then within the speed limit. The warning carries no penalty but it serves to caution the motorist against driving at speeds endangering safety.

We next deal with warnings for equipment violations, which we also hold would be valid. You cite the reluctance of State police officers to arrest, for example, for one defective tail-light, not an immediate danger to the public safety. We suggest an alternative administrative method of enforcement. The warning for an equipment violation would require the motorist to have the defect repaired or otherwise corrected within a short period of time, such as 48 hours, and to receive a certification to that effect from a motor vehicle inspection station or, possibly, any police officer. Failure to correct the condition would be treated as grounds for revocation or suspension of the driver's license or the motor vehicle registration by the Director of the Division of Motor Vehicles, to whom the certification would be directed. The Director, under R.S. 39:5-30, may revoke or suspend drivers' licenses or motor vehicle registrations both for any violation of Title 39, Motor Vehicles, or for "any other reasonable grounds."

The Appellate Division of the Superior Court specifically approved the auxiliary enforcement of the motor vehicle laws by the Director of the Division of Motor Vehicles, in *Sylcox* v. *Dearden*, 30 N.J. Super. 325 (1954). There, the revocation of a license for careless driving (R.S. 39:4-97) was upheld, although the driver had been acquitted in a magistrate's court on a charge of illegal passing (R.S. 39:4-86). The same facts were the basis for both the magistrate's court proceeding and the

administrative proceeding before the Director. The court held there was no double jeopardy and stated:

> "The suspension or revocation of a driver's license need not necessarily be regarded as punitive in purpose. It may be a measure for the prospective safety and protection of the traveling public in the nature of an auxiliary remedial sanction. Cf. *Helvering* v. *Mitchell*, 303 U.S. 391, 58 *Sup. Ct.* 630, 82 *L. Ed.* 917 (1937); *United States ex rel. Marcus* v. *Hess*, 317 *U.S.* 537, 63 *Sup. Ct.* 379, 87 *L. Ed.* 443 (1942)."

The final question in determining the validity of warnings for what amount to prima facie violations of the motor vehicle laws must be dealt with at length. We consider and distinguish *State* v. *Winne*, 12 N.J. 152 (1953), which sustained as valid an indictment for criminal nonfeasance against a county prosecutor who was charged with willfully omitting to perform his statutory duty to detect, arrest, indict and convict offenders against the criminal laws of the State, despite knowledge of specific gambling operations.

Motor vehicle laws are not criminal laws but are at most quasi-criminal. *State* v. *Emery*, 27 N.J. 348, 353 (1958); *State* v. *Rowe*, 116 N.J.L. 48 (Sup. Ct. 1935), aff'd 122 N.J.L. 466 (E. & A. 1939). The prime intention of the motor vehicle laws is to control a dangerous instrumentality in the interest of public safety. *Unwin* v. *State*, 73 N.J.L. 529 (Sup. Ct. 1906), aff'd 75 N.J.L. 500 (E. & A. 1907); *Hendrick* v. *Maryland*, 235 U.S. 610 (1914). According to *Cleary* v. *Johnson*, 79 N.J.L. 49, 51 (Sup. Ct. 1909), the statutory purpose is "securing the safety of the public in its use of highways."

The Legislature has recognized that the movement of motor vehicles over the streets and highways presents constant dangers to the public. Strict regulation and means of constant surveillance must be employed to preserve the public safety. *Pine* v. *Okzewski, supra.*

The standards imposed upon motorists fall into two general categories. Drivers are required to be licensed (R.S. 39:3-10), and all vehicles must be registered (R.S. 39:3-4). Licenses and registrations are subject to suspension or revocation after notice and hearing (R.S. 39:5-30). There is, in addition, the pattern of standards found in R.S. 39:4-1 *et seq.* setting forth driving offenses of omission or commission, including the offenses of careless driving (R.S. 39:4-97), failure to keep right (R.S. 39:4-82, 39:4-88), observance of stop signs and yield right of way signs (R.S. 39:4-140 *et seq.*), driving through amber light (R.S. 39:4-105), failure to use hand signals (R.S. 39:4-123 and 39:4-126), driving too fast for conditions (R.S. 39:4-98), within which many bad driving practices warranting warnings may technically fall. The Legislature has delegated a broad area of control to the Director of the Division of Motor Vehicles under R. S. 39:5-30 and broad powers to motor vehicle inspectors and to State police in the enforcement of the motor vehicle laws.

New Jersey has always exacted the highest degree of diligence from its law enforcement officers. N.J.S. 2A:135-1; *State* v. *Winne, supra.* At the same time, our courts have recognized that a law enforcement officer, with the power of arrest, who acts in good faith, may be justified legally in exercising discretion by use of other means to carry out his responsibilities, i.e., under the motor vehicle statutes, the regulation and control of operators, vehicles, their operators and pedestrians in promoting the public safety.

Such was stated by Chief Justice Vanderbilt in *State* v. *Winne, supra.*, where the Supreme Court, in reviewing the duty of county prosecutors, stated at p. 174:

> "A county prosecutor has an obligation to detect and arrest, as well as to obtain indictments and prosecute them. He is under a statutory duty to investigate suspicious situations and determine the facts in the process of detecting and arresting, especially when he receives information that makes it reasonably probable that the law has been violated. There are undoubtedly many instances when a refusal in good faith to prosecute after due investigation would lack the element of 'wilfullness,' but where he willfully refuses to act, i.e., without just cause or excuse, he is guilty of a breach of duty rendering him liable to indictment. The distinction between the exercise of discretion in good faith and a willful failure to act is to be judged by his conduct in the light of all the facts and circumstances. A county prosecutor within the orbit of his discretion inevitably has various choices of action and even of inaction. This discretion applies as much to the seeking of indictments from the grand jury as it does to prosecuting or recommending a *nolle prosequi* after the indictment has been found, but he must at all times act in good faith and exercise all reasonable and lawful diligence in every phase of his work."

See also: *Driscoll* v. *Burlington-Bristol Bridge Co.*, 8 N.J. 433, 474-6 (1952).

In *Dell Publishing Co.* v. *Beggans*, 110 N.J. Eq. 72 (Ch. 1932), the court approved of a practice by municipal police of giving warnings to newsdealers selling allegedly obscene magazines. At pp. 74 and 75 the court stated:

> "Complainant stresses that defendants have not arrested any newsdealers or taken any lawful action to uphold the law; that they have used extra legal means, namely, have ordered the newsdealers not to sell the magazine and have threatened to confiscate and destroy copies of the magazine that were not removed from sale. Further, the defendants admitted at the argument that, when on January 8th they ordered the removal of the magazine from the news stands, they collected all the copies they could find and took them to one of the police stations in Jersey City, so as to insure that they would not be sold.
>
> "An order by police officers that a magazine be not sold has no more legal weight than a similar order given by a private individual. It is effective, however, because it carries an implied threat that disobedience will be followed by arrest and prosecution. Complainant contends that any action by the police in advance of the commission of a crime (not amounting to a breach of the peace) is unlawful; that their only function is to wait until a crime has been accomplished and then to arrest and prosecute. I do not think this sound. In my opinion, the police have a preventive function; if they have reason to believe a crime is contemplated, they may properly give warning that if the crime is committed they will proceed against the wrongdoer."

See also: *Conte, et al.* v. *Roberts, et al.*, 58 R.I. 353, 192, Atl. 814 (Sup. Ct. 1937), adopting language of the *Dell* case.

The exercise of discretion can of course be abused. An officer acting in bad faith, who willfully refuses or neglects to act properly as the circumstances demand,

is subject to indictment. Abuse of discretion as well as the preventative function of law enforcement officials was discussed in *People* v. *Galpern*, 259 N.Y. 279, 181 N.E. 572 (Ct. App. 1932), where the court stated:

> "* * * The duty of police officers, it is true, is 'not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions.' *People* v. *Nixon*, 248 N.Y. 182, 188, 161 N.E. 463, 466. Then they are called upon to determine both the occasion for and the nature of such directions. Reasonable discretion must, in such matters, be left to them, and only when they exceed that discretion do they transcend their authority and depart from their duty."

Traffic law enforcement has been the subject of many extra-judicial pronouncements. In the Beecroft Memorial Lecture, delivered by the late Chief Justice Vanderbilt to the Metropolitan Section of the Society of Automotive Engineers on October 20, 1949 (4 *Rutgers Law Rev.* 555, 567), the need for specially trained traffic police was discussed:

> "The role of the police in traffic enforcement is by no means confined to making arrests and giving testimony. Equally with the judge and the prosecutor are they responsible for inculcating respect for law. On their sound judgment on our highways and streets, moreover, quite as much as what happens in the courtroom depends the successful enforcement of the traffic laws. If they attempt to issue a summons for every violation without making proper use of warnings, if they show any favoritism to one group of citizens as against another, if they set out to make a quota of arrests each day, regardless of whether the arrests are justified, they will inevitably be doing harm to traffic law enforcement and the cause of highway safety. But if they go about their work intelligently and courteously, supervising highway traffic on the basis of preventing the types of violations that analysis has shown to be responsible for accidents, their work will be quite as important as that of the judge or prosecutor."

This language became incorporated *in toto* into the 11th Resolution of *"Traffic Law Enforcement and the Sixteen Resolutions of the Chief Justices and the Governors,"* Arthur T. Vanderbilt, Institute of Judicial Administration, July 1953.

A warning citation system would not conflict with the jurisdiction of the Supreme Court over practice and procedure in the courts, as exercised in R.R. 8:10-1 *et seq.*, since the warning would not be a pleading or summons, as is the uniform traffic ticket; the jurisdiction of the courts would not be invoked. The warning procedure would supplement an enforcement program based upon the issuance of a summons, but would not conflict with it.

We therefore advise you that State police and motor vehicle inspectors may stop a vehicle and issue a warning citation where they have observed a bad driving practice or defective equipment on a vehicle amounting to a prima facie violation of the Motor Vehicle Act, within their discretionary authority to promote the public safety on the highways.

Very truly yours,

DAVID D. FURMAN
Attorney General