The last stated rule was applied in the *Todd* case, *supra,* to exclude from coverage of the act an employee who spent only about 1/10 of 1 per cent of his time on Federally financed activities.

We advise you that, under the conclusive standards set forth in the above cited United States Civil Service Commission rules and decisions, the employees of the Maintenance Division are not subject to the Hatch Act prohibition against political activity and that other officers and employees of the State Highway Department must be held to be governed by the Hatch Act, unless the particular circumstances of their employment fit within the two exceptions recognized in *In the Matter of Joseph L. Todd and the State of Illinois.*

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

MARCH 26, 1958

HON. CARL HOLDERMAN, *Commissioner*
Department of Labor and Industry
20 West Front Street
Trenton, New Jersey

MEMORANDUM OPINION—P-13

DEAR COMMISSIONER HOLDERMAN:

You have asked whether the Division of Workmen's Compensation can refuse to permit the search of its records by Accident Index Bureau, Inc., a New Jersey corporation organized:

> "to prepare and maintain records of accidents and such other information as may be of interest to employers, insurers, and insurance companies; and to issue reports thereof whenever necessary, and such other services as might be rendered by any natural persons to business or industry."

Accident Index Bureau, Inc., in a publication entitled "How Much Do You Really Know About the Man You Are About To Hire?" states:

> "* * * All too often the employer finds that he has unwittingly put on his payroll a workmen's compensation 'professional'. It is only when an injury is reported and a claim filed that the hapless employer finds that he has 'been taken'. Then it's too late. (In New Jersey alone last year, 81% of claims paid were for 'permanent partial disabilities'. In innumerable cases, no time or pay was lost. You pay for this in your premium. Many other States show similar liberal tendencies to give away the employers' money, through his insurance companies, money which he eventually repays in higher premiums.)

"The time to prevent these costly mistakes is before you put any person on your payroll, as a permanent employee, and he automatically becomes your responsibility.

"Pre-employment physical examinations—which cannot always detect 'low back injuries' and the like—and private investigations have proved too costly.

"There is only one sure, economical method to obtain the information to which you are entitled. That is by membership in the Accident Index Bureau which is being increasingly utilized by employers. From the Bureau's files and from its other sources, you will receive a complete history of previous injuries and claims by any individual.

"Your annual membership fee is only $25.00.

"The charge for each report on an individual is only $5.00. * * *"

You have indicated that Accident Index Bureau, Inc. seeks inspection of the card index (R.S. 34:15-59) containing petitioners' names arranged alphabetically and referring the searcher to a report concerning the date of claim, nature of injury, name of employer, and determination. The corporation seeks this information on a petitioner by petitioner basis, each search being made as a result of a specific request either by an insurance company involved in litigation or an employer interested in prospective employees. The inspection involves no interference with the performance of official duties of the Division.

Legislation governing the functioning of the Division of Workmen's Compensation, R.S. 34:15-1, et seq., provides for the keeping of records pertaining to the Division's operations. R.S. 34:15-58 (decisions, awards and rules for judgment or orders approving settlements); R.S. 34:15-96, 97, 98 (reports of accidents by employers and insurance carriers); R.S. 34:15-100 (insurance medical reports).

Certain records are required to "be open to the inspection of the public," pursuant to R.S. 34:15-59, which imposes an obligation to maintain a card index of the record of each case as well as the Division's dockets in which are to be entered the title of each cause, the record of the official conducting the hearing, the date of determination thereof, the date of appeal, if any, and the date on which the record, in case of appeal, was transmitted to the appellant. Certain other records "shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require," pursuant to R.S. 34:15-99 which deals with the first reports of accidents.

The records required by law to be kept by the Division and not restrained by statute from public access are public records. In *Josefowicz* v. *Porter,* 32 N.J. Super. 585, 591 (App. Div. 1954) the court stated:

"'Public Record' has been defined as * * * 'one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, * * * or a writing filed in a public office.'"

See also P.L. 1953, c. 410 (N.J.S.A. 47:3-16).

The right of a citizen to inspect public records was limited under the English practice to cases in which inspection was necessary as an aid in litigation maintainable by the petitioner. *Rex* v. *Shelley,* 3 T.R. 141; *In re Freeman,* 75 N.J.L. 329 (S. Ct. 1907).

> "In time, as inspection came to be sought for purposes other than use in litigation, courts in England and the United States began to depart, albeit with some reluctance and resort to pretext, from the narrow view that use in litigation was the only sufficient special interest. In that departure New Jersey and Vermont * * * were notable." *Cross, The People's Right to Know,* p. 26 (1953).

In the leading case of *Ferry* v. *Williams,* 41 N.J.L. 332 (Sup. Ct. 1879), the right to inspect recommendations for saloon licenses was vindicated after a careful analysis of the authorities upon the ground that any citizen in his capacity as a taxpayer had such an interest in the proper observance of the provisions of the city charter for licensing saloons, that he might, under certain circumstances, litigate for its protection; in order to ascertain whether those circumstances existed so as to be in a position to serve the public convenience, he was entitled, when actuated by the motives shown in that case, to the inspection sought. See Memorandum Opinions of Attorney General—dated September 25, 1915 and September 29, 1915.

This limited right of inspection was extended furthur in *Higgins* v. *Lockwood,* 74 N.J.L. 158 (Sup. Ct. 1906) where it was held that a voter was entitled to a *mandamus* to secure an inspection of registered lists for an election, although his only interest was as a voter and no litigation was intended to which the inspection might be an aid. Both the *Ferry* and *Higgins* cases recognized the necessity that the motives of the petitioner be proper. The effect of these cases, although such is by no means the nationwide view, is that a requirement of lawful, proper, and legitimate purpose not adverse to the public interest is inherent in the right to inspect public records. *Cross, The People's Right to Know,* p. 36 (1953). Thus, the court in *In re Freeman,* supra, at p. 332, in denying inspection of affidavits filed against a candidate 21 years prior to his candidacy, in an abortive disbarment proceeding, stated:

> "When, as in this case, the only right of the petitioner is his interest as one of the general public in securing the nomination and election to public office of proper men, he ought to show that the issue of the writ would conduce to that end and that he himself is actuated by proper motives. The courts ought to lend their aid in such a case, but they ought not to lend it where the information sought cannot be helpful for the ostensible purpose or where the petitioner's motive is partisan hostility or personal ill will.
>
> "* * * he was actuated rather by the zeal of the partisan rather than by a desire solely for the public weal."

The propriety of the motives of the one seeking an inspection was further discussed in *Taxpayers Association* v. *City of Cape May,* 2 N.J. Super. 27 (App. Div. 1949) and *Casey* v. *MacPhail,* 2 N.J. Super. 619 (Law Div. 1949). In the former case the court held valid the motives of a Taxpayers Association and permitted inspection of tax records for information which might support the Association's demand for increased governmental efficiency in the face of a proposed increase

in the tax rate. In the *MacPhail* case, a candidate was permitted inspection of the names and addresses of registered voters since he had a legitimate interest in ascertaining that only those that have a right to vote in the election shall vote in that election. See also *In re Caswell,* 18 R.I. 835, 29A. 259 (S. Ct. 1893) denying newspaper access to divorce proceedings where proposed use would be harmful to public interest.

The right to inspect public records is further qualified in this State in two respects. The inspection may not interfere with the performance of official duties. *Taxpayers Association* v. *City of Cape May,* supra; *Casey* v. *MacPhail,* supra; *Memorandum Opinion of Attorney General* dated February 21, 1957. The inspection cannot be an indiscriminate one which has as its purpose the general abstraction of public records in order to carry on the business of furnishing such abstracts to the public. *Barber* v. *West Jersey Title and Guaranty Company,* 53 N.J. Eq. 158 (E. & A. 1895).

The operation of Accident Index Bureau, Inc. indicates neither interference with the performance of official duties of the Division of Workmen's Compensation, nor the indiscriminate use of its files prohibited in the *Barber* case, supra. Access must then be granted unless it is sought for an unlawful, improper, or illegitimate purpose adverse to the public convenience or welfare.

> "* * * The right to inspect a public record does not attach to all persons or to every situation. He who asserts that right must have some interest in the record in which he seeks inspection, and the inspection must be for a legitimate purpose. There is no right of inspection of a public record when the inspection is sought to satisfy a person's mere whim or fancy, to engage in a pastime, to create scandal, to degrade another, to injure public morals, or to further any improper or useless end or purpose * * *"

State v. *Harrison,* 130 W. Va. 246, 230, 43 S.E. 2nd, 214, 218 (S. Ct. of App. 1947). See also 53 C.J. Records § 40.

Acts which are considered harmful to the public and contrary to the public good are determined by the public policy enunciated through legislative enactments. *Schaffer* v. *Federal Trust Co.,* 132 N.J. Eq. 235 (Ch. 1944). The purpose of our Workmen's Compensation Act is:

> "* * * to shoulder on industry the expense incident to the hazards of industry; to lift from the public the burden to support those incapacitated by industry and to ultimately pass on to the consumers of the products of industry such expense * * *."

Morris v. *Hermann Forwarding Company,* 18 N.J. 195, 197, 198 (1955). In order to accomplish this purpose, employees must be free to file claims without fear of retribution. They should not be made to feel that the filing of a claim will have a detrimental effect upon prospects for future employment. To instill that fear would be to defeat the objects of our Workmen's Compensation Legislation.

It is also the policy of this State to vocationally rehabilitate our physically handicapped for placement in remunerative employment. P.L. 1955, c. 64. (N.J.S.A. 34:16-20, et seq.). In order to encourage employment of the handicapped the One Percent Fund (Second Injury Fund) was originated. R.S. 34:16-94 et seq. The intent of this portion of our Workmen's Compensation Law has been clearly

established. As was stated in *In re Glennon*, 18 N.J. Misc. 196 (Co. Ct. 1940) at p. 196:

> "* * * This intent is (1) to insure to the employee full compensation, where a compensable disability succeeds, but has no causative connection with, the results of a prior disability, the combination of the two leaving the employee permanently and totally disabled. Its purpose is (2) to relieve the employer of the undue burden of a prior disability, with which, or its results, the disability arising in his employ had no causative connection, but which burden the previous broad provisions of the Workmen's Compensation Act were found to impose upon him. *Combination Rubber Manufacturing Co.* v. *Obser*, 95 N.J.L. 43; 96 Id. 544; 115 Atl. Rep. 138; *Richardson* v. *Essex National Trunk and Bag Co., Inc.*, 119 N.J.L. 47; 194 Atl. Rep. 622."

By this act the Legislature evinced a clear intent not to impose any greater obligation upon an employer who hires or employs a person previously injured than if he had hired a person previously not injured. In *Richardson* v. *Essex National Trunk and Bag Co., Inc.*, 119 N.J.L. 47 (E. & A. 1937), the court stated at p. 52 that:

> "* * * we clearly discern * * * a continued and progressive development of the law to meet unforeseen contingencies as they arise to the end that full force and effect be given to the objective sought to be accomplished by the State, namely, to make its plan of rehabilitating injured persons workable and a useful reality. That goal can only be accomplished if all affected act in cooperation. The State has done, and is doing, its part; the employee—the direct beneficiary—undoubtedly welcomes the opportunity of engaging in honorable and gainful occupation; but how was the employer to be induced to cooperate? * * *"

Many employers will not hire handicapped workers because they believe it will raise their workmen's compensation costs. This attitude and this belief persists even though the insurance industry itself has for many years, engaged in a widespread education to insure employers that handicapped workers do not cost them more in premium rates. See, for example, The Physically Impaired Can Be Insured Without Penalty (published by The Association of Casualty and Surety Companies, New York, New York); and also The Job for the Handicapped Man (published by the National Association of Mutual Casualty Companies, Chicago, Illinois).

Insurance companies have, for example, publicized the fact that Workmen's Compensation Insurance rates are based primarily on: (1) The hazards inherent in the industry concerned; and (2) the accident experience of the individually insured employee. Physically handicapped workers cannot possibly affect the first factor and could only influence the second if they were prone to have more accidents than workers without handicaps. Research studies conducted by various groups have shown that, when properly placed, handicapped workers have accident experience as good as or often better than that of other persons. B.L.S. Bulletin 923, U.S. Dept. of Labor, p. 9.

Whatever the cause or nature of their disability, the State's physically handicapped citizens want to lead normal, productive lives; do a good day's work of useful employment; to support themselves and their families. The State of New Jersey has recognized this fact and acting in the interest of all its citizens, has sought to encourage such employment.

No person can lawfully do that which has a tendency to be injurious to the public or against the public good. *Driver* v. *Smith,* 89 N.J. Eq. 339 (Ch. 1918); *Brooks* v. *Cooper,* 50 N.J. Eq. 761 (E. & A. 1893). The service as outlined by Accident Index Bureau, Inc. is designed to discourage the employment of the handicapped and would frustrate the efforts of the Department of Labor and Industry to effectuate the policy of this State concerning industrial injuries and employment of the handicapped.

Consequently, it is our opinion, and you are accordingly advised, that the Division of Workmen's Compensation can refuse to permit the search of its records by Accident Index Bureau, Inc. where the purpose of the search is to provide employers with information concerning prospective employees.

Verly truly yours,

DAVID D. FURMAN
Acting Attorney General

By: MARTIN L. GREENBERG
Legal Assistant

APRIL 9, 1958

HONORABLE JOSEPH E. MCLEAN
Commissioner of Conservation and Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-14

DEAR COMMISSIONER MCLEAN:

You have requested our opinion as to whether or not you may designate a representative to serve in your place on the Board of Review established by N.J.S.A. 18:5-1.6. That section is part of the statute governing the creation of new school districts, and the function of the board in question is to review the petition for the creation of a new school district and to grant or deny the same after considering the effect of the proposed separation upon the educational and financial situations of both the new and the remaining districts. Section 18:5-1.6 provides that the Board of Review shall "consist of the Commissioner of Education as Chairman, the Commissioner of the Department of Conservation and Economic Development, and the Director of the Division of Local Government in the Department of the Treasury."

It is our opinion that your function as a member of such Board of Review involves the exercise of discretion and judgment and therefore cannot be delegated except as specifically allowed by statute. 43 Am. Jur. "Public Officers" §461; 67 C.J.S. "Officers," § 104; see also cases cited in Attorney General's Memorandum Opinion P-2, rendered to the State Treasurer March 26, 1954. We find no statute authorizing you to make such delegation.

N.J.S.A. 13:1B-4, defining your powers of delegation, provides:

> "The commissioner may delegate to subordinate officers or employees in the department such of his powers as he may deem desirable, to be exercised under his supervision and direction. He shall, by order, rule or regulation filed with the Secretary of State, designate one or more of the officers or employees in the department who may act for him and on his behalf in the event of his absence or disability."

We advise you that the general power of delegation set forth in N.J.S.A. 13:1B-4 does not extend to the delegation of your statutory function of deciding matters according to your judgment as a member of the Board of Review, except in the instances of your absence from the State or disability. N.J.S.A. 18:5-1.6 entrusts this responsibility exclusively to the Commissioner of Conservation and Economic Development, without any authority, express or necessarily implied, for its delegation to a subordinate. Your inquiry, therefore, must be answered in the negative.

Very truly yours,

DAVID D. FURMAN
Acting Attorney General

By: THOMAS P. COOK
Deputy Attorney General

APRIL 16, 1958

HON. JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and
Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR COMMISSIONER:

You have requested our opinion as to whether your department is authorized to participate financially in a program of beach protection where the municipality proceeded with the work in question without first complying with the procedure ordinarily required in connection with such State aid projects.

The Appropriations Act under which the State proposes to make its contribution to the project is Chapter 100 of the Laws of 1956, which contains the usual appropriation for beach protection. The pertinent portion of the Appropriations Act provides, among other things, as follows:

> "All projects shall be constructed under contract with and under supervision of the Department of Conservation and Economic Development."

Other parts of the section provide for the participating municipality to match the State's contribution, and to deposit its 50% share with the State Treasurer through the Department of Conservation and Economic Development. The Appropriations Act for the fiscal year 1957-58 (Chapter 113 of the Laws of 1957) contains an identical provision.