

State Department of Taxation and Finance except that the term of office of the present members of the Local Government Board shall expire on the effective date of this act and the board shall consist thereafter of the director as chairman, and three members appointed by the Governor by and with the advice and consent of the Senate * * *

This section, in effect, reduced the number of appointments made by the Governor to the Board from four to three. It is silent as to the qualifications of membership either as to experience or political affiliation.

Significantly, the 1944 act expressly repealed sections 8 and 12 of P.L. 1938, c. 158 pertaining to the compensation for the Commissioner of Local Government and the members of the board. Section 11, however, was neither amended nor repealed as it pertained to experience and party affiliation. At that time, although not expressly provided, the requirement that not more than two members of the board appointed by the Governor should be of the same political affiliation remained in effect and was not impliedly repealed. See *Swede v. City of Clifton*, 22 N.J. 303, 317 (1956).

Thereafter, however, the "Local Government Supervision Act" (P.L. 1947, c. 151; N.J.S.A. 52:27BB-1 et seq.) was enacted and among other things, expressly repealed section 11 of P.L. 1938, c. 158; N.J.S.A. 52:27A-11, which, to repeat, dealt with political affiliation limitations.

Therefore, in light of this express repealer, you are advised that you may appoint, subject to Senate approval, persons to the Local Government Board without regard to political affiliation. Appointments to this Board, presently established in the Division of Local Government, Department of the Treasury by virtue of the 1948 Reorganization Act (P.L. 1948, c. 92; N.J.S.A. 52:18A-1 et seq.) should be made in accordance with the express provisions of P.L. 1944, c. 112, Art. 7, Sec. 1 (N.J.S.A. 52:27B-69).

Respectfully yours,

DAVID D. FURMAN
Attorney General

By: DAVID M. SATZ, JR.
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JULY 10, 1958

MR. W. LEWIS BAMBRICK
Unsatisfied Claim & Judgment Fund Board
222 West State Street
Trenton 25, New Jersey

MEMORANDUM OPINION—P-21

DEAR MR. BAMBRICK:

You have requested our opinion as to the rate of interest to be paid by a judgment debtor on a judgment which has been assigned to the Director of the Division of Motor Vehicles pursuant to the provisions of the Unsatisfied Claim and Judgment Fund Law. The act provides that before payment is made from the fund to one who has recovered an uncollectible judgment against an uninsured motorist, the

judgment must be assigned to the director, and thereafter the director "shall be entitled to enforce the same for the full amount thereof with interest and costs and if more money is collected upon any such judgment than the amount paid out of the fund, the director shall pay the balance, after reimbursing the fund, to the judgment creditor." N.J.S.A. 39:6-77. The act further provides that the license or registration of an uninsured motorist shall not be restored until the Treasurer be repaid such moneys as have been paid out of the fund, by reason of a claim against said motorist, together with interest at the rate of 4% per annum. N.J.S.A. 39:6-87. The question posed is whether interest on the judgment shall be charged at the usual rate of 6% per annum (a) as to the entire judgment, or (b) as to the balance of the judgment not paid by the fund, or whether interest at the rate of 4% per annum is chargeable on all or part of the judgment by virtue of the interest rate specified in N.J.S.A. 39:6-87(a).

The general rule is that judgments do not bear interest, as a matter of legal right or under the common law, in the absence of constitutional or statutory provision. 47 C.J.S., Interest, Section 21.

"Interest is not a common-law inheritance. It was denounced by the Mosaic law and by the later ecclesiastical law; and it was rejected by the courts in keeping with the philosophy of the classical and medieval economists from the time of Aristotle that money was but a medium of exchange, inherently barren and nonproductive. 47 C.J.S., Interest, § 2; *Am. Jur.*, Interest, section 3." *Consolidated Police etc. Pension Fund Comm. v. Passaic* 23 N.J. 645, 652 (1957).

The fundamental principle of law is that "interest is no part of a debt unless so stipulated in the contract; that, usually, it is of statutory origin, and is awarded as damages for the detention of a debt." *Warren Bros. Co. v. Hartford Accident & Indemnity Co.*, 102 N.J.L. 616 (E. & A. 1926); *Consolidated Police etc. Pension Fund Comm. v. Passaic, supra*. In New Jersey interest on a judgment is not granted by statute; however, the collection of interest on judgments is allowed by practice and custom. *Simon v. N.J. Asphalt & Paving Co.*, 123 N.J.L. 232, 234 (Sup. Ct. 1939); *Erie Railway Co. v. Ackerson*, 33 N.J.L. 33 (Sup. Ct. 1868).

In *Erie Railway Co. v. Ackerson, supra*, the court stated at p. 36 as follows:

"By the English practice, until it was altered by an act of parliament, (1 and 2 Vict., ch. 110, § 117), no interest was collected on a judgment, unless an action was brought on it, and interest assessed as damages for the detention * * *. But, from a very early period, it has been the practice in this State to collect legal interest on a judgment, by means of an endorsement on the execution, and the right to do this must be regarded as the common law of New Jersey, * * *."

In *Cox v. Marlatt*, 36 N.J.L. 389 (Sup. Ct. 1873) the court said at p. 390:

"Our practice has been, for many years, independent of any express statute, to allow interest to be levied under execution as an incident to the judgment, and as an increase of damages for the detention of the debt, without bringing a distinct action for the interest on damages for such detention."

The rate of interest due upon a judgment is the legal rate in effect at the time of the entry of the judgment. At the present time, 6% per annum is the legal rate of interest in New Jersey as fixed by the act against usury, R.S. 31:1-1. See: *Cox v. Marlatt, supra*.

Normally, then, in the absence of a contrary statutory intent, interest at 6% per annum would run on the judgment in question. However, where a statute is involved, the court will look to the particular statute creating the obligation or to the regulations or policy of the administrative agency in enforcing its provisions to determine whether interest is allowable and the rate intended to be charged. Cf. *Consolidated Police etc. Pension Fund Comm. v. Passaic, supra*; *Warren Bros. Co. v. Hartford, etc., supra*. In the *Consolidated Police Pension Fund* case, *supra*, the statute in question did not provide for interest on the obligations which it created. The administrative agency attempted to charge interest after it had accepted a long-delayed payment of the principal obligation and before any administrative regulation or practice for charging interest had been in effect. The court held that interest had been waived by acceptance of the principal payment.

Here, the injured party has recovered a judgment in a negligence action arising out of an automobile accident and such judgment would normally bear interest at 6% per annum. However, instead of proceeding on the judgment, certain rights are afforded to the injured party by the Unsatisfied Claim and Judgment Fund Law where a judgment is or would be uncollectible. In such case, payment may be obtained from the fund (a) upon settlement of the claim or (b) after judgment is entered. N.J.S.A. 39:6-72 provides for payment out of the fund upon a settlement of the claims between the injured party and the defendant-uninsured motorist, with the consent of the Unsatisfied Claim and Judgment Fund Board. In case of settlement, payment from the fund is conditioned upon the defendant agreeing in writing to repay the Treasurer of New Jersey. N.J.S.A. 39:6-72(7). It has been the practice of the board to require the defendant to sign a bond evidencing his indebtedness to the Treasurer and agreeing to repay same. The form of bond used by the board has provided for 4% interest per annum on such indebtedness. Where no settlement is made, payment may be obtained from the fund upon an uncollectible judgment, provided the judgment is assigned to the Director of the Division of Motor Vehicles. Thereupon, "the Director shall be deemed to have all the rights of the judgment creditor under the judgment and shall be entitled to enforce the same for the full amount thereof *with interest* and costs and if more money is collected upon any such judgment than the amount paid out of the fund, the director shall pay the balance, after reimbursing the fund, to the judgment creditor." (Emphasis added). N.J.S.A. 39:6-77.

It is concluded from the foregoing and from the provisions of N.J.S.A. 39:6-87 that interest is payable by the debtor both in cases of settlement and where a judgment is recovered against him. N.J.S.A. 39:6-87 provides that:

"Where the license * * * or the registration * * * has been suspended or cancelled under the Motor Vehicle Security-Responsibility Law of this State, and the treasurer has paid from the fund any amount in settlement of a claim or towards satisfaction of a judgment against that person, the cancellation or suspension shall not be removed, nor the license, privileges, or registration, restored * * * until he has

"(a) Repaid in full to the treasurer the amount so paid by him together with the interest thereon at four per centum (4%) per annum from the date of such payment * * *" (Emphasis added).

This is the only section which specifies the interest rate with reference to this act.

We construe this section as an expression of the Legislature not only to determine the condition for restoral of license privileges, but also to determine the rate of interest on the obligations to repay moneys paid out of the fund. By this provision the Legislature has expressed its intention to limit the interest rate to 4% per annum on all obligations for reimbursement of moneys paid out of the fund.

While N.J.S.A. 39:6-87 refers to interest at 4% per annum on moneys paid from the fund "* * * in settlement of a claim or towards satisfaction of a judgment * * *," there is no provision in this act which alters the interest rate on the balance of moneys due on said judgment in excess of the amount paid from the fund. We conclude that the usual interest rate of 6% per annum shall apply to such portion of judgments, the right to which remains in the judgment creditor. N.J.S.A. 39:6-77; N.J.S.A. 39:6-85. To apply a different interest rate would be in derogation of the common law of New Jersey; it is a construction not favored and not compelled by any express or implied provision of the act. We must enforce the legislative will as written and not according to some unexpressed intention. *Hoffman v. Hock*, 8 N.J. 397, 409 (1952); *Dacunzo v. Edgve*, 19 N.J. 443, 451 (1955). "If a change in the common law is to be effectuated, the legislative intent to do so must be clearly and plainly expressed." *DeFazio v. Haven Savings and Loan Ass'n.*, 22 N.J. 511, 519 (1956).

For the above reasons, you are advised that interest at 4% per annum is payable on obligations to repay the State Treasurer for moneys paid from the fund towards satisfaction of judgments and under settlement agreements. However, interest at 6% per annum is payable on that portion of judgments not paid by the fund and to which moneys the original judgment creditor is entitled if and when collected.

Very truly yours,

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JULY 24, 1958

MR. THOMAS E. HEATHCOTE
Secretary-Director
State Board of Professional Engineers
and Land Surveyors
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Newark 2, New Jersey

MEMORANDUM OPINION—P-22

DEAR MR. HEATHCOTE:

You have asked for a clarification of several sections of the statute governing the State Board of Professional Engineers and Land Surveyors. In particular, you are concerned with the proper construction of the saving clauses in Chapter 342 of the Laws of 1938 (N.J.S.A. 45:8-36 and N.J.S.A. 45:8-42).