Section 14 referred to in the above quotation which is applicable only to agents, brokers and solicitors not writing life insurance (see Section 23; N.J.S.A. 17:22-6.23) provided as follows:

> "* * * If an agency is operating its business affairs as a copartnership or corporation, such certificate of authority may be issued by such company in the name of such copartnership or corporation, which *certificate shall permit such copartnership or corporation to be licensed as an insurance agent* under this act; provided, all individuals actively engaged in the insurance business of such agency hold an unexpired agent's license issued in accordance with the provisions of this act. * * *" (Emphasis added)

Since sections 1, 2 and 3 of Chapter 175 (N.J.S.A. 17:22-6.1 to 6.3) had defined agents, brokers and solicitors as individuals, the express provision to the contrary in section 14 was questioned. You were then advised that section 14 permitted the licensing of corporations or partnerships as agents for the writing of non-life insurance:

> "* * * Sections 1, 2, 3, 6, 9[1] and others clearly indicate application only to individuals and generally inconsistent with that portion of Section 14 which makes it permissible, under certain circumstances, to issue an agent's license to a corporation or a partnership.
>
> "Despite such a lack of harmony, and because there is a presumption in law that the Legislature has not enacted either futile or senseless legislation, the Commissioner may issue a license to a corporation or partnership upon full compliance with *all* of the following conditions:
>
> 1. An authorized insurance company has issued a certificate of authority to act as its agent.
>
> 2. All individuals actively engaged in the insurance business of such agency (corporate or partnership) hold an unexpired agent's license issued in accordance with the provisions of Chapter 175, Laws of 1944.
>
> 3. Payment of a fee of $10.00.
>
> "The mere issuance of a certificate of authority by an insurance company to a corporate or partnership agency does not entitle such agency to a license from the Commissioner. Section 14 is not self-executing. It requires an affirmative act by the corporation or partnerships named in the insurance company's certificate of authority and compliance by it with the foregoing conditions."

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1 Sections 1, 2 and 3 are the definition sections referred to *supra*. Section 6 prescribes the manner of applying for a license. The applicant is required to supply a certificate from a representative of an insurance company authorized to do business in New Jersey stating: "* * * (b) that the applicant is personally known to him; (c) that the applicant has had experience or instruction in the general insurance business * * * (d) that the applicant is of good reputation and is worthy of a license * * *." Section 9 gives the commissioner power to make a "personal examination" of the applicant "in order to determine his trustworthiness and competency * * *." The commissioner is to grant the license where he finds that the applicant is of good reputation, has had experience or training, or is otherwise qualified by education, that he is reasonably familiar with the insurance laws of this State and with the terms of the policies he is proposing to solicit and finds that he is worthy of a license.

Section 9, which the above opinion had grouped with several other sections applicable only to individuals, was amended by Chapter 82 of the Laws of 1945 to provide expressly that:

> "A license may be issued by the Commissioner to and in the name of any copartnership or corporation engaged in the insurance brokerage business upon written request and payment of the twenty-five dollars ($25.00) fee prescribed in section thirteen of this chapter; provided, all members of the copartnership or all the officers of the corporation, as the case may be, actively engaged in the insurance brokerage business of the copartnership or corporation in this State hold an unexpired license as an insurance broker issued in accordance with the provisions of this act."

This made Sections 9 and 14, both dealing only with agents, brokers and solicitors of non-life insurance companies (see section 23; N.J.S.A. 17:22-6.23) consistent with each other but still anomalous to the rest of the act. No change was made in Section 24 dealing with agents, brokers and solicitors of life insurance companies.

Sections 23 and 24 of Chapter 175, Laws of 1944, were amended by Chapter 291 of the Laws of 1946; the amendments were of a clarifying nature and the significance of the section remained substantially unchanged. Section 24 was amended again in 1948 by Chapter 146 of the laws of that year. This amendment provided for personal examination of first-time appointees and set forth the conditions relating to such examination. It is clear from the 1948 amendment that the licensing of corporations was not contemplated. It is also reasonable to assume that the Legislature, in enacting the amendments of 1946 and 1948, was aware of the administrative interpretation placed upon Section 24 limiting licensing thereunder to individuals.

Since 1944, the Department has limited Section 24 to licensing of individuals. This interpretation is of long standing and is well settled. In our opinion, it should not be disturbed. See *In re West New York,* 25 N.J. 377, 385 (1957); *Kravis* v. *Hock,* 137 N.J.L. 252, 255 (Sup. Ct. 1948).

Very truly yours,

DAVID D. FURMAN
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

OCTOBER 30, 1958

HONORABLE RAYMOND F. MALE, *President*
Civil Service Commission
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-32

DEAR PRESIDENT MALE:

You have requested our opinion as to whether Walter Popielaski, who has requested a hearing on his removal from the employment list for Guard, Middlesex County, is properly entitled to such a hearing.

We understand that Mr. Popielaski pleaded *non vult* to a charge of desertion and non-support, receiving a suspended sentence of one year in the county workhouse. Mr. Popielaski was put on probation for three years. The application for examination submited by Popielaski was dated November 12, 1957 and clearly indicated the offense and sentence noted above. Popielaski was admitted to and successfully completed the examination. On June 5, 1958 his name was certified to the County of Middlesex on a list of eligibles for the position of Jailkeeper, Middlesex County, the employment list for Guard being deemed appropriate for filling that position. On June 25, 1958, the Chief Examiner of the Department of Civil Service notified Popielaski that his name was to be removed from the eligible roster because of his conviction.

The reason given for the removal was based on *Vanderwart* v. *Civil Service*, 19 N.J. 341 (1955). The Supreme Court ruled that R.S. 11:9-6 made it mandatory to refuse to admit persons convicted of crimes to Civil Service examinations. See Memorandum Opinion dated January 31, 1957. Even though the principle in the *Vanderwart* case governed at the time Popielaski was removed from the list, it was and is now necessary to abide by the terms of Civil Service Rule 40 which requires that once an individual has been certified to the appointing authority, and it is subsequently determined to remove his name from the employment list, the person whose name is subject to removal must be notified and given opportunity to be heard before the removal is accomplished. Rule 40 provides in part:

> "* * * On the approval of the president and the commission the name of any person who has been dismissed from some other position in the public service or whose character, qualifications and record are found to be such as not to warrant employment in a public position, may be removed from any employment list upon which it may appear. In all such cases the person whose name is considered for removal will be notified of such contemplated action and given reasonable opportunity to be heard."

See also: Memorandum Opinion dated March 2, 1955; Formal Opinion 1955, #10 dated March 24, 1955.

We advise you, therefore, that before action is taken to remove Popielaski's name from the eligible list, his request for hearing should be granted.

Respecting the rule of law to be followed at the hearing to be held, reference is made to Chapter 104 of the Laws of 1958, effective July 2, 1958, amending R.S. 11:9-6. This act became law after the determination to remove Popielaski from eligibility and changed the rule in the *Vanderwart* case to make the admission to public employment of persons convicted of crimes a matter of sound discretion rather than mandatory rejection. The department is now bound by the new legislation. See *Guaclides* v. *Englewood Cliffs*, 11 N.J. Super. 405 (App. Div. 1951). The discretionary power to admit to public employment persons convicted of crime may only be exercised by the Chief Examiner and Secretary of your department in concurrence with the appointing authority.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID LANDAU
Deputy Attorney General

NOVEMBER 17, 1958

HONORABLE EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-33

DEAR MR. PATTEN:

You have requested an opinion fixing the term of the members of the New Jersey Racing Commission.

The New Jersey Racing Commission was created by P.L. 1940, c. 17, which provided for a 4-member commission to be appointed by the Governor. Section 2 of this act provides as follows:

> "2. The commission shall consist of four members, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and not more than two of whom shall be of the same political party, and one of whom of the first to be appointed hereunder shall be designated by the Governor to be the chairman of the commission; said chairman thereafter shall be annually elected by the members of said commission. Each commissioner, at the time of his appointment and qualification, shall be a resident of the State of New Jersey, and shall have resided in said State for a period of at least seven years next preceding his appointment and qualification and he shall also be a qualified voter therein and not less than thirty years of age. The term of office of each member of the first commission shall commence on confirmation after appointment. One of said commissioners shall hold office for two years from the beginning of his term of office and until his successor shall qualify; one of said commissioners shall hold office for four years from the beginning of his term of office and until his successor shall qualify, and two of said commissioners shall hold office for six years from the beginning of their terms of office and until their successors shall qualify; *provided, however,* that the two members whose terms shall expire in six years shall not be of the same political party. The Governor, at the time of making and announcing the appointment of said four commissioners, shall designate which of said commissioners shall serve for the term of two years, which of said commissioners shall serve for the term of four years, and which of said commissioners shall serve for the term of six years, as aforesaid, and also who shall be the chairman of said commission. Upon the expiration of the terms of such respective commissioners, the Governor, by and with the advice and consent of the Senate, shall appoint their successors, each to hold office for a term of six years and until his successor has been appointed and qualified. Any vacancy in the commission shall be filled for the unexpired term. Each commissioner shall be eligible for reappointment in the discretion of the Governor."

To determine the terms of office of the present members of the New Jersey Racing Commission, it is necessary to decide whether the 6-year term is affixed or attached to the office of commissioner or to the incumbent thereof. *Marvel* v. *Camden County*, 137 N.J.L. 47 (E. & A. 1948).