> of loss of suffrage,' which would be a lawful restoration, and, therefore, a restoration by law, for the deprivation of the right of suffrage following the commission of certain crimes, was certainly the forfeiture of that right, and the power to 'remit fines and forfeitures and grant pardons' is in the same organic law as the provision for the deprivation and restoration of the right of suffrage, and, therefore, the two provisions must be construed together, and being so read would amount to a provision, such as above stated, namely, unless pardoned or unless restored by the court of pardons to the right of suffrage through the medium of a remission of the forfeiture. . . ."

You are advised, therefore, that an expunging of the record in accordance with N.J.S. 2A:164-28 does not restore the right to vote; restoration of franchise can only be obtained by executive action.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

JANUARY 15, 1959

HON. NED J. PARSEKIAN
Acting Director of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION 1959—No. 1

DEAR SIR:

We have been asked whether a citizen of New York who has a claim for bodily injuries (or death) suffered in an accident in New Jersey on or after January 1, 1959 should be considered a "qualified person" under the provisions of the Unsatisfied Claim and Judgment Fund Law. N.J.S.A. 39:6-61 *et seq.* Our opinion is yes, and that relief may be granted, accordingly, under said law.

New Jersey's Unsatisfied Claim and Judgment Fund Law defines a "qualified person" as a resident of this State "or a resident of another State, territory, or Federal district of the United States or Province of the Dominion of Canada, or foreign country, in which recourse is afforded, to residents of this State, of substantially similar character to that provided for by this act." N.J.S.A. 39:6-62.

In *Betz* v. *Director, Division of Motor Vehicles,* 27 N.J. 324 (1958) it was held that a resident of New York was not a "qualified person" within the meaning of our act under the New York law existing at the time of the accident there involved, namely, July 16, 1956. The Court acknowledged, at 328, 329, the provisions of the New York Motor Vehicle Financial Security Act, L. 1956, C. 655, Vehicle and Traffic Law, *McKinney's Consol. Laws,* Sec. 93 *et seq.,* requiring all persons registering motor vehicles in New York to give proof of their financial responsibility in the form of liability insurance coverage, the posting of a financial security bond or

deposit, or qualification as a self-insurer. Nevertheless, the Court in the *Betz* case held that the New York law then in effect "does not afford recourse to residents of New Jersey of a substantially similar character to that provided by the New Jersey Fund law." (at 330). The court indicated at p. 330 the following specific instances where a person injured in New York might not be able to satisfy part or all of his claim for such injuries, notwithstanding the requirements of "compulsory insurance" laws, if such injuries were caused by: (a) uninsured motor vehicles not registered in the State of New York; (b) unidentified motor vehicles which leave the scene of an accident, that is, "hit-andrun" accidents; (c) stolen motor vehicles; (d) motor vehicles operated without the permission of the owner; (e) insured motor vehicles where the insurer successfully disclaims liability or denies coverage; and (f) motor vehicles operated without compliance with applicable New York laws such as unregistered motor vehicles or motor vehicles registered in New York without a liability insurance policy being in effect at the time of the accident.

Since the date of the accident involved in the *Betz* case, *supra*, the New York Legislature enacted the Motor Vehicle Accident Indemnification Corporation Law, L. 1958, C. 759, amending the insurance law of New York by adding thereto Art. 17-A; Insurance Law, *McKinney's Consol. Laws*, Sec. 600 *et seq.* As noted by the court in the *Betz* case, at 331, "That law creates an unsatisfied judgment fund similar to that in existence in our State." This new law goes into effect as to accidents occurring in New York on or after January 1, 1959. Laws of New York, C. 759, Sec. 626.

We must determine whether under the New York Motor Vehicle Accident Indemnification Corporation Law a New Jersey resident would be afforded recourse "of substantially similar character" to that provided for by the New Jersey law. The New York law contains a reciprocity provision virtually identical to that contained in the New Jersey law. Section 601 (b) (2) of the New York law defines a qualified person as "a resident of another State, territory or federal district of the United States or province of the Dominion of Canada, or foreign country, in which recourse is afforded, to residents of this State, of substantially similar character to that provided for by this article, or his legal representative." The New York Motor Vehicle Accident Indemnification Corporation, at its meeting on October 22, 1958, passed a resolution "* * * that citizens of New Jersey should be recognized as qualified persons by the M.V.A.I.C. if New Jersey takes parallel action." New Jersey citizens, therefore, will be recognized as qualified persons for benefits under the New York law providing New York citizens are recognized in New Jersey as qualified persons under our Unsatisfied Claim and Judgment Fund Law.

An examination of the New York law, coupled with the aforesaid resolution of the agency administering said law, indicates that substantially similar recourse will be afforded to New Jersey citizens under the New York law as is afforded by our own law, with respect to claims for bodily injury or death suffered in accidents occurring on or after January 1, 1959. The New York law does not afford recovery from the "fund" for property damage claims.

Claims for bodily injuries or death of persons, who, through no fault of their own [Sec. 600(2)], are injured in New York on or after January 1, 1959 can be paid by the Corporation (Motor Vehicle Accident Indemnification Corporation) where such injuries or death are caused by:

> a. known owners or operators of motor vehicles who are financially irresponsible and who were uninsured at the time of the accident, or, if

insured, as to whom the insurer has disclaimed liability or denied coverage [Secs. 600(2), 608(a and c) and 620]; or

b. "hit-and-run" motorists, which include cases where the identity of the motor vehicle and of the operator and owner thereof cannot be ascertained and cases where a motor vehicle was operated without the owner's consent at the time of the accident by an unidentified person [Secs. 608(b), 617 and 618].

The maximum amounts payable from the New York "fund" are $10,000.00 "on account of injury to, or death of, one person, in any one accident" and, subject to such limit for any one person, $20,000.00 "on account of injury to or death of, more than one person, in any one accident," Sec. 610. Payments from the fund are further reduced by the amount of available assets or any contribution of the financially irresponsible motorist, as well as the amount of collectible liability insurance coverage on said motorist and, further, by the amount of any payments received or recoverable from other persons liable for the claim jointly or severally with said irresponsible motorist. Secs. 610, 611(g) and 612(b). Similar limits apply to "hit-and-run" cases. Sec. 619(a).

It can readily be seen that the New York law affords the same basic relief as is available under the New Jersey Law in cases of bodily injury or death. The New York law contains numerous parallels to our New Jersey law, and in fact, much of the phraseology is identical. The New Jersey law affords a remedy in the same two broad classifications shown above, namely, (a) in cases of a known, uninsured, financially irresponsible motorist and (b) in "hit-and-run" cases, including unidentified motor vehicles, owners and operators as well as motor vehicles operated by unidentified persons without the consent of the owner. N.J.S.A. 39:6-65, 39:6-70, 39:6-78 and 39:6-79. The limits of recovery in New Jersey, effective January 1, 1959, are exactly the same as in New York. N.J.S.A. 39:6-69(a) and (b), 39:6-84.

The procedures for collecting from the respective funds so established in New York and in New Jersey are similar. For example, a qualified person must first file a notice of intention to make a claim with the board or corporation administering the fund within 90 days after the accident, and such notice is made "a condition precedent to the right thereafter to apply for payment from the (fund or the corporation, as the case may be)." N.J.S.A. 39:6-65; N.Y. Insur. L., Art. 17-A, Sec. 608. In "hit-and-run" cases, occurring in New Jersey, the action is commenced against the Director of the Division of Motor Vehicles. N.J.S.A. 39:6-78. Under the New York act, the action is commenced against the corporation, with leave of the court. Sec. 618. After a judgment is rendered in favor of a claimant, or his personal representative, for his injuries or death, an application is made to the court in which the judgment was entered, on notice to the board or corporation, for an order directing payment of the amount unpaid upon such judgment within the limits of the act. N.J.S.A. 39:6-69; N.Y. Insur. L., Art. 17-A, Sec. 610. The court thereupon proceeds in a summary manner to determine the application. The applicant must show to the court, among other things, that he is a qualified person, that he has complied with various provisions of the act, that the application is not made by or on behalf of any insurer, and what amount, if any, he has received in payment of judgments recovered against any other person against whom he has a cause of action in respect to his damages for bodily injury or death arising out of the accident. N.J.S.A. 39:6-70 and N.Y. Insur. L., Art. 17-A, Sec. 611.

As might be expected. there are differences as well as similarities in the New York and New Jersey laws. In order to obtain reciprocity on a general level, however, the relief available need not be identical in every respect, and certainly the procedure for obtaining the relief can vary. As stated in the *Betz* case, *supra,* by Justice Proctor, speaking for the Court, at 330: "We do not imply that N.J.S.A. 39:6-62 requires complete identity of the foreign legislation with ours. Some points of difference may, and in all probability must, exist. Reciprocity does not require that the foreign law exactly parallel that of New Jersey." Of course, in each State a claimant must satisfy the particular requirements of the law under which his claim is made.

In accordance with the foregoing, the Unsatisfied Claim and Judgment Fund Board should recognize claims of New York citizens for bodily injury or death suffered in accidents occurring in New Jersey on or after January 1, 1959.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

FEBRUARY 18, 1959

HONORABLE CARL HOLDERMAN
Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION, 1959—No. 2

DEAR COMMISSIONER HOLDERMAN:

You have requested our opinion as to the legality of a proposed agreement under which agreement a builder would erect a structure to house the Department of Labor and Industry, and the State would lease and pay rent for the space for a suitable period of years. An option would be granted to the State empowering it, at stated intervals, to purchase the building during the life of the lease at a price in accordance with a sliding scale reflecting the depreciated value of the building and the fair market value at the time of purchase. In addition, the State, upon exercising the option, would pay a premium, determined at the time of, and included in, the agreement based upon the amount of total rental loss to the builder as a result of the exercise of the option.

In a recent opinion (Formal Opinion, 1957—No. 10, July 12, 1957) the Attorney General held that a "lease-purchase" agreement between the State and a private contractor for the construction of buildings to house State agencies would be improper. Under such an agreement the title to the property would remain in the contractor until the completion of all "rental" payments, whereupon it would vest automatically in the State. The proposed transaction was held not to constitute a true lease, but rather an installment purchase which violated the debt limitation provisions of Article VIII, Section II, paragraph 3 of the New Jersey Constitution in that the obligation to pay the "rent" constituted an indebtedness of the State, since the "rent" would not be compensation for the use of the structure but would consti-