Accordingly, we conclude that the authorities or instrumentalities not specifically named in *N.J.S.A.* 39:3–27 are not entitled to the benefits of that statute.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: PETER L. HUGHES, III
Deputy Attorney General

MAY 26, 1960

RAYMOND F. MALE, *Commissioner*
Department of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION 1960—No. 14

DEAR COMMISSIONER MALE:

You have asked whether the exemption of hotel employment from the Minimum Wage Standards law, as provided in *R.S.* 34:11–34, applies to a hotel dining room that is operated not by the hotel itself but by a concessionaire. If the exemption does apply, you further ask whether the concessionaire is exempt where he operates a "coffee shop" type of establishment with an entrance directly from the street (as well as from within the hotel) so that patrons need not enter the hotel to enter the establishment. *R.S.* 34:11–34 provides:

> "As used in this article:
>
> * * *
>
> 'Occupation' means an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed but shall not include domestic service in the home of the employer or labor on a farm or *employment in a hotel*;
>
> * * *." (Emphasis supplied.)

The answer to your second question is found in *Hotel Suburban System* v. *Holderman*, 42 N.J. Super. 84 (App. Div. 1956). There the court held, in part, that Mandatory Wage Order No. 9, concerning the employment of women or minors at restaurant occupations, did not apply to women and minors employed in hotel restaurants regardless of the fact that nonresidents were served in the eating facilities of the hotel. Referring to the definition of "occupation" the Court, at page 91, stated that the Minimum Wage Act

> "* * * so unequivocally and unqualifiedly exempts 'employment in a hotel,' that there is no basis for interpretation or construction of the statute by the Commissioner. The duty of the administrative agency, therefore, is to exclude all employment in a hotel from inclusion under the minimum wage standards, at least to the extent of operations not beyond what may be regarded as customary or reasonably incidental to the conduct of the hotel business."

Assuming that the purpose of the outside entrance is only to encourage patronage by nonresidents of the hotel, it would have no bearing on the applicability of the exemption. It is also immaterial whether the type of operation is classified as a "restaurant," "dining room" or "coffee shop." The court's opinion is so definite as to the exclusion of employment in a hotel that the only pertinent inquiry is whether the operation of a coffee shop is "customary or reasonably incidental to the conduct of the hotel business." Clearly, it is. See *Hotel Suburban System* v. *Holderman, supra,* at page 94.

The precise point raised by your first question is whether employment in a hotel dining room operated by a concessionaire rather than by the hotel itself comes within the statutory language setting forth the exemption, "employment *in* a hotel." (Emphasis supplied.) Although the plaintiffs in *Hotel Suburban System, supra,* were owners of hotels, the court's decision applies equally as well to the situation where a concessionaire operates the dining room. Exclusion of hotel employment by *R.S.* 34:11–34 encompasses all employment on the premises of a hotel that is customary and reasonably incidental to the conduct of the hotel business. If the Legislature had intended an agency connotation, i.e., to restrict the scope of the exemption to employees actually employed *by* the hotel, it would have couched the exemption in those terms. The common sense meaning of the language used by the Legislature indicates primary emphasis on the location of the employment. In holding that the Legislature was not unreasonable, arbitrary or capricious in providing an exemption for hotel employment, the court, in *Hotel Suburban,* at page 94, said:

> "Conceding the validity of the defendants' argument that the character of a modern hotel is vastly different from that of an old-time inn, that the hotel of today often carries on operations in addition to lodging and feeding of guests, such as coffee shops, supper clubs, health clubs, swimming pools, garages, etc., and that the employees of those departments should be covered by the Minimum Wage Act, the authority to classify and exempt lies with the Legislature; it is not an administrative or judicial function."

The various activities described above without distinctions as to the type of employment, together with the possible reasons why the Legislature provided for this exemption as discussed by the Appellate Division in *Hotel Suburban* and by the New Jersey Supreme Court in *New Jersey Restaurant Association* v. *Holderman,* 24 N.J. 295, 302-303 (1957), permit no other conclusion than the one just stated.

A distinction between restaurants or coffee shops owned and operated by the hotel and those owned and operated by a concessionaire would be difficult to enforce and subject to easy abuse. Large hotel corporations frequently enter into concession agreements wherein they grant or lease commercial enterprises conducted on the premises of a modern hotel. These agreements come in a variety of forms with diverse terms and arrangements. A concessionaire may pay a flat rental fee or he may pay a certain percentage of the net profits to the hotel. The hotel may retain the right to supervise and control the operation of the concession. In fact the hotel itself may be run as a concession. A difficult legal question thus may arise as to who is the actual employer. Presumably, the Legislature did not intend the exemption from the Minimum Wage Standards law to depend upon the form of agreement existing between the hotel owner and the restaurant concessionaire. There appear no inherent reasons for working conditions in a hotel restaurant operated under a concession to be different from working conditions in a restaurant operated by the hotel itself. The

reasons that the Legislature had for exempting the latter necessarily would apply to the former type of operation.

You are therefore advised that the hotel employment exemption contained in *R.S.* 34:11–34 applies where the hotel dining room is operated by a concessionaire as where it is operated by the hotel itself.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: STEPHEN F. LICHTENSTEIN
Deputy Attorney General

JUNE 2, 1960

HONORABLE NED J. PARSEKIAN
Acting Director
Division of Motor Vehicles
State House
Trenton 25, New Jersey

FORMAL OPINION 1960—No. 15

DEAR DIRECTOR PARSEKIAN:

You have requested an opinion concerning the use of "dealer" plates issued to manufacturers and dealers pursuant to N.J.S.A. 39:3–18. This section permits the Director, Division of Motor Vehicles, to issue special registrations and registration plates bearing the word "dealer" to manufacturers of and dealers in motor vehicles. These registrations are issued for separate fees to any manufacturer of motor vehicles and to bona fide dealers licensed as such by the Director under the terms of this section. *Metropolitan Motors, Inc.* v. *State*, 39 N.J. Super. 208 (App. Div. 1956).

You have asked whether manufacturers of trucks or bona fide dealers can permit the use of vehicles so registered by prospective purchasers on a trial basis prior to sale. During this period, ownership would remain in the manufacturer or dealer; the vehicle would continue to display "dealer" plates.

You have indicated that in the course of business, especially when trucks or other commercial vehicles are involved, it is necessary for manufacturers and dealers to authorize the use of a truck on trial in order for the purchaser to learn whether the vehicle performs the work satisfactorily. Under such circumstances, trucks with dummy loads or payloads perform tests under operating conditions. At no time is any compensation paid for use of the vehicles.

N.J.S.A. 39:3–18 authorizes the use of "dealer" plates by manufacturers so long as the vehicle is "* * * owned or controlled by such manufacturer * * *," and "* * * only if it is operated only for shop, demonstration or delivery purposes.* * *." The same section permits dealers to use such plates on any vehicle "* * * owned by such dealer; and *provided* such vehicle is not used for hire.* * *."

It is our opinion that, subject to reasonable regulations you may promulgate under N.J.S.A. 39:3–3, the use of "dealer" plates by vehicles under the control of a purchaser on trial but before sale would not violate the terms of this section.