It is to be noted that R.S. 19:57-22 provides only that the registration form is to be removed after an application for a military service absentee ballot is made. It does not provide that the registration form is to be removed at any time that the county board is informed that the voter has entered military service. This strongly implies that an option to take advantage of the Absentee Ballot Law or to comply with the general law on registration and voting is afforded the military service voter.

A person in military service voting in person at the polls is not excused from satisfying the conditions for voting to which all persons voting in person at the polls are subject. He must be registered. Cf. R.S. 19:57-25 (excusing registration only in the case of a military service voter voting by absentee ballot). He must meet the residence requirements, R.S. 19:4-1. The rule that a voting residence is not established solely by virtue of residence at or near a military installation by a member of the military service continues unchanged.

For all of the above reasons, a citizen of New Jersey in military service who is qualified to vote, who has registered, and who has not applied for an absentee ballot, may vote at the polls in person.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

JULY 27, 1960

ANTHONY J. PANARO, *Secretary*
Mercer County Board of Taxation
Room 309—Court House Annex
Trenton 10, New Jersey

FORMAL OPINION 1960—No. 20

DEAR SECRETARY PANARO:

You have asked our opinion whether a bank organized under the laws of the State of New Jersey is entitled to compute its tax under the Bank Stock Tax Law (N.J.S.A. 54:9-1 et seq.) by deducting from its capital surplus and undivided profits the assessed value of real estate which it owns but which is located in a county other than the county within which its principal place of business is located.

The bank stock tax is collected by the county for the county and municipal benefit, N.J.S.A. 54:9-13. It is assessed against the common capital stock of "all banks and banking associations organized under the authority of this state or the United States, and trust companies organized under the laws of this state, whose principal place of business is within this state." N.J.S.A. 54:9-1; *City of Passaic* v. *City of Clifton*, 23 N.J. Super. 333 (App. Div. 1952) aff'd. 12 N.J. 466 (1953). See *Morris & Essex Investment Co., Inc.*, v. *Director of Division of Taxation*, 33 N.J. 24 (1960). The bank stock tax is expressly declared to be "in lieu of all other state, county or local taxation upon such shares or upon any personal property held or owned

by banks, the value of which enters into the taxing value of the shares of common stock." N.J.S.A. 54:9-7. By implication, taxation of the real property of banks is not prohibited. See *Lippincott* v. *Lippincott*, 75 N.J.L. 795 (E. & A. 1908).

The bank stock tax states expressly how the "true value" of the common shares of bank stock is to be determined. N.J.S.A. 54:9-4 states:

> "The value of each share of common stock of each bank shall be ascertained and determined by adding the amount of its capital, surplus and undivided profits and deducting therefrom the assessed value of its real property, including in such deduction the assessed value of all real property owned by a corporation all the stock of which corporation is owned by such bank, and also deducting therefrom an amount equal to the aggregate sum of the par value of all classes of the issued and outstanding preferred stock of such bank and such additional sum in excess of par value as the holders of such preferred stock are entitled to receive upon the retirement of such preferred stock (irrespective of whether the bank has created a reserve for the retirement of such preferred stock or any class thereof, or the amount of any such reserve), and by dividing the result by the number of its shares of common stock outstanding, it being the intention that the shares of preferred stock and the capital represented thereby plus such additional sum in excess of the aggregate par value of such preferred stock as the holders of such stock are entitled to receive upon the retirement of such preferred stock shall not be assessed or taxed; nor shall there be assessed or taxed any stock issued to former unpaid depositors of the bank while held to evidence their right to repayment under any plan of reopening or rehabilitation approved by the Commissioner of Banking and Insurance. No deduction or exemption shall be allowed or made from the value determined as provided in this section."

To facilitate the determination of the "true value" of the bank's income shares, the chief fiscal officer of every bank must file an annual statement setting forth certain specific information called for by N.J.S.A. 54:9-5. From these statements and "from any other sources of information which may be open to it" (N.J.S.A. 54:9-9) each county board of taxation must annually ascertain the amount of tax to be levied upon the common capital stock of each bank having its principal place of business within the county. And, in order to compute this tax, the county board must also ascertain the number of issued and outstanding shares of common and preferred capital stock of each bank; the aggregate amount of the capital, surplus and undivided profits of each; all the assessed value of its real property and the assessed value of all real property owned by a corporation, all the stock of which is owned by such bank, etc.

The express provisions of the Bank Stock Tax Act indicate that the assessed value of all real property of a bank, in whatever county of the State that property may be located, should be deducted from the capital, surplus and undivided profits of the bank in order to compute the "true value" of its common stock. Thus the statute requires the statement filed by each bank to set forth "the assessed value of its real property" including "the assessed value of all real property owned by a corporation all the stock of which is owned by such bank," N.J.S.A. 54:9-5(e); 54:9-9(e). The county board's obligation to make an independent determination of the same fact is stated in identical terms. It should be noted that there are two classes of real property the assessed value of which must be deducted from the bank's net worth

for purposes of computing the tax. In the language of the statute the first such class consists of "its real property"; that is, the real property owned by the bank directly. *Hackensack Trust Co.* v. *City of Hackensack*, 116 N.J.L. 343 (Sup. Ct. 1936). The second class consists of "*all* real property" owned by a wholly owned subsidiary of the bank. (Emphasis added.) The use of the word "all" in the quoted phrase clearly requires that the assessed valuation of all real property of wholly owned subsidiary corporations, in whatever county such property may be located, should be deducted from the "net worth" of the parent bank. It is most unlikely that the Legislature intended that banks should deduct the assessed valuation of all real property owned by their subsidiaries, but only that part of the assessed valuation of their own real property which happens to be located in the same county as the principal office of the bank. The statute should not be construed to reach such an anomalous result unless its express terms so require.

There is no express language in the Bank Stock Tax Act which requires that a bank subject to the tax be permitted to deduct from its net worth only the assessed valuation of its real property located in the same county as its principal office. It is true, as previously stated, that the tax is a county tax and that it is to be administered by the county tax board. Real property assessments are matter of public record. N.J.S.A. 54:4-38; N.J.S.A. 54:4-55. The necessary information is, in any event, required to be supplied to the county board by the bank. N.J.S.A. 54:9-5.

There is an additional consideration which conclusively requires that banks subject to the Bank Stock Tax Act be permitted to deduct from their net worth the assessed valuation of all real property wherever located within the State. Both state and national banks are subject to the Bank Stock Tax Act. N.J.S.A. 54:9-1. Therefore, the incidence of the tax must be the same in the case both of state and national banks. However, the authority of a state to tax the stock of national banks is limited by 12 U.S.C.A. § 548 (formerly § 5219 of the United States Revised Statutes). A condition for the imposition of such a tax is that it "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." 12 U.S.C.A. § 548(1)(b). Taxation of national bank stock in violation of this condition would invalidate the Bank Stock Tax Act. *Mercantile National Bank* v. *City of New York*, 121 U.S. 138, 7 S. Ct. 826 (1887). The New Jersey Bank Stock Tax Act has always been construed to avoid such discrimination against national banks. *Lippincott* v. *Lippincott supra; Com. Trust Co.* v. *Hudson Bd. of Taxation*, 86 N.J.L. 424 (Sup. Ct. 1914) aff'd 87 N.J.L. 179 (E. & A. 1914). The Financial Business Tax Law, N.J.S.A. 54:10B-1 et seq. was adopted in 1946 to avoid discrimination against national banks. *Morris and Essex Investment Co., Inc.* v. *Director, Division of Taxation*, *supra*, at 33 N.J. 34. Consequently, the Bank Stock Tax Act must be construed so as not to impose any greater tax upon national banks than is imposed by the Financial Business Tax Law upon competing financial businesses. The latter statute directs that in computing the tax basis "there may also be deducted from net worth the assessed value of real estate taxable in this State." N.J.S.A. 54:10B-6. The quoted language of the Financial Business Tax Law clearly requires that all real property of taxpayers subject thereto in whatever county such realty may be located may be deducted from net worth in computing the tax. Unless the Bank Stock Tax Act were construed to permit national banks to take an identical deduction, such banks would be taxed at a higher rate than competing financial businesses. Such a construction of

the law would violate 12 U.S.C.A. § 548 and would therefore, render the Bank Stock Tax Act invalid as against national banks.

We therefore wish to advise you that in computing the tax due under the Bank Stock Tax Act a bank subject thereto may deduct from its net worth the assessed valuation of its real property in New Jersey and of the real property in New Jersey of its wholly owned subsidiaries, regardless of the county within which such real property may be located.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General

JULY 26, 1960

MR. JOHN WYACK, *Secretary*
Water Policy and Supply Council
Division of Water Policy and Supply
520 E. State Street
Trenton 25, New Jersey

FORMAL OPINION 1960—No. 21

DEAR MR. WYACK:

You ask the effect of a reduction in the area serviced by the Hackensack Water Company (hereinafter called "Hackensack") on its "free allowance" determined under Laws of 1907, c. 252, codified as R.S. 58:2-1.

Hackensack was chartered by Laws of 1869, c. 80. Its charter did not enfranchise it to divert any waters, surface or subterranean, without charge by the State. But in common with other water companies it did not, prior to 1907, make a payment to the State for its diversion of waters for public supply, no statute having required it to do so. See *State* v. *Trenton,* 97 N.J.L. 241 (E. & A. 1922), *appeal dismissed,* 262 U.S. 182 (1923). By the Laws of 1907, c. 252 the Legislature created the former State Water-Supply Commission which was charged with general supervision over all the sources of public and potable water supply in the State. Section 8 of the act provided as follows:

> "8. Every municipality, corporation or private person now diverting the waters of streams or lakes with outlets for the purpose of a public water-supply shall make annual payments on the first day of May to the State Treasurer for such water hereafter diverted in excess of the amount now being legally diverted; *provided, however,* no payment shall be required until such legal diversion shall exceed a total amount equal to one hundred (100) gallons daily, per capita for each inhabitant of the municipality or municipalities supplied, as shown by the census of one thousand nine hundred and five."

Pursuant to the proviso in the foregoing section a free allowance was determined for Hackensack. In 1907 the city of Hoboken was being served by Hackensack and