July 27, 1960.

COL. JOSEPH D. RUTTER
Division of State Police
Route No. 29
West Trenton, New Jersey

MEMORANDUM OPINION—P-14

DEAR COLONEL RUTTER:

You have requested an opinion relating to the right to withdraw contributory payments in the State Police and Retirement Benevolent Fund, N.J.S.A. 53:5–1, et seq., by a former trooper, William F. Charles.

Mr. Charles enlisted in the New Jersey State Police on June 16, 1928 and served as a trooper continuously until June 1, 1937, when he was granted a six month leave of absence without pay to terminate on November 30, 1937. Thereafter, on December 1, 1937 he was granted two single month extensions lasting until January 31, 1938. At that time he resigned to continue his service with the Pompton Lakes Police Department which he joined during his leave of absence. He presently is serving as its Chief.

During the time between 1928 and the date his leave of absence commenced, Mr. Charles made contributions to the Retirement Fund as required by law, N.J.S.A. 53:5–6. At the time that Mr. Charles actively served in the State Police there was no authority for withdrawal of funds which were contributed by members of the State Police. However, on the date when his leave of absence commenced, June 1, 1937, Chapter 114 of the Laws of 1937 was enacted, part of which amended what is presently N.J.S.A. 53:5–6 to provide that:

> "Any person who is a member of the state police retirement and benevolent fund and who for a period of at least two years has made the payments required to be made to such fund, shall upon the termination of his service, prior to retirement as authorized by this chapter, be entitled to have and receive from the state treasurer the total sum of his said payments with interest thereon at the rate of two per cent per annum."

The specific question you present is whether Mr. Charles is entitled to withdraw the funds he contributed between 1928 and 1937 in view of the fact that the withdrawal provision was not enacted until the first day that he was on leave of absence.

It is our opinion that he was a member of the Retirement Fund while on leave of absence and is entitled to withdraw his contributions despite the fact that he was not on active service at the time this law was enacted. It is clear that a person on leave of absence from particular service does not lose any rights or benefits of an office including pension rights by virtue of the fact that he is not in active service. *Ward* v. *Keenan,* 3 N.J. 298, 310 (1949). The benefits of tenure are in force during a leave of absence so long as the person complies with all other requisites of that position. For instance, in the *Ward* case, *supra,* it was determined that a person who was granted a leave of absence from a police force to run for public office and who made charges against the force of which he was a member was recognized as being possessed with the rights of office such as the right to be removed only upon charges. In addition, Ward had an obligation to report crime to his superiors while on leave of absence.

Mr. Charles did not abandon any rights of his State Police employment during his leave of absence by joining the Pompton Lakes Police Force. It was his choice,

having been granted the leave of absence, to return within the time that the leave was extended. To that extent, the rights of the office continued until January 31, 1938, long after the withdrawal statute was enacted. Cf. *Formal Opinion No. 15—1958,* dealing with abandonment of state employment rights by persons in Military Service.

You are therefore advised that Mr. Charles may withdraw his contributions to the State Police Retirement Benevolent Fund, N.J.S.A. 53:5-1 et seq.

Very truly yours,
DAVID D. FURMAN
Attorney General

By: DAVID M. SATZ, JR.
Assistant Attorney General

July 28, 1960.

DR. ROSCOE P. KANDLE
Commissioner
Department of Health
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR COMMISSIONER KANDLE:

We have been asked by the Visiting Homemaker Association of New Jersey, Inc. (an advisory committee to the Division of Chronic Illness Control of the State Department of Health) whether the individual Homemakers are immune from tort liability under Chapter 90 of the Laws of 1959 (N.J.S. 2A:53A-7 to 11).

The Act in question is entitled as follows:

> "An Act concerning *corporations, societies* and *associations* organized exclusively for religious, charitable or hospital purposes; providing that they shall not be liable to respond in damages, in certain cases; and providing for the application and operation of the act." (Emphasis supplied.)

In a Memorandum Opinion dated October 30, 1959, the Attorney General advised you that under the law in question the local Homemaker Service Groups are "charitable" associations within the meaning of the statute. The question now posed is whether the immunity extends to the individual Homemakers who may perform, at the request of a physician, some personal care services to patients.

This question must be answered in the negative. The title of the Act already quoted indicates that the immunity runs only to the associations, corporations or societies themselves. Any possible doubt is removed by the terms of the statute itself; the last sentence of section one provides in applicable part:

> "* * * but nothing herein contained shall be deemed to exempt the said agent or servant individually from their liability for any such negligence."

It is therefore clear from the terms of the statute itself, as well as from the statutory history, see *LaParre* v. *Y.M.C.A. of the Oranges,* 30 N.J. 225 (1959), that the servants and agents of the immune associations would be liable for their negligence