

number of councilmen" was not satisfied by the participation of 4 of the remaining 7 councilmen.

In *State v. Rogers*, 56 N.J.L. 480 (Sup. Ct. 1894), where the main question was whether holdover senators had a right to organize the Senate at the beginning of a legislative year, without the participation of newly elected senators not yet sworn in, both the majority and the dissenter assumed that a quorum of the Senate was 11 members, even though the dissenter would have held that the holdover senators, necessarily a number less than the full 21, could organize the Senate. *Id.*, at 630, 632, 649.

Since the above authorities are in point and explicit, it is my opinion that constitutional references to a majority or to fractions of "all the members" of the houses of the Legislature must be construed to refer to fractions of the full membership authorized by law, even though from time to time one or more seats may be vacant, and that requirements of a majority, three-fifths, two-thirds or three-quarters of the General Assembly are only satisfied if 31, 36, 40 or 45 members, respectively, concur.

Very truly yours,

DAVID D. FURMAN
Attorney General

FEBRUARY 7, 1961

MAJOR GENERAL JAMES F. CANTWELL
Chief of Staff
Department of Defense
Trenton, New Jersey

FORMAL OPINION 1961—No. 4

DEAR GENERAL CANTWELL:

You have requested an opinion as to the police powers and duties of Civil Defense auxiliary police. My conclusions are based upon a construction of the Civil Defense and Disaster Control Act (L. 1953, c. 438 supplementing L. 1942, c. 251; App. A:9-33 to 57), the regulations proclaimed by the Governor pursuant thereto, and related general laws on police powers and the carrying of firearms.

The Civil Defense and Disaster Control Act is broadly drawn to provide a system of protection to the public, including rescue operations and maintenance of law and order in the event of war emergency or local disaster emergency. A clear legislative intention is evident that Civil Defense auxiliary police be adequately trained to supplement regular police forces in safeguarding against war disasters and in coping with war disasters or disasters from natural causes such as hurricanes or floods. The statute sets forth in App. A:9-45:

"In order to accomplish the purposes of this act, the Governor is empowered to make such orders, rules and regulations as may be necessary adequately to meet the various problems presented by any emergency and from time to time to amend or rescind such orders, rules and regulations, including among others the following subjects:

". . . c. Concerning the organization, recruiting, training, conduct, duties and powers of volunteer agencies, including air raid wardens, auxiliary

police and firemen, demolition and clearance crews, fire watchers, road repair crews, rescue squads, medical corps, nurses' aides corps, decontamination squads, drivers' corps, messengers' corps, emergency food and housing corps, utility repair squads, and all other civilian protection forces exercising or performing any functions or duties in connection with the problems of local civilian defense or disaster control."

Governor Meyner issued a proclamation prescribing rules and regulations for the development and training of civil defense auxiliary police on September 23, 1954. After declaring that such officers in the civil defense auxiliary police should have full police powers during any emergency as defined in the statute, the Governor in his proclamation vested equivalent powers in such auxiliary police during periods of training, as follows:

"Within time limits and rules and regulations to be prescribed by the State Civilian Defense Director, and with the approval of the governing body of any municipality, the auxiliary police of the duly authorized civilian defense organization of such municipality may be attached to the local police force for the purpose of training. During such period of training such auxiliary police shall have all the powers of peace officers, police officers and constables except as may otherwise be prescribed by such municipality."

My understanding is that your inquiry is directed to the police powers and duties of civil defense auxiliary police in times other than periods of emergency. By the Governor's proclamation the civil defense auxiliary police are limited in exercising police powers to periods of training, subject to the further rules and regulations of the State Director of Civil Defense and Disaster Control and the approval of their municipal governing body. The justification for such an extraordinary vesting of authority in citizens other than regular police officers is that, without the development of a knowledge of and skill in police methods, the auxiliary police could not handle rescue operations, expedite traffic flow and enforce the criminal laws during a war emergency or local disaster emergency.

The Acting State Director of Civil Defense and Disaster Control promulgated supplementary rules and regulations for the training of civil defense auxiliary police on October 10, 1957:

"In accordance with the Proclamation dated September 23, 1954 by Governor Robert B. Meyner concerning the powers of auxiliary policemen, there are hereby set forth the rules and regulations covering their actions while training with regular municipal police forces. Wherever a municipality does not have a regular police department the time of regular training and the decision to arm or not to arm the auxiliary police shall rest with the governing body of the municipality. The auxiliary police shall be subject to the orders of the Civil Defense Director. The time limits, rules and regulations are as follows:

"1. The length of time the auxiliary police may be attached to the local police for training shall be determined by the governing body and the Civil Defense Director, subject to the approval of the Chief of Police.

"2. During the period of time that the auxiliary police are attached to the local police for training, they shall be under the direction of the Chief of Police.

"3. The police authority and the arming of the auxiliary police with weapons during such period of training shall be determined by the Civil Defense Council, subject to the approval of the governing body of the municipality and the Chief of Police.

"4. Members of the auxiliary police shall be required to complete a preliminary course of training prior to assignment to duty, as prescribed by the Chief of Police.

"5. These same regulations shall apply during 'The time of drill or activity in preparation for the drill' as stated in paragraph No. 1 of Governor Robert B. Meyner's proclamation dated September 23, 1954."

My conclusion is that the Civil Defense and Disaster Control Act and the rules and regulations pursuant thereto vest police authority in civil defense auxiliary police during periods of training. Without adequate training, including law enforcement experience, the civil defense workers would be helpless and unequipped for the disaster or emergency against which the Legislature has sought to safeguard.

The critical question remaining is the length and extent of police training. Discretion has been reserved in the municipal governing body and State Director of Civil Defense and Disaster Control to approve the time limits and scope of police training of the civil defense auxiliary police. Several guiding legal principles, however, should be stated. Training must be bona fide and must not be abused as to extent. A municipality cannot substitute civil defense auxiliary police for regular or special police officers; an extension of the period of training to accomplish such a result would be unlawful. During valid periods of training civil defense auxiliary police are exempt from prosecution for the crime of carrying a concealed weapon (N.J.S. 2A:151-41-43). A municipality may be subject to liability for damages in an action founded upon its negligence in not adequately training a civil defense auxiliary police officer, for example in the law of arrest or the use of firearms. See *McAndrews v. Mularchuk*, 33 N.J. 172 (1960).

The objective in the application of the Civil Defense and Disaster Control Act should be to develop civil defense auxiliary police for disasters and emergencies through training and experience but without disruption of regular police activity or substitution of auxiliary police for regular or special municipal police officers.

Sincerely yours,

DAVID D. FURMAN
Attorney General

APRIL 18, 1961

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1961—No. 5

DEAR MR. KERVICK:

You have requested our opinion whether certain types of financial institutions would become subject to taxation under the New Jersey Corporation Business Tax