"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

Act, N.J.S.A. 54:10A–1 et seq., by foreclosing a mortgage on New Jersey real estate and by subsequently managing the property for the purpose of collection of rents therefrom. The types of institutions with which you are concerned are: (a) a foreign savings and loan association; (b) a foreign building and loan association; (c) a national bank having its principal office in a state other than New Jersey; and (d) a state bank organized under the laws of a state other than New Jersey.

N.J.S.A. 54:10A–3 exempts from taxation thereunder, "railroad, canal or banking corporations, savings banks, production credit associations organized under the Farm Credit Act of 1933 or building and loan or savings and loan associations." The legal issue posed by your request for an opinion is, therefore, whether the enumerated types of financial institutions are "banking corporations, savings banks . . . or building and loan or savings and loan associations" within the meaning of N.J.S.A. 54:10A–3.

New Jersey does not impose any form of corporation tax upon domestic building and loan or savings and loan associations. N.J.S.A. 54:10A–3; N.J.S.A. 54:10B–2(b). Unlike domestic banks, domestic building and loan or savings and loan associations are not subject to the bank stock tax. N.J.S.A. 54:9–1 et seq. Although it might be constitutionally permissible to tax foreign building and loan associations which conduct a local business despite the exemption of domestic associations, the New Jersey Corporation Business Tax Act should not be construed to require such unequal tax treatment unless demanded by its terms. Far from demanding such a construction, however, the language of the statute appears to exempt all savings and loan or building and loan associations in unqualified terms without regard to their state of incorporation. It is, therefore, our opinion that foreign savings and loan or building and loan associations are not subject to the New Jersey corporation business tax under the circumstances which you have described.

Federal law prohibits New Jersey from imposing a franchise tax upon national banking associations whose principal offices are located in other states regardless of whether or not they are engaged in any activities here. National banks are not merely private monied institutions. They are agencies of the United States and are not subject to taxation by the states except as expressly permitted by consent of Congress. *First Nat. Bank* v. *Anderson*, 269 U.S. 341 (1926). See *Morris and Essex Investment Co.* v. *Division of Taxation*, 33 N.J. 24 (1960). Consequently, national banking associations can be taxed by New Jersey only in accordance with 12 U.S.C.A. sec. 548. This section permits taxation of such an association only by the state in which its principal office is located. *Bank of California National Ass'n.* v. *Richardson*, 248 U.S. 476 (1919); *National Bank of Redemption* v. *Boston, Mass.*, 125 U.S. 60 (1888). Accordingly, the Corporation Tax Act is inapplicable to national banks having their principal offices in states other than New Jersey.

The taxability of foreign state banks is less clear than that of the other financial institutions previously discussed. Section 331 of the New Jersey Banking Act of 1948, N.J.S.A. 17:9A–331, permits such banks to engage in limited activities in New Jersey. Although it could be argued that the statutory exemption granted to "banking corporations and savings banks" by the Corporation Business Tax Act refers only to banks which are subject to the Bank Stock Tax Act, the unqualified language of N.J.S.A. 54:10A–3 is to the contrary. From the language used it should not be presumed that the Legislature intended to impose a tax upon foreign state banks in situations in which New Jersey is constitutionally prohibited from taxing national banks which have their principal offices outside New Jersey. We are not aware that

either the charters or the laws of the states of incorporation purport to authorize banking institutions organized under the laws of foreign states to engage in activities in New Jersey more extensive than those permitted by the Banking Act of 1948. However, if more extensive activities are conducted, the foreign institution would become subject to the New Jersey corporation tax laws and other applicable tax laws on the same basis as any other foreign corporation engaged in such activities in this state. In our opinion, a foreign banking institution whose only activities in New Jersey are those expressly permitted by N.J.S.A. 17:9A–331, including activities reasonably ancillary to the foreclosure of a mortgage on New Jersey realty, does not become subject to the New Jersey corporation tax because of such activities.

Very truly yours,

DAVID D. FURMAN
Attorney General

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

APRIL 24, 1961

HONORABLE ARTHUR S. MEREDITH
Prosecutor, Somerset County
Court House
Somerville, New Jersey

FORMAL OPINION 1961—No. 6

DEAR PROSECUTOR MEREDITH:

At a recent prosecutors' meeting my opinion was sought as to whether blood samples may be taken from comatose parties to automobile accidents to determine the presence of alcohol. The question requires a consideration of the constitutionality of such action under both the State and Federal Constitutions and the applicability of the death by automobile statute (N.J.S. 2A:113-9) and certain provisions of the Motor Vehicle statutes (N.J.S.A. 39:4–50 and 50.1).

There can be no doubt that the taking of blood samples from comatose suspects where there exists reasonable grounds to suspect such persons of having committed an offense in which the presence of alcohol is pertinent (see *Schutt* v. *MacDuff*, 127 N.Y.S. 2d 116 (Sup. Ct. 1954)) and where there are adequate health safeguards does not constitute a violation of the due process clause of the Fourteenth Amendment to the United States Constitution. In *Breithaupt* v. *Abram*, 352 U.S. 432, 77 S. Ct. 408 (1957) the Court considered a factual situation almost identical to the one now under consideration. The defendant in that case was involved in an automobile crash in which three persons were killed and he was seriously injured. An almost empty pint bottle of whiskey was found in the glove compartment of the defendant's vehicle. Defendant was taken to a hospital, unconscious, and, after detecting the smell of liquor on defendant's breath, a state policeman requested that a sample of defendant's blood be taken. While defendant was still unconscious a sample of 20 cc. was taken by an attending physician by using a hypodermic needle. Analysis of the sample indicated .17 per cent alcoholic content and this formed the basis of a conviction for involuntary manslaughter. In an ensuing habeas corpus proceeding the argument was made that