under the statute concerning the operation of a motor vehicle while under the influence of intoxicating liquors. (N.J.S.A. 39:4-50.)

Very truly yours,

DAVID D. FURMAN
Attorney General

APRIL 25, 1961

HON. HAROLD J. ASHBY, *Chairman*
State Parole Board
State Office Building
Trenton, New Jersey

FORMAL OPINION 1961—No. 7

DEAR MR. ASHBY:

You have inquired concerning the application of disenfranchisement provisions of the Constitution of New Jersey and implementing statutes to

(a) Juvenile offenders between the ages of 16 and 18 years, and
(b) Minor offenders between the ages of 18 and 21 years convicted in adult criminal court.

We conclude that these provisions have no application to juvenile offenders under the age of 16 and juvenile offenders between the ages of 16 and 18 years adjudicated as such in the Juvenile and Domestic Relations Court, but such provisions do have application to persons between the ages of 16 and 21 years convicted in the adult criminal court of specified disqualifying offenses.

Art. II, *par.* 7, of the *Constitution of New Jersey* (1947) provides:

> "The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right."

The legislature implemented this constitutional provision by *Chap.* 438, *P.L.* 1948, as amended, *R.S.* 19:4-1, as amended, where it is provided:

"No person shall have the right of suffrage—

(1) Who is an idiot or is insane; or
(2) Who has been or shall be convicted of any of the following designated crimes, that is to say—blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with mankind or with beast, robbery, conspiracy, forgery, perjury or subornation of perjury, unless pardoned or restored by law to the right of suffrage; or
(3) Who was convicted prior to October 6, 1948, of the crime of polygamy or of larceny of above the value of $6.00; or who was convicted after October 5, 1948, and prior to the effective date of this act, of larceny of above the value of $20.00; or

(4) Who shall hereafter be convicted of the crime of larceny of the value of $200.00 or more, unless pardoned or restored by law to the right of suffrage; or

(5) Who was convicted after October 5, 1948, or shall be convicted of the crime of bigamy or of burglary or of any offense described in chapter 94 of Title 2A or section 2A:102–1 or section 2A:102–4 of the New Jersey Statutes or described in sections 24:18–4 and 24:18–47 of the Revised Statutes, unless pardoned or restored by law to the right of suffrage; or

(6) Who has been convicted of a violation of any of the provisions of this Title, for which criminal penalties were imposed, if such person was deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage; or

(7) Who shall be convicted of the violation of any of the provisions of this Title, for which criminal penalties are imposed, if such person shall be deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage."

The *Constitution of 1947*, with the exception of the judicial article, became effective January 1, 1948. The legislative enactment (*Chap.* 438, *P.L.* 1948 as amended; *R.S.* 19:4–1, as amended) became effective October 6, 1948. Accordingly, it will be observed that the implementing statute had application only to convictions had after October 5, 1948 with respect to the classification and description of crimes for which disenfranchisement would occur. With respect to disenfranchisement for convictions had prior to October 5, 1948 we must look to the former *Constitution of New Jersey* which provided in *Art.* II, *par.* 1, that a "person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage" shall be disqualified from exercising the right of suffrage.

The law disqualifying witnesses referred to in said constitutional provision is found in Sec. 1 of an act entitled "*An Act concerning witnesses*," enacted June 7, 1799 which continued without amendment until the adoption of the former *Constitution in 1844* and provides as follows:

"That no person, who shall be convicted of blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with mankind or with beast, polygamy, robbery, conspiracy, forgery or larceny, of above the value of $6.00, shall in any case be admitted as a witness, unless he or she be first pardoned; and no person who shall be convicted of perjury, or of subornation of perjury, although pardoned for the same, shall be admitted as a witness in any case."

Our courts were confronted with the question of what constituted disenfranchisement from the period of the adoption of the *Constitution of 1947*, to wit, January 1, 1948, and the effective date of the implementing statute (*R.S.* 19:4–1) October 6, 1948.

It was held *In the Application of Palmer*, 61 A 2d 922 (Co. Ct. 1948) that *R.S.* 19:4–1, as amended, did not impliedly repeal the former statutes and constitutional provisions relating to disenfranchisement with respect to convictions prior to October 6, 1948. It was further held that there was no constitutional invalidity with respect to the requirement of disenfranchisement with regard to convictions had prior to the effective date of *R.S.* 19:4–1, as amended, to wit, October 6, 1948.

Thus, with respect to convictions had prior to October 5, 1948, the schedule of disenfranchisement convictions apparent in the *1844 Constitution* and the statute relating to witnesses will prevail. With respect to convictions had after October 5, 1948 the schedule appearing in *R.S.* 19:4–1, as amended, will obtain.

Regarding the application of the aforementioned law to disenfranchisement of individuals, it becomes evident that children under the age of 16 years are not affected adversely thereby because it is provided in N.J.S. 2A:85–4 that "a person under the age of sixteen years is deemed incapable of committing crime," and there is no "conviction" of record.

Such children charged with juvenile offenses automatically come under the jurisdiction of the Juvenile and Domestic Relations Court and the adult criminal court has no jurisdiction.

The Juvenile Court as presently constituted in this State was established by *Chap.* 157, *P.L.* 1929 and the jurisdiction of the court was limited to children under the age of 16 years, until enlarged by *Chap.* 97, *P.L.* 1943, to include, on a selective basis, children over the age of 16 but under the age of 18 years. It was the legislative scheme of *Chap.* 97, *P.L.* 1943, that all cases of minors between ages 16 and 18 would be referred to the juvenile court which might in turn forward the case to the prosecutor for disposition in the adult criminal court if special circumstances appeared in the situation. This same jurisdiction continues at the present time under similar circumstances. See *N.J.S.* 2A:4–3, et seq.

It is provided in *N.J.S.* 2A:4–39 that "no adjudication upon the status of a child under the age of 18 years of age shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall such a child be deemed a criminal by reason of such conviction, nor shall such adjudication be deemed a conviction."

Accordingly, it becomes apparent that if the juvenile court retains jurisdiction of an individual under the age of 18 years and adjudicates the person as a juvenile offender then the disenfranchisement features of *R.S.* 19:4–1, as amended, shall not apply.

If the juvenile court avails itself of the provisions of *N.J.S.* 2A:4–15 and transfers the case of a child between the age of 16 to 18 years to the adult criminal court for disposition, and if conviction is had therein, then it is evident that the provisions of *R.S.* 19:4–1 will apply and disenfranchisement will occur if conviction is had for any of the crimes enumerated in the schedules referred to above. This is because it is provided in *R.S.* 19:4–1, as amended, that "No person shall have the right of suffrage * * * (2) who *has been* or shall be convicted of any of the following designated crimes * * *." The utilization by the legislature of the past tense with respect to conviction of crime is a clear intent that it should apply to convictions previously had as well as to those in the future.

This argument is bolstered by the language used *In the Application of Palmer, supra,* where it is indicated by the court that the purpose of the constitutional provision and the implementation thereof by the legislature is to maintain purity of elections. The same decision is authority for the proposition that *R.S.* 19:4–1, as amended, could apply retroactively without constitutional invalidity.

Palmer, supra, was approved *In the Matter of Smith,* 8 N.J. Super. 573 (Co. Ct. 1950) where Judge Hartshorne extended the provisions of *R.S.* 19:4–1, as amended, to include convictions had in sister states and federal courts.

We find nothing in any of the constitutional provisions or implementing statutes relating to disenfranchisement which can be interpreted to mean that persons under the age of 21 years convicted of disqualifying crimes should receive automatic amnesty therefrom upon attainment of majority and, thus, escape application of the disenfranchisement provisions of the Constitution and the laws of this jurisdiction.

We conclude that it was the intention of the framers of the Constitution and the Legislature to disenfranchise all persons convicted in adult criminal court of the specific enumerated offenses and to exclude therefrom minors adjudicated as juvenile offenders in the Juvenile and Domestic Relations Court.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: EUGENE T. URBANIAK
Deputy Attorney General

MAY 25, 1961

DR. VINCENT P. BUTLER, *Secretary*
State Board of Medical Examiners
28 West State Street
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and
DR. EMANUEL C. NUROCK, *Secretary-Treasurer*
State Board of Optometrists
162 West State Street
Trenton, New Jersey

FORMAL OPINION 1961—No. 8

DEAR SIRS:

You have asked whether Chapter 12 of Title 45 of the Revised Statutes regulating the practice of optometry authorizes optometrists to prescribe and fit contact lenses and, if so, whether optometrists are permitted to delegate this function to ophthalmic technicians or dispensers who are not licensed to practice optometry or medicine.

The first part of this question must be answered in the affirmative. R.S. 45:12-1 sets out the statutory definition of the practice of optometry as follows:

> "The practice of optometry is defined to be the employment of objective or subjective means, or both, for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its powers of vision and adapting lenses or prisms for the aid thereof.* * *"

In *Abelson's Inc.* v. *N. J. State Board of Optometrists*, 5 N.J. 412 (1950), the Supreme Court held that optometry was a profession in sustaining the constitutionality of regulatory legislation. The opinion stated at p. 419:

> "Optometry is directed to the measurement of the range of vision and the correction by lens, of visual defects and the increase of visual power with a minimum of eye exertion. * * *"