

The absence of similar language in the senior citizen exemption statute compels us to conclude that the Legislature did not intend to allow the senior citizen exemption to be apportioned.

An example of the apportionment problems that may arise is illustrated by the following: A veteran-husband and his wife own a principal residence in one taxing district and own either vacant land or a summer cottage in another taxing district in New Jersey. If neither claims the senior citizen exemption, the husband could elect to apportion the veteran's exemption between the two properties. If a senior citizen exemption is claimed by the husband, it could not be apportioned between the two properties, and, as shown above, it is taken to the exclusion of his veteran's exemption on any property. However, if the wife claims the senior citizen exemption on the dwelling house, the husband may still claim the veteran's exemption on the other property in the full amount or he may claim the veteran's exemption against personal property, as indicated above. However, should the husband desire to apportion his veteran's exemption between the properties in both taxing districts, he can do so provided that the exemptions for himself and his wife on the dwelling house do not exceed \$800 in the aggregate.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: ROBERT L. SHELDON  
*Deputy Attorney General*

JULY 10, 1961

HONORABLE RAYMOND H. BATEMAN  
*Somerset County Assemblyman*  
118 West High Street  
Somerville, New Jersey

FORMAL OPINION 1961—No. 13

DEAR ASSEMBLYMAN:

You have requested an opinion as to the procedure to be used in filling the new offices on township committees in all townships which have exceeded a population of 4,500 in the 1960 federal census, except those located in sixth class counties (R.S. 40:146-2). The 1960 federal census was promulgated effective May 6, 1961, a date too late for the nomination at the regular primary of candidates for newly established offices.

It is my opinion that R.S. 19:27-11 applies to these circumstances and sets forth the procedure to be followed for selection of candidates. This statute has been considered in an earlier opinion, see Ops. Atty. Gen. No. 53 (1950) in which it is said:

"The obvious intent of R.S. 19:27-11 is to make unnecessary a special primary election in connection with certain vacancies and yet to make available the machinery of the general election for the filling of such vacancies."

This statute is aimed at filling "vacancies" and it must be considered whether the facts at hand present such a "vacancy" within the purview of the statute. In the

same title, R.S. 19:3-25 defines a "vacancy" to include offices which exist and become vacant but says nothing of offices which are newly created.

A similar problem arose in June 1954 when Pemberton Township of Burlington County became entitled to additional committeemen under R.S. 40:146-2. The procedure prescribed by R.S. 19:27-11 was followed. The court in *Michaels v. Johnson*, 33 N.J. Super. 77 (App. Div. 1954) held this to be the proper governing provision of law. In doing so, the court considered the term "vacancy" as appearing in that statute and held that the term was intended by the legislature to include all unfilled elective offices including those established by an increase in population of the municipality, citing supporting authority from New Jersey and other jurisdictions.

Briefly outlined, N.J.S.A. 19:27-11 permits the naming of candidates by two processes; first, the county committee of each political party is authorized to name a candidate and, second, independent candidates may be nominated by petition. Time requirements are very important in each instance; the vacancy must have occurred more than thirty-seven days prior to the general election, and the statements of selection or petitions of nomination must have been filed with the county clerk at least thirty-four days prior to the general election. When the vacancy occurs it is the duty of the municipal clerk of the township to give prompt notice of the vacancy to the county clerk, the chairman of the county committee of each political party and in counties of the first class to the county board of elections.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

JULY 18, 1961

HON. NED J. PARSEKIAN, *Acting Director*  
*Division of Motor Vehicles*  
25 South Montgomery Street  
Trenton, New Jersey

FORMAL OPINION 1961—No. 14

DEAR DIRECTOR PARSEKIAN :

We have been asked whether N.J.S. 2A:168-1 authorizes a magistrate to suspend the imposition or execution of a sentence where a mandatory penalty is fixed in subtitle 1 of Title 39 (Chapters 1 through 5) despite the provisions of R.S. 39:5-7. N.J.S. 2A:168-1 reads in part as follows :

"When it shall appear that the best interests of the public as well as of the defendant will be subserved thereby, the courts of this state having jurisdiction over criminal or quasi-criminal actions shall have power, after conviction or after a plea of guilty or non vult for any crime or offense, except those hereinafter described, to suspend the imposition or execution of sentence, and also to place the defendant on probation under the supervision of the chief probation officer of the county, for a period of not less than 1 year nor more than 5 years."