R.S. 39:5–7 reads as follows:

"In any proceeding instituted pursuant to the provisions of this subtitle, except where a mandatory penalty is fixed herein, the magistrate may suspend the imposition or execution of sentence, and may also place the defendant on probation under the supervision of the chief probation officer of the county for a period of not less than six months nor more than one year. The probation shall be effected and administered pursuant to the provisions of sections 2A:168–1 to 2A:168–13 of the New Jersey Statutes."

In our opinion, a magistrate cannot suspend sentence on a motor vehicle violation where a mandatory penalty is imposed by subtitle 1 of Title 39. The provisions of R.S. 39:5–7 govern.

It is a familiar principle that when two statutory provisions are in apparent conflict, the more specific controls. *State* v. *Hotel Bar Foods, Inc.*, 18 N.J. 115, 128 (1955). The provisions of Title 39 relating to motor vehicle offenses are more specific than the provisions of Title 2A referring to the administration of civil and criminal justice generally. R.S. 39:5–7 recognizes the existence of N.J.S. 2A:168–1 by providing that where sentences may be suspended pursuant to R.S. 39:5–7 probation shall be pursuant to N.J.S. 2A:168–1 to 13. If it was the intention of the legislature to make the provisions of N.J.S. 2A:168–1 concerning suspension of sentence controlling, it would not have left in R.S. 39:5–7 the express prohibition on the suspension of sentences where subtitle 1 of Title 39 prescribes a mandatory penalty.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

JULY 19, 1961

HONORABLE JOHN W. TRAMBURG
Commissioner, Dept. Institutions and Agencies
State Office Building
Trenton, New Jersey

FORMAL OPINION 1961—No. 15

DEAR COMMISSIONER TRAMBURG:

You have asked our opinion concerning the apparent conflict in law between R.S. 30:6A–11 and N.J.S. 2A:37–12. R.S. 30:6A–11 deals with assets of inmates of the New Jersey Home for Disabled Soldiers that remain unclaimed for three years after death. N.J.S. 2A:37–12 deals with the escheating of property, generally of persons who die without heirs or known kindred.

R.S. 30:6A–11 provides as follows:

"Moneys, choses in action and effects deposited by an inmate in trust with the chief executive officer of the home and unclaimed at the death of the inmate, dying intestate, shall be held in trust by the chief executive officer,

with power to invest the funds with the consent of the board of managers and to use the income for the benefit of the inmates as the board may deem most advisable.

"Upon claim made and sustained by legal proof, the sufficiency of which the chief executive officer or board of managers shall be the sole and exclusive judges, the funds shall be paid over to the claimant entitled thereto upon acknowledging, executing and delivering a proper release and discharge.

"A fund remaining unclaimed three years after the death of its depositor shall with the income therefrom escheat to and become the property of and subject to the absolute control and disposal of the board of managers to be used for such purposes as they deem most advisable."

N.J.S. 2A:37–12 provides as follows:

"If any person, who, at the time of his death, has been or shall have been, the owner of any personal property within this state, and shall have died, or shall die, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, of whatsoever nature the same may be, shall escheat to the state."

More directly you ask if under the provisions of R.S. 30:6A–11 the chief executive officer of the Soldiers Home may demand and receive the estate of an inmate therein who died without any known heirs, next of kin, or surviving spouse since the enactment of the general Escheat Act, *L.* 1946, *c.* 155, N.J.S. 2A:37–11, et seq., or whether such estate is subject to escheat to the State of New Jersey.

It is our opinion and you are so advised that R.S. 30:6A–11 was impliedly repealed by the enactment of the general Escheat Act, *L.* 1946, *c.* 155 to the extent that the statutes are inconsistent.

Mahr v. *State*, 12 N.J. Super. 253 (Ch. 1951), involved a contest between the State and the municipality of Cedar Grove for the estate of a person who died intestate without known heirs, next of kin, or surviving spouse. The Court held that the enactment of *L.* 1946, *c.* 155 impliedly repealed R.S. 3:5–9, 10 and 11. R.S. 3:5–9, 10 and 11 had provided that the administrator of the estate of an intestate leaving no spouse and no known kindred or relatives should after one year from the intestate's death put the surplus of the personal estate out at interest, paying the income thereon annually to the municipality where the intestate had a legal residence, and paying the principal to such municipality seven years after the date of death for the use of the poor. After discussing the general rules applicable to implied repealers, the Court stated at page 262:

"Applying the tests recited to the dispute here, it is plain that the Legislature, in enacting the Escheat Act, intended to efface the sections of the Distribution Act relied upon by the defendant township.

"Concededly the State had no general escheat law relating to tangible and intangible personal property prior to 1946. In that year, the lawmakers undertook to deal with the whole problem of escheat of such property, both as to the conditions which would bring about acquisition thereof by the State and as to the manner and means of accomplishing the acquisition. It must be assumed that the Legislature was aware at the time that revenue provided by interest on funds of an intestate after administration, as well as by the

unclaimed funds themselves, after seven years, was going to the various municipalities. And the act adopted leaves no room for doubt that the intention was to pre-empt this revenue for the State.

"It must be noted that the definition of personal property set forth in the Escheat Act is broad enough to include every conceivable kind of tangible and intangible personal property. However, specifically excluded are personal property 'in the custody of any court in this State' and 'any personal property covered by Chapter 199 of the Laws of 1945.'

"Chapter 199 of the Laws of 1945 relates to the escheat of unclaimed bank deposits. (R.S. 17:9–18 to 26.) 'Personal property in the custody of any court in this State' cannot be deemed to include funds in the hands of an administrator under the circumstances of this case. The administrator holds the funds here only for the purpose of distribution according to law, which means to the State or to Cedar Grove, depending upon the determination of the vital question of implied repeal now presented and the obtaining by the State of a judgment in an escheat proceeding.

"On fundamental principles of statutory construction, these two express exclusions demonstrate an intention to include escheatable personal property in all other classes of cases. *Expressio unius est exclusio alterius.*

"Furthermore, the Legislature dealt with the personal property of an intestate in a separate and distinct section (sec. 16). In this section, the 14-year period, the elapse of which must precede escheat under section 17, in cases other than intestacy, was eliminated. Such elimination manifests an intention not to require a waiting period of 14 years before personalty of an intestate would escheat. And the declaration of escheat was expressly made applicable to 'any personal property within this State' of an intestate owner. Thus there is present inescapable evidence that the Legislature intended to deal generally and fully with escheat in cases of intestacy and to exclude any existing form of disposition of such property."

* * *

"The only reasonable and feasible conclusion from all these considerations is that R.S. 2:53–15 through 32, representing the later expression of the legislative will and being plainly repugnant to R.S. 3:5–9, 10 and 11, operate as an implied repealer thereof."

The holding in the *Mahr* case was followed by the New Jersey Supreme Court in *State* v. *Roberts*, 21 N.J. 552 (1956). The *Roberts* case involved a contest between the State of New Jersey and the Township of Middletown for the estate of a decedent intestate without known heirs, next of kin, or surviving spouse. In *Roberts* at page 554 of 21 N.J. the Court stated:

"Judge Schettino, who decided the case in the Chancery Division, held that R.S. 3:5–9, 10 and 11, although historically originating as part of the Distribution Law, see L. 1898, p. 778, were in actuality but the means by which the State at that time exercised its sovereign right to escheat such personal property, *State by Parsons* v. *Standard Oil Co.*, 5 N.J. 281, 297 (1950), affirmed 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951), and that in enacting the general Escheat Act the State displaced its creature municipalities in favor of itself as taker, thereby accomplishing the repealer

of the sections by implication. Judge Schettino followed in this respect the decision of Judge Francis, who, also sitting in the Chancery Division, held, in *Mahr* v. *State*, 12 N.J. Super. 253, 262 (1951), that 'it is plain that the Legislature, in enacting the Escheat Act, intended to efface the sections of the Distribution Act relied upon by the defendant township.'

"We fully agree that such was the legislative design. A comparison of the two statutes plainly reveals that the later Escheat Act fully asserts the State's sovereign right to escheat property of this kind to itself and covers the whole subject of escheatable property dealt with by the mentioned sections of the Distribution Act. The reasonable, indeed inescapable, conclusion therefore is that the Escheat Act was intended by the Legislature to supplant the earlier law. This is thus a case for application of the settled rule of statutory construction that in that circumstance the later statute, though not expressly saying so, will be held to operate to repeal the earlier law. *State Board of Health* v. *Borough of Vineland*, 72 N.J. Eq. 862 (E. & A. 1907)."

We are satisfied that the foregoing reasoning applied to R.S. 3:5–9, 10 and 11 in the *Mahr* case and the *Roberts* case is equally applicable to R.S. 30:6A–11. Accordingly, the estate of any inmate in the Soldiers Home who dies without known heirs, next of kin or surviving spouse is subject to the general Escheat Act of New Jersey (N.J.S. 2A:37–12).

Very truly yours,

DAVID D. FURMAN
Attorney General

By: CHARLES J. KEHOE
Deputy Attorney General

JULY 20, 1961

HONORABLE WILLIAM F. HYLAND, *President*
Board of Public Utility Commissioners
101 Commerce Street
Newark 2, New Jersey

FORMAL OPINION 1961—No. 16

DEAR COMMISSIONER HYLAND:

You have asked our opinion whether a municipal water utility filing reports pursuant to N.J.S.A. 40:62–1 may be charged any fees under N.J.S.A. 48:2–56 for the furnishing of report forms and for the filing, examination and audit of such reports.

N.J.S.A. 40:62–1 provides:

"Every municipality operating any form of public utility service shall keep accounts thereof in the manner prescribed by the board of public utility commissioners for the accounting of similar public utilities, and shall file with the board such statements thereof as may be directed by the board."