

AUGUST 2, 1961

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

FORMAL OPINION 1961—No. 18

DEAR DIRECTOR PARSEKIAN:

At the completion of an audit of your Division undertaken by the State Auditor, it was recommended that an opinion be sought from this office upon the following question: Where the Director deems under Section 3 of the Motor Vehicle Security Responsibility Law (*L. 1952, c. 173, § 3, as amended; N.J.S.A. 39:6-25*) that a deposit of security is required of an operator or owner of a vehicle involved in an accident, may he allow the required security to be paid in installments?

The intent of this legislation was specifically to provide a means whereby a financially irresponsible driver would furnish some sufficient security in the event that judgment was entered against him for damages resulting from a motor vehicle accident, (*N.J.S.A. 39:6-25(a)*). The Director was provided with means to enforce his demand through suspension of the license of each operator and all registrations of each owner of any motor vehicle involved, if within a specified period of time the amount determined to be sufficient to satisfy the judgment was not deposited (*N.J.S.A. 39:6-25(b)*). The same statute (*N.J.S.A. 39:6-25(c)*) exempted owners or operators covered by a liability insurance policy in any form or self-insured as provided in *N.J.S.A. 39:6-52, (L. 1952, c. 173, § 30)*. The revocation sanction vested in the Director is applicable, therefore, only to owners or operators who were uninsured at the time of the accident.

These requirements were lifted in certain enumerated instances, even with respect to uninsured vehicles or operators, in cases where, patently, no liability attached to the person concerned, or where an adjudication had resulted in a determination of non-liability, or if a written agreement for payment in installments had been executed with respect to all claims for injuries or damages resulting from the accident, (*N.J.S.A. 39:6-26*).

We conclude that there is no statutory authority to accept installment payments of a security deposit. The Director under the terms of *N.J.S.A. 39:6-30* must, with this deposit, stand ready to satisfy, to the extent possible, all judgments rendered against an individual based upon his involvement in a specific accident. To insure that the amounts demanded would be available, the Legislature resorted to the drastic sanction of suspension of licenses and registrations in the event of failure to deposit sufficient security. It is obvious that the Legislature intended that the entire sum required be promptly paid, and gave the respondent only ten days notice to do so, (*N.J.S.A. 39:6-25(b)*).

In addition, the specific recognition in the act (*N.J.S.A. 39:6-26(d)*) of written agreements for installment payments of claims for damages, is confirmation that the Legislature did not intend to approve installment payment in another section of the act by implication only.

Accordingly, we advise that when you act under the provisions of *N.J.S.A.* 39:6-25(b), you must demand the entire amount deemed sufficient for the purposes thereof and that upon failure of such deposit, you should apply the sanctions of license and registration revocation.

Very truly yours,

DAVID D. FURMAN
Attorney General

AUGUST 2, 1961

HONORABLE ARCHIBALD S. ALEXANDER
Chairman, Board of Governors
Rutgers, The State University
New Brunswick, New Jersey

FORMAL OPINION 1961—No. 19

DEAR MR. ALEXANDER:

You have sought my opinion as to the legality of the regulation of the former Board of Trustees of Rutgers, The State University, dated April 14, 1961, establishing a mandatory retirement age of 65, with a provision for its waiver under exceptional circumstances. I understand that this regulation has been ratified by the present Board of Governors.

You refer in your opinion request to the recent unreported opinion of County Judge Lester A. Drenk of Burlington County in *Eiselman v. Burlington County Board of Freeholders*. Judge Drenk ruled in that case that a resolution of the Burlington County Board of Freeholders setting a mandatory retirement age of 65 was invalid because of its conflict with the Public Employees' Retirement-Social Security Integration Act, L. 1954, c. 84. That act provides in Section 47 (N.J.S.A. 43:15A-47):

"Retirement from service shall be as follows:

"a. A member who shall have reached 60 years of age may retire from service by filing with the board of trustees a written statement, duly attested, stating at which time subsequent to the execution and filing thereof he desires to be retired. The board of trustees shall retire him at the time specified or at such other time within 30 days after the date so specified as the board finds advisable.

"b. A member who shall have reached 70 years of age shall be retired by the board for service forthwith, or at such time within 90 days thereafter as it deems advisable, except that an employee reaching 70 years of age may be continued in service from time to time upon written notice to the board of trustees by the head of the department where the employee is employed."

As you realize, Rutgers, The State University is:

". . . subject to the same membership, contribution and benefit provisions of the retirement system and to the provisions of chapter 3 of Title 43 of the Revised Statutes as are applicable to State employees . . ." (N.J.S.A. 43:15A-73(b)).