

October 20, 1961.

HONORABLE RAYMOND F. MALE
Commissioner, Department of Labor & Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION 1961—No. 30

DEAR COMMISSIONER MALE:

We have been asked whether a proposal to assist jobless workers to find employment through vocational training or retraining programs would be legally valid. Your department has specifically proposed that its Division of Employment Security recommend vocational training courses to unemployed individuals and, where they are otherwise eligible for unemployment compensation benefits not disqualifying them from such benefits on the sole grounds that they are taking the specified training program. It is assumed that the Department of Education would approve or establish training courses for occupational skills which the State Employment Service identifies as being in demand or offering reasonable opportunities for employment to jobless workers.

It is our opinion that the subject proposal is incompatible with the "available to work" provisions of N.J.S.A. 43:21-4(c).

Such action by the Division of Employment Security would appear to be valid under provisions of N.J.S.A. 43:21-11(f), to wit:

"Employment stabilization. The division, with the advice and aid of its advisory councils, and through its appropriate divisions, *shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; . . . to promote the re-employment of unemployed workers throughout the State in every other way that may be feasible, . . .*"
(Emphasis supplied.)

We see no reason why the director, by virtue of N.J.S.A. 43:21-4(c) cannot modify the active search for work requirement provided therein. N.J.S.A. 43:21-4(c) provides as to benefit eligibility conditions:

"(c) He is able to work, is available for work, and has demonstrated that he is actively seeking work, except as provided in subsection (f) of this section; provided, that the director may, *in his discretion*, modify the requirement of *actively seeking work* if, in his judgment, such modification of this requirement is warranted by economic conditions; . . ." (Emphasis supplied.)

However, it must be pointed out that the other criteria which must be met under N.J.S.A. 43:21-4(c), namely that the individual must be "able to work" and "available to work" are *not* subject to the director's discretion or subject to his modification.

The Supreme Court of New Jersey, in *Krauss v. A. & M. Karagheusian*, 13 N.J. 447 (1953) at p. 457 has held:

"In determining whether a claimant is entitled to benefits the 'available for work' test under sub-section 4(c) is of first importance. 'The availability requirement is a test to discover whether claimants would, in actuality, now

be working, were it not for their inability to obtain work that is appropriate for them.' *Altman, Availability for Work* (Harv. Univ. Press 1950), p. 259. The test is met if it appears that the 'individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is when he is genuinely attached to the labor market.' Freeman, *Able to Work and Available for Work* (1945), 55 *Yale L. J.* 123, 124; *Reger v. Administrator, Unemployment Compensation Act*, 132 *Conn.* 647, 46 *A. 2d* 844 (Sup. Ct. of Err. 1946); *Ludwigsen v. N. J. Dept. of Labor & Industry*, *supra*; *W. T. Grant Co. v. Board of Review*, *supra*; *Valenti v. Board of Review*, *supra*."

The policy set out by the courts in previous cases makes clear that "suitable work" comprises the equivalent in wages and working conditions of work formerly engaged in by the individual, and, further, that the courts held if such work is or becomes available an individual who withholds himself from same because he is engaged in seeking a job elsewhere, with a bigger wage, is not within the eligibility sections of the act. *W. T. Grant Co. v. Board of Review*, 129 *N.J.L.* 403 (Sup. Ct. 1943); *Ludwigsen v. N.J. Dept. of Labor & Industry*, 12 *N.J.* 64 (1953). It is clear from the proposal under consideration that setting up vocational training programs would in effect withdraw the trainees from the labor market, and make them, for the duration of their training at least, unavailable for "suitable employment" in direct violation of the principles enumerated in the cases cited above. For that reason the subject proposal is invalid.

Verly truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID A. BIEDERMAN
Deputy Attorney General

November 29, 1961.

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

FORMAL OPINION 1961—No. 31

DEAR DIRECTOR PARSEKIAN:

You have asked for our opinion as to the legality of your administrative interpretation of the provisions of N.J.S.A. 39:4-204 relating to the issuance of special vehicle identification cards to amputees and other persons. N.J.S.A. 39:4-207 provides that persons exhibiting on their windshield a certificate showing that a special vehicle identification card has been issued for said motor vehicle cannot be penalized for overtime parking unless the vehicle is parked in one location for more than 24 hours.

N.J.S.A. 39:4-204 provides:

"The word 'amputee' as employed herein shall include any person, male or female, who has sustained an amputation of either or both legs, or of parts of