1, 1958. It is possible that the use of different assessment dates for computing the tax bases under the Bank Stock Tax Act and the Financial Business Tax Law would discriminate against state and national banks. This possibility can be avoided if county tax boards use the same assessed valuation date for the purposes of computing the Bank Stock Tax as the Corporation Tax Bureau uses for computing the Financial Business Tax. That would mean that to compute the Bank Stock Tax payable on January 10, 1960 with respect to the calendar year 1959, the assessed value of real property deducted should be the assessed value fixed for the tax year 1959 as of October 1, 1958.

You are, therefore, advised that the statutory phrase "the assessed value of [the taxpayer's] real property" which appears in R.S. 54:9–1 et seq. refers to the valuation as of the October 1 preceding the commencement of the year with respect to which the Bank Stock Tax is payable.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General

JANUARY 26, 1961

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-2

DEAR MR. KERVICK:

You have sought our advice concerning the proper procedure in allowing interest upon excess contributions of all members belonging to the Teachers' Pension and Annuity Fund. N.J.S.A. 18:13–112.22. In order to avoid misunderstanding we shall also direct in part our remarks to the proper procedure concerning return of veterans' contributions. N.J.S.A. 18:13–112.72(a).

It is our understanding that at the time of the enactment of the Teachers' Pension and Annuity-Social Security Integration Act, the administrative burden in processing refund applications was so great that there necessarily resulted lengthy delays in the completion of the program. Therefore, the question has arisen as to the propriety of allocating interest upon delayed refunds. The Board desires our legal direction concerning their actions in this regard.

N.J.S.A. 18:13–112.22 provides, in pertinent part:

> "Any [excess] contributions made by a member * * * shall be refunded with regular interest to January 1, 1956 to the member * * * or shall, at his request, be used at retirement with regular interest, to provide an annuity of equivalent actuarial value * * *."

This provision was enacted to allow former members of the previous teachers' retirement system, R.S. 18:13-24, et seq., an adjustment in their new pension accounts, based upon past contributions and the revised actuarial computation for benefits under the new system created as of January 2, 1956. As can readily be seen, the moneys being refunded here were equitably payable to the members because they represented overpayment of the necessary contribution rates according to the actuarial criteria.

Concerning these sums it should be noted that if the member elected to leave them with the fund, they would continue to accumulate "regular interest." N.J.S.A. 18:13-112.4(n). In such a case the member received extra annuity "of equivalent actuarial value." *See also* N.J.S.A. 18:13-112.27. Upon withdrawal from the fund, the member would also be in a position to obtain such regular interest after the establishment of the new system, N.J.S.A. 18:13-112.26, .36, and furthermore, upon death of the member in active service, his beneficiary would also receive these funds with regular interest credited. N.J.S.A. 18:13-112.40(a). The annuity portion of the member's retirement allowance would also reflect the allowance of interest upon such sums. *Compare* N.J.S.A. 18:13-112.44(a), .46(a), *with* N.J.S.A. 43:3-1 (P.L. 1959, c. 101). It is clear that the Legislature contemplated two alternatives, i.e., immediate return of such excess contributions or retention in the fund with an interest earning equity.

Such moneys retained by the Board of Trustees, belonging to a member, were properly invested in accordance with the provisions of P.L. 1950, c. 270, N.J.S.A. 18:13-112.63 and could thus create additional earnings thereon, N.J.S.A. 18:13-112.26, .29. Because payment of these sums was not provided for absolutely but only upon the election of the individual members, there was no need to immediately freeze the amounts for use in investments and the Board properly had the use of that money upon which interest could be earned.

Interest is basically compensation for the use of money belonging to another. *Wilentz* v. *Hendrickson*, 135 N.J. Eq. 244 (E. & A. 1944). Hard and fast rules should not be followed considering the granting of interest but it should be granted in each case in accordance with justice and with consideration of fair dealing. *Jardine Estates* v. *Donna Brook Corp.*, 42 N.J. Super. 332, 340 (App. Div. 1956); *Dial Press, Inc.* v. *Phillips*, 23 N.J. Super. 543 (App. Div. 1952), *cert. den.*, 12 N.J. 248 (1953); *Brown* v. *Home Development Co.*, 129 N.J. Eq. 172 (Ch. 1941); *Fidelity Mutual Life Insurance Co.* v. *Wilkes-Barre & Hazleton R. R. Co.*, 98 N.J.L. 507 (E. & A. 1922). *See also Consolidated Police, etc. Pension Fund Commission* v. *Passaic*, 23 N.J. 645 (1957). In view of the fact that the moneys withheld represented excess contributions of the members, we advise you that it was proper for the Board to allow interest for any fiscal year in which refund was delayed.

However, N.J.S.A. 18:13-112.72(a) states that:

> "Each veteran member shall have returned to him * * * his accumulated deductions as of January 1, 1956 * * *."

Some former members (who were veterans) of the old teachers' retirement system had elected to contribute to the teachers' fund instead of merely relying upon the free Veterans' Pension Act, R.S. 43:4-1, et seq. Because N.J.S.A. 18:13-112.72 and .73 made membership in the new system mandatory for all teacher veterans, granting them free credit for all prior service, the Legislature returned contributions of the veteran members of the old fund. Therefore, the Legislature provided for the return

of these veterans' accumulated deductions which are specified in N.J.S.A. 18:13–112.4 (a) as:

> "The sum of all amounts, deducted from the compensation of a member or contributed by him, including interest credited prior to January 1, 1956, standing to the credit of his individual account in the annuity savings fund."

It can be seen that this provision dealt more with a legislative grant than a return of moneys paid in excess of what the actuarial computations required. In such a situation it is our opinion that the legislative plan does not call for the addition of interest upon the grant. *Swede* v. *City of Clifton*, 22 N.J. 303 (1956); *Hoboken, Newark, etc. Assn.* v. *Hoboken*, 23 N.J. Misc. 334 (Sup. Ct. 1945); *Fletcher* v. *Board of Education*, 85 N.J.L. 1 (Sup. Ct. 1913); *Bourgeois* v. *Freeholders of Atlantic*, 82 N.J.L. 82, 86, 87 (Sup. Ct. 1911). It is apparent that the Legislature only provided for return of "accumulated deductions as of January 1, 1956" which by statutory definition includes "interest credited prior to January 1, 1956," N.J.S.A. 18:13–112.72 (a), .4(a). Nowhere in the legislative scheme are there provisions relating to veterans' refunds comparable to those concerning excess contributions whereby the moneys may be allowed to earn interest for the member at his election. It follows that since these sums were in effect a generous legislative grant "the plainest and simplest considerations of justice and fair dealing" do not allow payment of interest on such refunds. *Cf. Opinions of the Attorney General, Memorandum Opinions*, (2), dated June 30, 1959.

In conclusion we thus advise you that (1) in the discretion of the Board of Trustees, interest may be paid according to the usual procedures upon excess contributions which refunds were delayed because of administrative process, and (2) there is no authority for the payment of such interest upon delayed refunds of pre-1956 veterans' contributions.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: LEE A. HOLLEY
Deputy Attorney General

JANUARY 31, 1961

HON. FRANCIS X. CRAHAY
Deputy Attorney General in Charge
Sussex County Prosecutor's Office
Court House
Newton, New Jersey

MEMORANDUM OPINION—P-3

DEAR MR. CRAHAY:

I am in receipt of your request for our opinion as to whether or not a defendant who had been convicted a second time for a violation of N.J.S. 39:4–50 is subject to a fine in addition to the mandatory sentence of imprisonment for a term of three months and forfeiture of the right to operate a motor vehicle for a period of ten years.