

compensation" for which contributions were "*being* made at the time of the occurrence of the accident." Here, the phrase "were being made" imports the sense of current payments. This sense is also distinguishable from the concept of "last year of creditable service" referred to above for other types of benefits.

It is our opinion, therefore, that accident disability retirement allowances should be based upon the rate of compensation actually being paid to an employee at the time of the accident.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: ROBERT S. MILLER  
*Deputy Attorney General*

AUGUST 1, 1961

COLONEL JOSEPH D. RUTTER  
*Superintendent State Police*  
State Police Headquarters  
West Trenton, New Jersey

MEMORANDUM OPINION—P-11

DEAR COLONEL RUTTER:

You have sought my opinion as to whether independent insurance investigators and adjustors are subject to the licensing provisions of the Private Detective Act of 1939, R.S. 45:19-8 et seq.

The statutory definition of private detective business, insofar as pertinent, is as follows:

"(a) The term 'private detective business' shall mean the business of conducting a private detective agency or for the purpose of making for hire or reward any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed by the same person, firm, association or corporation for fee, hire or reward, to wit: \* \* \* (6) the causes and origin of, or responsibility for, fires, libels, accidents, damage, injuries or losses to persons, firms, associations or corporations, or to real or personal property; \* \* \* provided, however, that the term shall not include \* \* \* any person, firm, association or corporation engaged in the business of making reports for insurance or credit purposes. \* \* \* The term shall not include and nothing in this act shall apply to any lawful activity of \* \* \* any person, firm, association or corporation licensed to do a business of insurance of any nature under the insurance laws of this State, nor to any employee or licensed agent thereof; nor to any person, firm, association or corporation conducting any investigation solely for its own account."

Under the facts you set forth various firms or associations, which are not affiliated with licensed insurance companies, are engaged in this State in the investigation of fires, accidents and other damage and in the adjustment of claims arising therefrom against various insurance carriers. A contract relationship exists between the investigating firm and the insurance carrier, with the compensation on an hourly basis.

The plain language of the statute reaches investigative activities of such claims investigators and adjusters. This construction is buttressed by the legislative policy of protecting the public against disreputable or incompetent investigators who might engage in blackmail or otherwise prey upon the public. See *Berardi v. Rutter*, 42 N.J. Super. 39, 50 (App. Div. 1956), aff'd sub nom, *In re Berardi*, 23 N.J. 485 (1957).

New York with a statute (General Business Law Sec. 70-89A) similar to R.S. 45:19-8 et seq. has a judicial construction that it encompasses activities by independent insurance investigators. *Cole v. State*, 179 Misc. 172, 37 N.Y.S. 2d 1002 (Ct. Cl. 1942). In *Schauder v. Weiss*, 88 N.Y.S. 2d 317, 321 (Sup. Ct., Kings County 1949) aff'd 276 App. Div. 967, 94 N.Y.S. 2d 748 (2d Dep't 1950), the Court ruled that the regulation of investigators:

"\* \* \* is designed primarily for the protection of the public against 'wilful, malicious and wrongful' acts of private detectives who, in the absence of stringent controls and the requirement of a bond, would be in a position to cause irreparable harm to other members of the community because of the very nature of their work."

In 1945, the New York Legislature overruled the *Cole* decision, *supra*, by statute, General Business Law §§ 71 and 72, by bringing independent insurance adjusters under the supervision of the Superintendent of Insurance.

The various statutory exceptions are not applicable under the facts presented. The firms which you describe are engaged in activities other than making reports for insurance or credit purposes, are not licensed insurance companies and are not conducting investigations solely on their own behalf.

My conclusion therefore is that the independent insurance adjusters and investigators must seek a private detective's license and comply with all other provisions of the Private Detective Act of 1939.

Sincerely,

DAVID D. FURMAN  
*Attorney General*