all benefits of the system except the special veteran benefits of Sections 60 and 61) it would have been a simple matter to have expressed that purpose by directly appending a qualifying phrase. See *Transcontinental Gas Pipe Line Corporation v. The Department of Conservation and Economic Development of the State of New Jersey*, 43 N.J. 135, 146 (1964). The fact that the Legislature did not qualify the benefits to be received by the employees of these agencies manifests an intent that these employees have the same benefits accorded to State employees, including all the veterans benefits.

For the foregoing reasons, we conclude that war veterans in the employ of the bi-state commissions, the Delaware River Basin Commission and the Delaware River Joint Toll Bridge Commission, who are members of the Public Employees' Retirement System, are entitled to the benefits provided war veterans in Sections 60 and 61 of Chapter 15A of Title 43.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: RICHARD NEWMAN
Deputy Attorney General

December 29, 1964

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

FORMAL OPINION 1964—NO.6

Dear Mr. Kervick:

You have requested our opinion whether the Issuing Officials, being the Governor, yourself as the State Treasurer, and the Comptroller of the Treasury, may lawfully issue bonds known as "State Higher Education Construction Bonds of 1964" pursuant to the provisions of the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended, L. 1964, c. 143, (herein sometimes referred to as the Act).

For the reasons hereinafter set forth, we are of the opinion that the Issuing Officials may lawfully and properly issue the aforesaid bonds.

In reaching our conclusion we have considered the following facts, viz.: On May 18, 1964, the Legislature passed Senate Bill No. 371. This bill became L. 1964, c. 142. This Act authorized the creation of a debt of the State of New Jersey through the issuance of bonds as direct obligations of the State in the sum of $40.1 million for public higher education facilities. Specifically, it authorized capital expenditures in that amount for Rutgers, the State University, the State Colleges and the Newark College of Engineering. The Act contained the usual provisions with respect

to the issuance of State bonds. It placed a ceiling upon interest in the amount of $27.06 million. It also provided that the proposed bonds shall mature in installments commencing not later than the fifth year and ending not later than the fifteenth year from the date of issuance of each series but not later than thirty years from the effective date of the Act (L. 1964, c. 142, §§ 4, 17). Of significance is the following provision of the Act:

> "For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1964, be submitted to the people. In order to inform the people of the contents of this act it shall be the duty of the Secretary of State, after this section shall take effect, and at least 15 days prior to the said election, to cause this act to be published in at least 10 newspapers published in the State and shall notify the clerk of each county of this State of the passage of this act, and the said clerks respectively shall cause to be printed on each of the said ballots, the following:***.
>
> COLLEGE BOND ISSUE.
>
> Shall the act entitled 'An act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the sum of $40,100,000.00 for public higher education facilities; providing the ways and means to pay the interest of said debt, not to exceed in the aggregate the sum of $27,060,000.00, and also to pay and discharge the principal thereof; and providing for the submission of this act to the people at a general election,' be approved?" (L. 1964, c. 142, §20.)

Shortly thereafter, the Legislature enacted an amendatory law, Senate Bill No. 399, which was approved by the Governor as L. 1964, c. 143 on July 13, 1964, simultaneously with his approval of Senate Bill No. 371. The purpose of Chapter 143 is evident from the Statement accompanying the bill, namely, that the bill "contains certain technical amendments" designed to conform the Higher Education Construction Bond Act with a companion measure known as the New Jersey Institutions Construction Bond Law (1964), L. 1964, c. 144.

The changes in Chapter 143 provided for the "acquisition of land" to be included in the capital expeditures (L. 1964, c. 143, §1); discretion with respect to the maturity of each bond series for a term shorter than 30 years from the date of issuance (*Id.*,§ 2); changes in phraseology with respect to voter approval and of the interchangeability of issued bonds (*Id.*, § 3). There are other changes pertaining to the handling and disposition of the proceeds from the bond sale including accrued interest and premiums (*Id.*, §§4, 5 and 6). It was further provided that the bonds of each series shall mature in installments ending no later than the 30th year from the date of issue rather than the 15th year, with additional discretion vested in the issuing officials with respect to redemption and refundability under appropriate circumstances (*Id.*, § 7). Chapter 143, it is to be noted, did not change the maximum aggregate interest cost of the proposed bond issue. Consequently the extension of the permissible maturity date from 15 to 30 years in Chapter 143 could not affect the limitation upon the total interest cost. Thus, the changes contemplated by Chapter 143 in no way affect the essential objective of the Higher Education Construction

Bond Act (1964) which, it is to be emphasized, was the incurrence of the public debt by the people of the State of New Jersey in the amount of $40.1 million, with a maximum interest limitation of $27.06 million for the purpose of constructing higher educational facilities for Rutgers, the State University, the State Colleges, and the Newark College of Engineering.

Pursuant to section 20 of Chapter 142, the Secretary of State certified to the county clerks of the respective counties that there should appear on the ballot to be voted upon by the voters of the entire State at the General Election to be held on November 3, 1964, as Public Question No. 2, the statement of the question appearing in section 20 of Chapter 142. Pursuant to this notification, there did appear on the ballot at the General Election held on November 3, 1964 as Public Question No. 2 the question as stated in Chapter 142. The question so published and stated in the official ballot was also contained in the General Election Sample Ballots distributed to voters in advance of the General Election. With respect to newspaper publication, however, there was published the unamended version of L. 1964, c. 142, including its recitals and the question which ultimately appeared on the ballot for the General Election.

It further appears from the Statement of the Determination of Result of the General Election of November 3, 1964 on public questions submitted to the people made by the Board of State Canvassers that of the total vote cast for Public Question No. 2, the "College Bond Issue," 992,669 votes were cast in the affirmative and 804,278 votes were cast in the negative.

On November 24, 1964 there was enacted L. 1964, c. 223 making appropriations for the purposes of the Higher Education Construction Bond Act. Chapter 223 appropriated the proceeds to be derived from the sale of the State Higher Education Construction Bonds of 1964 "the issuance of which is provided for in chapter 142 of the laws of 1964 (as amended by chapter 143 of the laws of 1964) which said act was submitted to the people and approved by the people at the General Election held on November 3, 1964." L. 1964, c. 223, § 3.

You further advise us that the Issuing Officials propose to issue bonds under the Higher Education Construction Bond Act (1964) as amended, the interest cost on which will not exceed in the aggregate the authorized maximum interest of $27.06 million.

In view of the fact that the newspaper publication of L. 1964, c. 142 did not encompass the specific amendments thereto contained in L. 1964, c. 143, the precise question is whether bonds may be issued by the State of New Jersey under and pursuant to the Higher Education Construction Bond Act (1964).

In our opinion no constitutional questions arise by reason of the manner in which the Act was published. The New Jersey Constitution does not require the newspaper publication of a statute specifically creating a debt of the State of New Jersey. The constitution provides:

> "The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means,

exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God." *N.J. Const.* (1947), Art. VIII, Sec. II, par. 3.

The Act, as evidenced by the statement of the public question set forth in the ballot, has "been submitted to the people at a general election" and it has been "approved by a majority of the legally qualified voters of the State voting thereon." Thus the requirements of the constitutional provision have been met by the enactment of L. 1964, c. 142 (as amended) and by its submission to the people of the State of New Jersey at the General Election of November 3, 1964.

Analysis of the pertinent statutes and decisional law leads to the conclusion that there was no legal defect with respect to the publication which prevents issuance of bonds pursuant to the Higher Education Construction Bond Act (1964). In our opinion, the publication as hereinabove set forth constitutes substantial compliance with the provisions of the Act and the omission from the publication of the amendments set forth in L. 1964, c. 143 does not constitute a failure to make the publication required by the Act.

The general election laws of the State of New Jersey do not disclose an overriding State policy requiring the newspaper publication of public questions which are to be submitted to the people at a general election. R.S. 19:14-33. The provisions of section 20 of Chapter 142 demonstrate an awareness on the part of the Legislature that the New Jersey Constitution required only the submission of the public question to the people on the ballot at the general election. Newspaper publication was directed by the Legislature in section 20 merely "[i]n order to inform the people of the contents of this act." The statement of question which section 20 directed to be submitted on the ballot discloses what the Legislature considered to be the essential provisions of the bond act in order to permit the electorate to exercise an intelligent choice.

The amendments contained in Chapter 143 did not in any respect alter the purpose of the proposed bonds, the principal amount of bonds to be issued or the aggregate interest costs. Significantly, the Legislature in amending Chapter 142 did not change the statement of the public question to be submitted to the people in section 20. This statement of the public question emphasized that the important features of the bond issue are the specific objective of the bonds and the principal amount and the total interest costs thereof. It is to be noted that one of the changes contemplated by Chapter 143 permitted a maturity period not exceeding 30 years instead of 15 as originally prescribed in Chapter 142. This, however, is not a change in the basic

bond issue as defined by the Legislature. The only constitutional limitation with respect to maturity is 35 years. As previously stated, the change in maturity limits is not a factor which could result in aggregate interest costs exceeding the statutory restrictions of $27.06 million. Thus, in overall effect, the amendments of Chapter 143 involved technical and non-critical financial provisions and minor changes in phraseology. Consequently, the publication of Chapter 142, without the amendments of Chapter 143, suffices to inform the people of the contents as to the Higher Education Construction Bond Act (1964).

The great weight of authority recognizes that a defect in a statement or public notice of the technical or financial details of a bond issue is unlikely to affect in a meaningful way the choice of the electorate. Note, 70 *Harv. L. Rev.* 1077, 1079 (1956-57). Consequently, courts have regarded such defects as insubstantial. *E.g., City of Louisville v. Kesselring,* 257 S.W. 2d 599 (Ky. Ct. of App. 1953). In *State v. City of Miami,* 41 So. 2d 888 (Fla. Sup. Ct. 1949), the Florida Supreme Court considered the validity of bonds to be issued by the City of Miami. The proposed bonds were to be issued pursuant to a resolution in five series and dated at such time in the future as the City Commission should determine and each to mature in two to twelve years after that date. It was urged that such bonds would be contrary to those actually approved by the vote of freeholders in a special bond election which prescribed the bonds to be sold in single series with a fixed maturity schedule commencing July 1, 1948 and ending July 1, 1958. The proposed bonds would have been issued after the July 1, 1948 commencement date and would have matured beyond the schedules originally fixed. The Court nevertheless approved the bonds:

> "...The Charter of the City authorized the issuance of the bonds. The freeholders approved the amount and purpose of the bonds, which were the same in both issues. Other requirements, such as denomination, maturities and series, are matters that may be imposed in the discretion of the issuing authority, so long as constitutional and statutory limitations are not transgressed. All the maturities here were within the time prescribed by the constitution. The fact that the bonds as issued were in five series instead of one, and that they were to mature from two to twelve years after date, as fixed by the Commission, is not material." 41 So. 2d at 889.

Even in instances where there have been mistakes, misstatements or omissions concerning financial provisions of proposed bond issues which appear in the ballot itself, bond statutes so approved by the voters have not been declared invalid; such irregularities do not have the tendency to mislead, deceive or confuse the people and are not considered substantial. *Cf., Dunlap v. Williamson,* 369 P. 2d 631 (Okl. Sup. Ct. 1962); *State v. Beidleman,* 121 N.E. 2d 561, 564 (Ohio Ct. of App. 1953). Where the ballot itself correctly sets forth the essential provisions of the bond proposition to be passed upon by the electorate (as in the present situation involving the Higher Education Construction Bond Act (1964)), a misstatement, irregularity or omission of an insubstantial nature in a public election notice will not suffice to vitiate the law authorizing the proposed bonds. *Cf., State v. McGlynn,* 135 N.E. 2d 632 (Ohio Ct. of App. 1955).

Decisions which have declared bond acts invalid because of defects in election notices or in the statement of the public question submitted usually have involved

instances where particular provisions or terms of proposed bonds have been in conflict with specific statutory requirements, *Mann v. City of Artesia,* 76 P. 2d 941 (N.M. Sup. Ct. 1938), or where general statutory provisions have been construed by state courts to require the inclusion of the subject matter omitted, *Eastern Shore Public Service Co. v. Town of Seaford,* 137 Atl. 115 (Del. Ct. of Ch. 1936); *Peterman v. City of Milford,* 104 A. 2d 382 (Del. Ct. of Ch. 1954).

New Jersey decisions pertaining to elections in general clearly support the conclusion that the bond act has been lawfully adopted. *Cf., Sharrock v. Keansburg,* 15 N.J. Super. 11 (App. Div. 1951). In *Lindabury v. Clinton Township,* 93 N.J.L. 96 (Sup. Ct. 1919), it was contended that an election should be invalidated because of the failure of the local clerk to advertise the specific fact that the question propounded by the statute would be submitted to the voters. The Court noted that there was no specific requirement in the act itself for special publication. It emphasized, however, that:

> "There is no serious contention in the case that a full and fair expression of local sentiment upon this question was not obtained at this election; that any voter was misled, deluded or ignorant of the situation, or failed to receive a sample ballot presenting the legislative query, and such being the fact that the rule of law is settled that a mere clerical oversight, omission or deliction will not avoid the result." 93 N.J.L. at 98. See also, *Brown v. Street Lighting District,* 70 N.J.L. 762, 766 (E. & A. 1904); *Winters v. Warmolts,* 70 N.J.L. 615, 618 (Sup. Ct. 1903); *Hartley v. Board of Elections,* 93 N.J.L. 313, 314-15 (Sup. Ct. 1919).

It has been recognized consistently by the New Jersey courts in recent decisions that technical irregularities in election procedures cannot serve to invalidate the results of an otherwise fair election and thus frustrate the expressed will of the electorate. *In re Livingston,* 83 N.J. Super. 98, 107 (App. Div. 1964); *In re Bethlehem Tp.,* 74 N.J. Super. 448, 463 (App. Div. 1962). In *Wene v. Meyner,* 13 N.J. 185, 196 (1953) this essential policy was aptly expressed:

> "Where, as here, there is an unwitting omission of a formal requirement otherwise supplied in substance, the ballots are invulnerable; the overturning of the result in such circumstances would frustrate the will of the voters for errors and omissions of form not related to the merits; and this would do violence to the legislative will. In this regard, acts and omissions by the district board mandatory before election may for reasons of policy be deemed directory after the election, if it undubitably appears that the election result was not thereby prejudiced. The question is essentially one of fairness in the election. An election is not vitiated by the defaults of election officers not involving malconduct or fraud, unless it be shown that thereby the free expression of the popular will in all human likelihood has been thwarted."

To the same effect is the statement in *In re Hackensack Recall Election,* 31 N.J. 592, 595 (1960):

"*** In the absence of malconduct or fraud, we cannot overturn a concluded election for an irregularity in the ballot unless in all human likelihood the irregularity has interfered with the full and free expression of the popular will, and has thus influenced the result of the election."

As previously demonstrated, the amendments of Chapter 143 pertained to technical changes, non-critical financial provisions and minor alterations in phraseology. The published Act, in its recitals, fully set forth the proposals for capital expenditure and itemized the specific amounts to be allocated for higher education purposes. The publication contained the question to be voted upon by quoting verbatim the title of the Act. The title specified the amount of the public debt to be created, the maximum amount of interest to be paid thereon and the purpose for which the bonds were to be issued. This is what the Legislature deemed important. It is thus clear that the amendments reflected in L. 1964, c. 143 did not alter materially the substantive provisions of the Higher Education Construction Bond Act (1964). Under the foregoing authorities the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended by L. 1964, c. 143, was duly and validly approved by the people of the State of New Jersey at the General Election held on November 3, 1964.

For the reasons expressed herein, we are of the opinion that the Issuing Officials may lawfully issue bonds in accordance with the provisions of the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended by L. 1964, c. 143.

Very truly yours,
ARTHUR J. SILLS
Attorney General
By: DONALD M. ALTMAN
Deputy Attorney General

December 29, 1964

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

FORMAL OPINION 1964—NO.7

Dear Mr. Kervick:

You have requested an opinion as to the exemption from personal property taxation of certain enumerated classifications of vehicles registered under the provisions of Title 39 of the Revised Statutes of the State of New Jersey, and upon which registration fees have been paid.

More specifically, you have asked whether the following types of vehicles are exempt from taxation under the provisions of N.J.S.A. 54:4-3.21, viz: