> the employee for support and maintenance and have been reported to the policy holder for the insurance."

This contract evinces an understanding on the part of the persons charged with the implementation and administration of the statute that the dependency requirement with respect to "children" covered by the act encompasses the generally accepted meaning of this term as involving actual or substantial dependence. The administrative interpretation and application of a statute, when consistent with the overall objectives of the legislation, are persuasive of the true meaning of the statute and the intent of the Legislature. *Lane v. Holderman,* 23 N.J. 304 (1957): *Walsh v. Dept. of Civil Service,* 32 N.J. Super. 39, 48 (App. Div. 1954), *certif. granted* 17 N.J. 182 (1955); *Swede v. City of Clifton,* 39 N.J. Super. 366, 377 (App. Div. 1956), *aff'd* 22 N.J. 303 (1956). Moreover, we are satisfied from the facts which you have furnished that the child in question is actually dependent upon her legal guardian for the necessities of life and is thus "wholly dependent" upon her guardian within the meaning and intendment of the Act, notwithstanding the nominal receipts of income which she receives from the Social Security and Veterans' Administrations.

In sum, it is our opinion that an unmarried child under the age of 19 years residing with an employee who is the legally appointed guardian of the child in a regular parent-child relationship and who is substantially and actually dependent on the employee for basic support and maintenance is a dependent within the meaning of N.J.S.A. 52:14-17.26(d).

Very truly yours,
ARTHUR J. SILLS
Attorney General
By: ALAN B. HANDLER
First Assistant Attorney General

December 29, 1964

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

FORMAL OPINION 1964—NO. 9

Dear Mr. Kervick:

You have asked for our opinion concerning the effect to be given to an application for accidental disability pension, in the case where the application is denied but an affirmative finding of permanent disability is made by the Pension Board involved.

It is our opinion, for the reasons stated herein, that an application for accidental disability which is denied but with respect to which there has been an affirmative

finding of permanent disability should be treated as an ordinary disability application.

You have stated that frequently an application is filed with one of the Pension Boards for accidental disability retirement with a claim therein that the applicant-member is permanently and totally disabled, that he is not capable of performing his regular duties, and that there are no other duties which the employer can assign to him. Claim is also made therein that the disability sustained was service-connected in origin. These are the statutory requisites of accidental disability retirement, in one form or another, of all five of the State Pension Systems, the Public Employees' Retirement System (N.J.S.A. 43:15A-43); the Consolidated Police and Firemen's Pension Fund (N.J.S.A. 43:16-2), as amended and supplemented by P.L. 1964, c. 242; the Police and Firemen's Retirement System (N.J.S.A. 43:16A-7), as amended and supplemented by P.L. 1964, c. 241; the Teachers' Pension and Annuity Fund (N.J.S.A. 18:13-112.41); and the Prison Officers' Pension Fund (N.J.S.A. 43:7-12).

All the Funds, except for the Prison Officers' Pension Fund, allow an accident disability retirement pension of two-thirds of the applicant's annual compensation at the time of the occurrence of the accident. On the other hand, the quantum of recovery for an ordinary (non-service connected) disability claim varies amongst the Systems, but, in all cases, is substantially less than the recovery allowed for a proven accidental disability.[1] As a result, many exaggerated claims have been registered by applicants with the hope that the higher two-thirds accidental claim will be obtained, but if it is not, that the applicant may continue to work rather than be the recipient of a substantially lower benefit and a forced retirement. The question is, therefore, whether the applicant may be required to retire upon his own claim of permanent disability and the Board's finding that he is permanently disabled but that the injury causing the disability was not work-connected.

With the exception of the Prison Officers' Pension Fund, (N.J.S.A. 43:7-1, *et seq.*, and more particularly N.J.S.A. 43:7-12, which appears to be silent respecting a provision for ordinary disability retirement benefit,[2]) all the Pension Systems contain provisions for both accident and ordinary disability retirement benefits. The various Boards in considering the law and facts presented in these applications, and by making determinations and findings pursuant to the authority granted to them by the Legislature in the above mentioned statutes, are exercising a quasi-judicial function. *McFeely v. Board of Pension Com'rs*, 1 N.J. 212, 215 (1948). The Boards must decide whether the disability was the result of a work-connected accident and not the applicant's "wilful negligence." However, the Boards also have the affirmative duty to make the following determination:

> "[A finding must be made] on the basis of the medical evidence in the record and such other facts in the record as are relevant to the issues before it. The issues before the commission are: (1) whether the employee is physically fit (a) to perform his usual duty or (b) any other available duty in the department which his employer is willing to assign to him, and (2) whether (a) his usual duty is available or (b) there is another available job in the department which the employer is willing to assign to him. Evidence with respect to such issues should be before the commission and the determination of the commission must be supported by such evidence." *Atty. Gen.* F.O. 1954, No. 7. See also, *Getty v. Prison Officers' Pension Fund, supra*, at p. 387; *Cf. Roth v. Board of Trustees, etc.* 49 N.J. Super. 309 (App. Div. 1958).

Thus, a finding that an injury or disability was work-connected is not made to the exclusion of, but in addition to, an affirmative finding that the applicant is permanently disabled and that no other suitable employment can be obtained for him. The word "and" is employed as a connecting word between the double requirement of work-connection and permanent disablement in the provisions of all five Pension Boards. See N.J.S.A. 43:15A-43 (Public Employees' Retirement System); N.J.S.A. 43:16-2, as amended and supplemented by P.L. 1964, c. 242, (Consolidated Police & Firemen's Pension Fund); N.J.S.A. 43:16A-7, as amended and supplemented by P.L. 1964, c. 241, (Police and Firemen's Retirement System); N.J.S.A. 43:7-12 (Prison Officers' Pension Fund) and R.S. 18:13-112.41 (Teachers' Pension and Annuity Fund). Both of the requirements must be fulfilled in order to qualify for an accidental disability. *Fattore v. Police and Firemen's Retirement System of N.J.*, 80 N.J. Super. 541 (App. Div. 1963); *Kochen v. Consolidated Pol., etc. Pension Fund Comm.*, 71 N.J. Super. 463 (App. Div. 1962). A determination that the injury was not work-connected precludes a grant of accidental disability of two-thirds of final compensation, but can still leave standing a finding that the disability is permanent and that no other suitable employment can be obtained for the applicant.

The ordinary disability provisions in all but the Prison Officers' Pension Fund, require in general that the applicant be physically or mentally incapacitated for the performance of his duty. The requirement that an accidental disability be of a permanent nature varies amongst the systems, but entails within each of the Systems, exactly the same quantum of proof necessary to establish ordinary disability.[3]

In conclusion, we are of the opinion that if the pensioner's application for accidental disability is denied because the accident was not work-connected and if the member is found to be permanently disabled and he has been employed for the statutory number of years necessary to permit retirement for ordinary disability, he should be retired on the basis of such an ordinary disability.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: RICHARD F. ARONSOHN
Deputy Attorney General

[1]The ordinary disability allowance provisions are to be found in the following sections of the statutes: N.J.S.A. 43:15A-45(b) (Public Employees' Retirement System); N.J.S.A. 18:13-112.43 (Teachers' Pension and Annuity Fund); N.J.S.A. 43:16-2 (Consolidated Police and Firemen's Pension Fund); N.J.S.A. 43:16A-6(2) (b) (Police and Firemen's Retirement System). No provision for an ordinary disability allowance is made in the Prison Officers' Pension Fund. See N.J.S.A. 43:7-7, *et seq.*, with particular attention to N.J.S.A. 43:7-12.

[2]The matter was briefed and argued in *Getty v. Prison Officers' Pension Fund*, 85 N.J. Super. 383 (App. Div. 1964), *pet. for certif. pending* N.J. ; filed Dec. 10, 1964, but the Court did not specifically address itself to this question, while remanding the cause for a further hearing.

[3](a)*Public Employees' Retirement System:* that the applicant is "physically or mentally incapacitated for the performance of duty and should be retired." N.J.S.A. 43:15A-42 and 43. (b) *Teachers' Pension and Annuity Fund:* that the "member is physically or mentally incapacitated for the performance of duty and should be retired." R.S. 18:13-112.41 (paragraphs 1 and 3). (c) *Consolidated Police and Firemen's Pension Fund:* "The determination shall specify whether or not such member is permanently disabled from performing his usual duty and any other available duty in the department which his employer is willing to assign to him . . ." N.J.S.A. 43:16-2 (paragraph 3). (d) *Police and Firemen's Retirement System:* that "such member is mentally or physically incapacitated for the performance of his usual duty and of any other

available duty in the department which his employer is willing to assign to him and that such incapacity is likely to be permanent and to such an extent that he should be retired." N.J.S.A. 43:16A-6(1) and N.J.S.A. 43:16A-7(1).

December 30, 1964

HONORABLE RAYMOND F. MALE
Commissioner, Department of Labor & Industry
John Fitch Plaza
Trenton, New Jersey

FORMAL OPINION, 1964—NO. 10

Dear Commissioner Male:

You have requested our opinion as to whether or not the following situations are covered by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25, *et seq.:*

a. A sewerage authority created by a municipality having a population of less then 45,000 people; and
b. A school district having a population of less than 45,000 people.

It is our opinion for the reasons stated herein that the foregoing governmental bodies are covered by the New Jersey Prevailing Wage Act.

The Act states *inter alia:*

> "Every contract in excess of $2,000.00 for any public work to which any public body is a party shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workmen employed in the performance of the contract and the contract shall contain a stipulation that such workmen shall be paid not less than such prevailing wage rate . . . ." N.J.S.A. 34:11-56.27.

The Act is remedial in nature in that it seeks to insure payment of a minimum wage to all employees engaged on a public works project. The Legislature declared it to be the public policy of this State that there should be established:

> ". . . a prevailing wage level for workmen engaged in public works in order to safeguard their efficiency and general well being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being." N.J. S.A. 34:11-56.25.

Similar acts have been upheld as a valid exercise of the state's police power for the