23 (*Essex Cty. Orphan's Court* 1937) and cases cited therein. This becomes more apparent when the "party in interest" requirement is contrasted with its counterpart under the Unsatisfied Claim and Judgment Fund Law. That Law strictly limits the right to file a claim to "any qualified person. . . .who suffers damages resulting from bodily injury or death or damage to property. . . ." *N.J.S.A.* 39:6-65. The distinction between these two provisions is rendered more significant because the Unsatisfied Claim and Judgment Fund expressly prohibits subrogation by an insurance carrier which has paid its own insured. *N.J.S.A.* 39:6-71. There is a conspicuous and, therefore, meaningful absence of a similar prohibition in the Security Fund Act. Since both Acts were passed at the same time and are in *pari materia,* it must be concluded that the Legislature, being familiar with its own enactments, intended to permit subrogation under the Security Fund Act.

Based upon all of the foregoing, we conclude that the insurance companies in the matter *sub judice,* as subrogees, are legally entitled to file for payment from the Motor Vehicle Liability Security Fund.

Very truly yours,
ARTHUR J. SILLS
Attorney General of New Jersey
By: E. ROBERT LEVY
Deputy Attorney General

1. See *Selected Risks Insurance Company v. Zullo, supra,* p. 368; Budget Message of Richard J. Hughes, Governor of New Jersey, for the fiscal year ending June 30, 1968, page 61; Gaffney, *The Motorist, His Victims and the State,* 25 State Gov't 266 (1952).
2. Both articles were cited by the Court as setting forth the genesis, operation and purpose of the Act. See *Indemnity Ins. Co., etc. v. Metropolitan Casualty Ins. Co., N.Y.,* 33 N.J. 507, 513 (1960).
3. The authoritative quality of their conclusion is further supported by the fact that the bill was recommended by the Department of Banking and Insurance. See statement accompanying L. 1952, c. 175, Assembly, No. 346, 1952.

February 17, 1969

HONORABLE RICHARD J. HUGHES
Governor
State House
Trenton, New Jersey 08625

FORMAL OPINION 1969—NO. 2

Dear Governor:

You have requested our opinion as to whether the current 193rd New Jersey Legislature may rescind a concurrent resolution proposing a constitutional amendment which had been agreed to by more than three-fifths of the members of both Houses of the preceding 192nd Legislature. The resolution has been ministerially

filed with the Secretary of State, but has not yet been delivered by the Secretary of State to the appropriate County officials for submission to the people at the next general election pursuant to the provisions of N.J.S.A. 19:12-1, *et seq.* If the answer to the inquiry is affirmative, you then request advice concerning the vote required to rescind such resolution.

You have informed us that on April 29, 1968, by a vote of 34 to 0, the Senate of the 192nd New Jersey Legislature adopted Senate Concurrent Resolution No. 41, which proposed a constitutional amendment releasing the State's claim of title to certain meadowlands. On November 18, 1968, by a vote of 55 to 13, the General Assembly of the 192nd Legislature also adopted Senate Concurrent Resolution No. 41. Records indicate that the notice and public hearing requirements of N.J. Const., Art. IX, Sec. I were satisfied prior to these votes. The resolution was filed with the Secretary of State on November 23, 1968 and is scheduled to be placed on the ballot at the next general election in November, 1969. On January 14, 1969, the 193rd New Jersey Legislature assumed office.

Our review of the New Jersey Constitution and applicable case law indicates that a subsequent legislature may rescind a resolution proposing a constitutional amendment if a three-fifths vote of all the members of each of the respective houses is obtained.

I

The applicable constitutional provision, N.J. Const., Art. IX, Sec. I, states as follows:

> "Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to the first vote thereon in the house in which such amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house. Thereafter and prior to such vote a public hearing shall be held thereon. If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective houses, then such amendment or amendments shall be submitted to the people."

The aforesaid constitutional provision does not establish any specific procedure for the rescission of resolutions proposing constitutional amendments. However, a survey of the constitutions of our sister states indicates that none contain a specific procedure for rescission.

Whether the New Jersey Legislature has the implied power to rescind a resolution providing for a constitutional amendment has never previously been raised in the courts of this state or presented to the Attorney General. A review of the minutes of the Constitutional Convention Record, Vol. III, Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, indicated that the question was not discussed by the framers.

In Michigan, however, the Attorney General rendered an opinion in which he concluded that the legislature has the power to rescind a resolution directing the submission of a constitutional amendment at a subsequent legislative session prior to the submission of the question to the public. Opinion No. 652, Attorney General of Michigan (1948). He reasoned that the legislature may ordinarily reconsider its actions and there was no specific reason for differentiating a resolution of this type from other legislative actions. He cited *Crawford v. Gilchrist,* 64 Fla. 41, 59 So. 969 (1912) wherein the court stated: "A right to reconsider action taken is an attribute of all deliberative bodies and is not forbidden to the legislature by the commission." He then went on to indicate that since a legislature may pass an act at one session and repeal it at the next, there would appear to be no reason to hold joint resolutions immune from the exercise of the same power. Thus, he determined:

> ". . . In the absence of authority directly to the contrary, no good reason appears to exist why at any time before the administrative officers charged with that duty have taken the necessary steps to submit the amendment to an election, the legislative action which forms the authority for such submission cannot be rescinded." Opinion No. 652, Attorney General of Michigan (1948).

See also *In re Senate Concurrent Resolution No. 10 of the Forty-First General Assembly,* 137 Colo. 491, 328 P. 2*d* 103 (1958); *Crawford v. Gilchrist, supra; In re Opinion of the Justices,* 252 Ala. 89, 39 So. 2*d* 665, 668 (1949). These three decisions found no impropriety in the legislature rescinding a prior resolution proposing a constitutional amendment.

An opinion contrary to the foregoing was rendered by the Attorney General of California, who concluded that a subsequent legislature did not have the power to reconsider a resolution proposing a constitutional amendment. Opinion No. 173, Attorney General of California (1955). Citing the constitutional language, ". . . and it shall be the duty of the legislature to submit such proposed amendment . . . to the people . . .", Calif. Const. Art. XVIII, Sec. I, he concluded that such language placed a mandatory duty on the legislature to submit the resolution to the people. He relied upon prior California decisions holding that the California Legislature in proposing a constitutional amendment is limited to an exercise of powers expressly granted by Art. XVIII, Sec. I and must strictly observe the mandatory requirements of that section.

The reasoning of the California Attorney General's opinion is not persuasive in light of the decisional law of this State. It is a general rule of law in the State of New Jersey that restraints on legislative power must be expressly stated or arise by necessary and fair implication. The New Jersey courts have held that the state constitution, unlike the federal constitution, is not a grant but a limitation of legislative power. *Behnke v. N.J. Highway Authority,* 13 N.J. 14 (1953); *Gangemi v. Berry,* 25 N.J. 1 (1957); *State v. Murzda* 116 N.J.L. 219 (E.&A. 1935). Since the New Jersey Constitution does not expressly limit the power of the legislature to rescind or revoke earlier resolutions proposing constitutional amendments, it is reasonable to conclude that the legislature has the implied authority to take such action under New Jersey decision law.

Additionally, it should be noted that the New Jersey Constitution of 1844, Art. IX, Sec. I contained the exact language as California Const., Art. XVIII, Sec. I: ". . .

and it shall be the duty of the legislature to submit such proposed amendment . . . to the people . . ." However, when the New Jersey Constitution was revised in 1947 the language was changed to read: ". . . the same shall be submitted to the people . . .", N.J. Const., Art. IX, Sec. I, ". . . in the manner and form provided by the legislature", N.J. Const. Art. IX, Sec. IV. The procedural mechanism for submission to the people appears in N.J.S.A. 19:12-1, *et seq.* These statutory provisions require the Secretary of State, not later than the sixtieth day preceding the primary election for the general election, to cause to be delivered to the Clerk of the County and the County Board wherein any such election is to be held, a notice stating the public questions which are to be submitted to the voters of the State at the ensuing general election. Thus, under present New Jersey constitutional law, the filing of a resolution proposing a constitutional amendment is a ministerial act which is revocable up until such time as the Secretary of State executes the obligation imposed upon him under N.J.S.A. 19:12-1.

The aforesaid reasoning does not, in our opinion, become altered when the resolution sought to be revoked or rescinded has been passed by a previous legislature. Compare Opinion 652, Attorney General of Michigan (1948). Therefore, the 193rd Legislature has the authority to rescind Senate Concurrent Resolution No. 41.

II.

With respect to the vote required for a subsequent New Jersey Legislature to rescind a prior resolution proposing a constitutional amendment, Art. IV, § IV, par. 3 of the New Jersey Constitution provides that each house of the legislature shall determine the rules of its own proceedings. Neither the standing rules of the New Jersey Senate and the New Jersey Assembly, Cushing's *Law and Practice of the Legislative Assembly* nor the rules of practice followed by the New Jersey Legislature in the absence of standing rules touch upon this question. New Jersey case law and opinions of the Attorney General are also silent on this issue.

However, Opinion No. 745, Attorney General of Michigan (1948), answered this inquiry by concluding that where there is no express contrary rule on the subject a vote of rescission required the same number of votes required to take the initial action. In Michigan, a two-thirds vote is required to pass a proposed constitutional amendment. Thus, with respect to the Michigan House of Representatives where the rules of practice were silent, the Attorney General stated that a two-thirds vote was required to rescind such motion. With respect to the Michigan Senate, the Attorney General stated that a two-thirds vote was also required, but such requirement came from the express provisions of Section 705 of the Hughes' *American Parliamentary Guide,* which was incorporated into the Michigan Senate rules at that time.

The opinion of the Michigan Attorney General replied upon *Whitney v. Village of Hudson,* 69 Mich. 189, 37 N.W. 184, 190 (1888), which stated:

> "It is claimed, also, by the defendants' counsel, that the vote to reconsider was not carried; that where, by statute, a vote of two-thirds is required to pass a resolution, it cannot be reconsidered or rescinded except by a two-thirds vote. This was declared to be the law in the case of Stockdale v. School-dist., 47 Mich. 226 (10 N.W. Rep. 349), where the motion was to rescind. And, where the body has adopted no rule regulating the practice upon motions for reconsideration, it is not percieved why the same ruling should not apply.
>
> "The law requires a vote of two-thirds of the members of the body to pass the act in the shape it is in when the vote is taken. Two-thirds are

> satisfied with it as it then reads, and no reason exists why a majority less than two-thirds can bring the resolution again before the body for the purpose of changing its features, or postponing action. There should be some stability in legislative action which is passed under the requirements of a law calling for a vote of two-thirds of its members, and it should remain as the two-thirds have passed it, unless the same number desire a further consideration of the measure."

Citing the *Whitney* case, the Michigan Attorney General concluded that:

> ". . . as to the House of Representatives, there being no express rule on the subject, its action is governed by the general rule announced by the Supreme Court of this state in *Whitney v. Village of Hudson* and that as to the House of Representatives a vote of two-thirds of the members of that body will be required to rescind the resolution in question." Opinion No. 745, Attorney General of Michigan (1948).

In the instant circumstances, since the New Jersey Constitution has no provision for rescission and the legislative rules are silent on the subject, it would appear reasonable and proper to follow the procedure adopted by Michigan, that a rescission must be accomplished by the same number of votes required for passage. Therefore, the 193rd Legislature may rescind Senate Concurrent Resolution No. 41 only by a three-fifths vote of both houses of the legislature.

For the foregoing reasons, it is our opinion that the 193rd Legislature has the implied power to rescind Senate Concurrent Resolution No. 41 prior to its submission to the electorate in the next general election in November 1969. A three-fifths vote of both houses is required to rescind such resolutions.

Respectfully,
ARTHUR J. SILLS
Attorney General

By: RACHEL LEFF
Deputy Attorney General