for other purposes. There is, consequently, no clearly defined public interest in maintaining the confidentiality of these audit reports.

For these reasons, you are advised that an audit report prepared by the DOT of the financial status of the TNJ as a prerequisite to the grant of substantial bus subsidies to the TNJ to minimize certain operating deficits is a public record within the "common law" rule. It is, therefore, subject to inspection by a person with a well defined interest in the subject matter of bus subsidies in this State. You are also advised that there is serious concern that such audit report is subject to public disclosure under the provisions of the Right to Know law, as well, especially since there is no precise consideration of confidentiality which would outweigh the public's right to be familiar with the disbursement of public funds through bus subsidies to motor bus carriers.

Sincerely yours,
WILLIAM F. HYLAND
Attorney General

By THEODORE A. WINARD
Assistant Attorney General

* In accordance with the provision of the Right to Know law, Govenor Hughes issued Executive Order No. 9 which established the various records which were not to be deemed public records under the Right to Know Law. In addition, Executive Order No. 9 empowered the head or principal executive of each department of State government to adopt and promulgate regulations setting forth which records under his jurisdiction shall not be deemed public records.

September 5, 1974

WILLIAM M. LANNING, *Chief Counsel*
Legislative Services Agency
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 6 - 1974

Dear Mr. Lanning:

You have inquired whether the State Constitution allows an appropriation to provide legislators with office space in their home districts. It is concluded on the basis of constitutional and judicial precedent that such an appropriation would be valid. It would be important, however, for any such program to be coordinated with the State Treasurer because of his specific responsibilities in the area of space procurement and allocation and for the additional purpose of formulating appropriate controls over procedures.

The provision of the 1947 New Jersey Constitution directly applicable is Art. IV, § IV, par. 7, which provides in pertinent part:

> "Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever . . . ."

In drafting this provision. the framers of the 1947 Constitution effected a change from fixed legislative compensation as prescribed in the 1844 Constitution to a flexible mode of compensation.* In other respects they left the 1844 provision unchanged. The proceedings of the 1947 Convention reveal, in this connection, an almost exclusive concern with the question of fixed versus flexible salaries. The only reference to the prohibition of allowances discovered is the remark, in committee, that "members of a legislative council could not be paid for what might amount to considerable extra work." III *Proceedings of the Constitutional Convention of 1947*, p. 689.

Examination of the previous constitutional history of the prohibition provides no substantial guidance in answering the present inquiry. It first appeared as part of the 1875 amendments to the 1844 Constitution, and substituted the fixed compensation specified for per diem and mileage payments.** Proclamation of Sept. 28, 1975, L. 1876, p. 433.

As part of the former Constitution, the paragraph received its only judicial interpretation in *Wilentz ex rel Golat v. Stanger*, 129 N.J.L. 606 (E. & A. 1943), where the court found the clause violated by payment of salary to an incumbent legislator for services as counsel to the Milk Control Board. The court stated:

> "The compensation of $500 fixed for members of the legislature is the *maximum compensation*, according to our understanding, permitted to be paid *from the state treasury for any and all services* by such members to or on behalf of the state, and the words 'no other allowance or emolument, directly or indirectly, for any purpose whatever' are inclusive of the compensation nominated by the director to be paid to Mr. Stanger for his services as counsel." (Emphasis added.) 129 N.J.L. at 609.

The court's comment suggests that the evil to be avoided is pecuniary gain to the legislators over and above their stated compensation and not the provision of ancillary services or facilities, in aid of the strictly legislative function.

The courts of sister states have so interpreted constitutional provisions kindred to N.J. Const. Art. IV, § IV, para. 7. They have distinguished between payments of personal expenses and those of a distinctly legislative character. Where the proposed allowance is not related to a legitimate legislative expense, it is prohibited; where such a relation is shown, it is allowed. *State ex rel Griffith v. Turner*, 117 Kan. 755, 233 P. 510 (1925) (invalidating an unrestricted per diem allowance as not necessary to enable the legislature to perform its functions); *Peay v. Nolan*, 157 Tenn. 222, 7 S.W. 2d 815 (1928) (appropriation for postage, stenographic hire and other necessary expenses, unrelated to actual expenses, invalid as not directed to expenses arising from the performance of official duties); *Manning v. Sims*, 308 Ky. 587, 213 S.W. 2d 577 (1948) (allowing the judiciary a monthly sum, determined to be a reasonable minimum estimate, for postage, telephone, supplies, stenographic and law clerk hire, books and periodicals). The Kentucky court stated:

> "Unless the contrary is clearly expressed, it is consistently held that the allowance of reasonable expenses incurred in the discharge of the official duties is neither salary, compensation, nor an emolument of the office." 213 S.W. 2d at 580.

Squarely on point with regard to the present inquiry is the more recent *Spearman v. Williams,* 415 P. 2d 597 (Okla. 1966), distinguishing disallowable personal expenses from proper legislative outlays, among which were found to be a monthly allowance in lieu of actual expenses for the maintenance of mandatory legislative district offices. The court reasoned:

> "The functions of government have grown and expanded greatly since statehood, many new boards, commissions and agencies having been created to carry out the ever increasing necessities, welfare and desires of our people. Many members of the Legislature, past and present, have not maintained offices within which to transact legislative business in their districts. The Legislature has now, due to the present press of legislative business, deemed it advisable for each member thereof to maintain an office in their respective districts so they can be more available and accessible to advise and consult with their constituents, which the legislative body evidently thought would inure to the benefit of the whole state.
>
> "It is our conclusion that such office and traveling expenses incurred by members of the Legislative Council are expenses of the performance of official duties and are not compensation, salary or emoluments . . . ." 415 P. 2d at 602.

It is therefore sound to distinguish for purposes of Art. IV, § IV, para. 7, between payments constituting pecuniary gain and those which directly facilitate the conduct of legislative business, although they may incidently reduce expenses otherwise borne by particular legislators. See *Manning v. Sims, supra.* Among the latter are the existing appropriations for legislative aids, for postage and telephone, and the proposed appropriation for legislative district offices.

What has been said also disposes of any constitutional difficulties on the score of Art. IV, § IV, para. 8, providing:

> "The compensation of members of the Senate and General Assembly shall be fixed at the first session of the Legislature held after this Constitution takes effect, and may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly."

This paragraph is new in the 1947 Constitution, for the obvious reason that compensation was previously fixed by organic law rather than by statute. Since the proposed appropriation is not compensation for purposes of paragraph 7, the succeeding paragraph, *a fortiori,* is no impediment.

For the reasons above stated, you are advised that an appropriation to provide

legislative district offices would be valid under Art. IV, § IV, para. 7 of the 1947 New Jersey Constitution. Your attention is again directed, however, to the importance of coordination of such a program with the State Treasurer.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: PETER D. PIZZUTO
Deputy Attorney General

* Art. IV, §IV, para. 7 of the 1844 document, as amended, directed:

> "Members of the senate and general assembly shall receive annually the sum of five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever."

** The original language of 1844 specified:

> "Members of the senate and general assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the State; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session, and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra session by the Governor they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, on the most usual route."

September 9, 1974

THE HONORABLE ANN KLEIN
Commissioner
Department of Institutions
and Agencies
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1974

Dear Commissioner Klein:

You have asked for an opinion as to whether the county government or the state government is responsible for establishing shelter care facilities for juveniles in need of supervision pursuant to N.J.S.A. 2A:4-42 *et seq.* Initially, it should be noted that N.J.S.A. 2A:4-42 does not require that any new accommodations for juveniles be built or otherwise established. Since the Legislature enacted this code only a few months in advance of its effective date, it did not contemplate the need to establish additional residential facilities. If, however, existing residential arrangements do