livery. Nor is it significant that these possible purposes behind the amendment have not been explicitly articulated by the Legislature, because "[a] statutory discrimination will not be set aside *if any state of facts reasonably may be conceived to justify it.*" *Dandridge v. Williams, supra,* 397 U.S. at 485 (emphasis added).

For the foregoing reasons, you are advised that the provisions of the Unemployment Compensation Law and the Temporary Disability Benefits Law which disallow disability benefits for normal pregnancy except for the four weeks before the expected date of birth and the four weeks following delivery appear to be consistent with applicable constitutional requirements as explicated in recent decisions of the Supreme Court of the United States. You are further advised that claims based on medical complications of pregnancy are to be treated the same as any other claim for disability benefits, with the exception of claims arising from normal pregnancy and delivery. Finally, you are advised that the portion of N.J.S.A. 43:21-5(a) under which women who leave their jobs "solely by reason of [their] pregnancy" are not thereby disqualified for unemployment benefits appears to present no legal problem.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey

By: MICHAEL S. BOKAR
Deputy Attorney General

1. The meaning of this provision, as it has been applied in practice by the Department of Labor and Industry, can best be illustrated by a hypothetical example. Suppose a woman is told by her doctor that she is pregnant and that the expected date of birth is June 15. If the mother has a full-term pregnancy and the child is born on or about the estimated date, she is eligible for disability benefits for four weeks before and after the actual date of birth. Similarly, if the child is born prematurely on a date reasonably close to the expected birth date—one to four weeks early, for example—the mother will likewise be eligible for the eight-week period. If the mother has a premature delivery more than four weeks before the estimated birth date, she would have to show that her doctor's estimate was medically unreasonable at the time it was originally given in order to qualify for benefits for the four weeks before birth, although she would still be eligible for the four weeks after birth, since these would be weeks "following the termination of the pregnancy."

2. We are informed that the primary reason for this amendment is to enable pregnant women to qualify for *disability* benefits in cases where they suffer a disability *not* caused by pregnancy during the time they are unemployed. Under the Unemployment Compensation Law, a worker who becomes disabled while unemployed is not entitled to disability benefits unless he or she "would be eligible to receive benefits. . . except for his inability to work." N.J.S.A. 43:21-4(f)(1). Consequently, if the Legislature had not amended N.J.S.A. 43:21-5(a) to exclude pregnant women from the general prohibition against leaving work for personal reasons, a woman who was forced to leave her job because of pregnancy and later happened to sustain a disability unrelated to the pregnancy would have been ineligible for disability benefits except during the eight weeks surrounding delivery.

3. In periods of high nationwide unemployment, a claimant may also qualify for up to 26 additional weeks of unemployment compensation benefits.

4. New Jersey likewise does not pay for disabilities of seven days or less under the Temporary Disability Benefits Law, except where the disability lasts for three weeks or more. N.J.S.A. 43:21-39. Also, as noted earlier, benefits, as in California, are payable for a maximum of 26 weeks.

5. The Court noted in a footnote that evidence presented to the trial court indicated that women

requirements as to meeting minimal building code standards would be permissible.

"We do not, however, completely rule out the possibility that there exist some inherent aspects of an abortion procedure which make it unique from other medical procedures of substantially the same risk. For such aspects, the Board of Health may be able to show that a narrowly drawn health regulation is compelling. Again we should point out that the state will bear a heavy burden in justifying any such regulation, both with respect to showing the existence of a unique medical complication and with respect to showing that the problem is of such a nature as to be beyond the general scope of a doctor's professional judgement." 505 F. 2d at 1153-54 (*Dictum*)

Similarly, in *Word v. Poelker*, 495 F. 2d 1349 (8th Cir. 1974), the court invalidated a St. Louis city ordinance regulating abortion clinics because it failed to exclude the first trimester of pregnancy from its coverage and was thus an overbroad enactment infringing unreasonably upon fundamental rights. The court said that the ordinance was "additionally invalid" in that the government's interests were already protected by (1) the physician's medical judgment and his professional, ethical standards and (2) the city and state health regulations which were already in effect and which had application to clinical procedures in general, so that the "extra layer of regulation" imposed by the abortion clinic regulations was unreasonably burdensome of patients' and physicians' rights and not legitimately related to recognized objectives of the state to protect maternal health and potential human life. 495 F. 2d at 1351. Accord, *Hodgson v. Anderson*, 378 F. Supp. 1008, 1018 (D. Minn. 1974), appeal dismissed, 420 U.S. 903, 95 S. Ct. 819, 42 L. Ed. 2d 832 (1975).

In *Hallmark Clinic v. North Carolina Department of Human Resources*, 380 F. Supp. 1153 (E.D.N.C. 1974) (3-judge court), the court said:

"Under *Roe* and *Doe*, if North Carolina may regulate the performance of first-trimester abortions at all, it may do so only to the extent that it regulates tonsillectomies and other relatively minor operations." 380 F. Supp. at 1157.

And further:

"If North Carolina can regulate first-trimester abortions at all, it may do so only in the interest of patient health and safety." 380 F. Supp. at 1158.

The court thus struck down a state regulation which conditioned an abortion clinic license on the clinic's having a transfer agreement with a local hospital, observing that nursing homes were the only other facilities required to seek such transfer agreements and their licenses were not conditioned on success in obtaining them. The court held this to be singling out the performance of first trimester abortions for special regulation.

This consistent judicial interpretation of the *Roe* and *Doe* opinions establishes the parameters of the permissible scope of the regulation of first trimester abortion clinics, *i.e.*, that governments may regulate first trimester abortion clinics in a gene-

December 29, 1975

THE HONORABLE J. EDWARD CRABIEL
Secretary of State
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 31–1975

Dear Secretary Crabiel:

You have asked for our opinion as to the date of the primary election to be held in 1976, a presidential year in which delegates and alternates to the national conventions of the political parties will be elected. For the following reasons, you are advised that the 1976 primary election shall be held on the Tuesday following the first Monday in June as provided by N.J.S.A. 19:2-1, or June 8, 1976.

N.J.S.A. 19:2-1 provides, in pertinent part, as follows:

> "Primary elections *for delegates and alternates to national conventions of political parties* and for the general election shall be held in each year on *the Tuesday next after the first Monday in June. . . .*" (emphasis added)

That date was established by an amendment to N.J.S.A. 19:2-1, changing the date of the primary election for the election of delegates and alternates from the first Tuesday in June. L. 1968, c. 292, §1. A corresponding change was also made by the amendment and in N.J.S.A. 19:23-40 to establish the same date for the conduct of the primary election for the general election. L. 1968, c. 292, §5. The bill was enacted into law without any amendment, and without any legislative statement. (Assembly Bill No. 766 of 1968).

N.J.S.A. 19:3-3, however, provides in pertinent part:

> "Delegates and alternates to the national conventions of the political parties shall be elected at the primary election to be held on the *first Tuesday in June* in that year." (emphasis added)

The first Tuesday in June of 1976 falls on June 1; the Tuesday following the first Monday in June of 1976 falls on June 8. Because of the amendment to N.J.S.A. 19:2-1, it is apparent that the date established by the statute does not conform to the date described in N.J.S.A. 19:3-3. This discrepancy has apparently escaped detection until this time because in the presidential year primary election held in 1972, the last time delegates and alternates were elected, the first Tuesday in June and the Tuesday following the first Monday fell on the same date, i.e., June 6, 1972.

The source statutes of N.J.S.A. 19:2-1 and 19:3-3 provided that the primary elections for delegates and alternates shall be held on the day of the primary for the general election in presidential years. L. 1930, c. 187, paras. 5 and 10. Subsequently, a definite date was established for the primary election for the general election, L. 1935, c. 9, §1, and that date was correspondingly reflected in the description of the primary that could serve to elect delegates and alternates. L. 1935, c. 9, §3. Subsequent changes in the date established by N.J.S.A. 19:2-1 were correspondingly made in N.J.S.A. 19:3-3. See L. 1935, c. 299, §§1 and 2; L. 1946, c. 11, §§1 and 2; L. 1948, c. 2, §§1 and 2; L. 1965, c. 4, §§1 and 2.

In 1967 the primary election was assigned to a date in September by an amendment to N.J.S.A. 19:2-1 but a change in N.J.S.A. 19:3-3 was not made because such amendment excepted from its provisions those primary elections held in presidential years. Laws of 1967, c. 26, §1. However, in 1968 N.J.S.A. 19:2-1 was again amended to change the date for the conduct of the primary for the general election from the date in September to the Tuesday next after the first Monday in June, and also to change the date for the primary for the election of delegates to a national convention in a presidential year from the first Tuesday in June to the Tuesday next after the first Monday in June. A comparable change was not correspondingly made, undoubtedly as a result of legislative oversight, in N.J.S.A. 19:3-3 which then described the primary date used to elect delegates to a national convention in a presidential year as the first Tuesday in June. Accordingly, the longstanding consistency between these two statutes as to the date for the holding of an election for delegates to a national convention in a presidential year was not maintained and the present discrepancy arose.

The two statutes are in irreconcilable conflict because each enactment specifies a different date for the conduct of the same election in June. It is unreasonable to assume that the Legislature could have intended to authorize the holding of two separate primaries a week apart in June of 1976 for the election of delegates to the national convention. Statutes should not be interpreted to reach such an anomalous or absurd result. *State v. Gill,* 47 N.J. 441, 444 (1966); *Robinson v. Rodriguez,* 26 N.J. 517, 528 (1958). Rather, where two acts are clearly irreconcilable in their provisions, the later act will be deemed to govern as the most current expression of the Legislature on the subject. *Town of Montclair v. Stanoyevich,* 6 N.J. 479 (1951); *Bruck v. Credit Corp.*, 3 N.J. 401 (1950); 2A *Sutherland, Statutory Construction,* 4th ed., §51.02. In this case, the most recent legislative indication was the amendment to N.J.S.A. 19:3-3 in 1974 but that amendment did not address itself to the date to be established for election of delegates. L. 1974, c. 9. It was the comprehensive amendment to N.J.S.A. 19:2-1 in 1968 that provided the last legislative expression as to the date to be established for the election of delegates and alternates to national conventions in presidential years. L. 1968, c. 292 §1. For these reasons, it is our opinion that pending any further legislative clarification of these statutes, the primary election of delegates and alternates to the national convention and for the general election shall be held on the Tuesday next following the first Monday in June pursuant to N.J.S.A. 19:2-1, or June 8, 1976.

Very truly yours,
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Attorney General of New Jersey
By: GREGORY E. NAGY
Deputy Attorney General