The Legislature finds and declares:

(a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be enacted as general statutory prohibitions or requirements; others, because of complexity and variety of circumstances, are best left to the governance of codes of ethics formulated to meet specific needs and conditions of the several agencies of government.

The right of the public to know whether an employee is sacrificing his capacity to work or objectivity in the performance of his public responsibilities because of the conflicting nature of his outside employment is of paramount importance and outweighs any incidential invasion of privacy. Thus, it would be entirely consistent with the legislative policy underlying the Conflict of Interest Law, as well as the Right to Know Law, to publicly disclose this information bearing on the ethical conduct of state employees.

For the foregoing reasons, Form PR-102 is a public document under the Right to Know Law, and this document should be made available to the member of the news media for his inspection.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: RICHARD L. RUDIN
Deputy Attorney General

September 29, 1976

FRANK A. MASON, DIRECTOR
Office of Employee Relations
134 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 25—1976

Dear Director Mason:

You have requested our advice as to whether a managerial executive, a confidential employee or a supervisory employee, as defined by the New Jersey Employer-Employee Relations Act, has a right to join or actively participate in public

employee labor organizations. You are advised that managerial and confidential employees have no guaranteed statutory right to join in or participate in employee labor organiztions. You are also advised that, although supervisory employees may join either a supervisory or nonsupervisory employee labor organization, they may not be represented in collective negotiations by any labor organization which admits nonsupervisory employees to membership. Moreover, supervisory employees may not participate in public employee labor organization activities in a manner as to create a conflict of interest between their supervisory responsibilities for State government and their activities in furtherance of the labor relations of nonsupervisory employees.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 *et seq.* is a legislative implementation of article I, paragraph 19 of the New Jersey Constitution. *See Lullo v. Intern. Assoc. of Fire Fighters,* 55 N.J. 409 (1970). N.J.S.A. 34:13A-5.3 provides that:

> "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist *any* employee organization or to refrain from any such activity; *provided however, that this right shall not extend to elected officials, members or boards and commissions, managerial executives, or confidential employees* . . . ." (Emphasis added)

Managerial executives are defined in the Act as follows:

> " 'Managerial executives' of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.: N.J.S.A. 34:13A-3(f).

Confidential employees are defined in the subsequent subsection as follows:

> " 'Confidential employees' of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.' " N.J.S.A. 34:13A-3(g).

It is clear, therefore, that the Legislature has not provided a managerial or confidential employee with a statutory right to join or assist an employee organization.

This type of legislation is not unique to New Jersey. The New York State Legislature has enacted a similar provision:

> "No managerial or confidential employee, as determined pursuant to subdivision seven of section two hundred one of this article, shall hold office in or be a member of any employee organization which is or

> seeks to become pursuant to this article the certified or recognized representative of the public employees employed by the public employer of such managerial or confidential employee." Civil Service Law §214.

This provision has been reviewed by the Court of Appeals of New York, in *Shelofsky v. Helsby,* 295 N.E. 2d 774 (1973), *appeal dismissed,* 414 U.S. 804, 94 S.Ct. 60, 38 L.Ed.2d 41 (1973). The court upheld the provision as a legitimate exercise of the State's power to insure for itself "a responsible cadre of management personnel to formulate policy and to handle labor relations. . . ." 295 N.E.2d at 775. In conclusion, the court held that:

> "In sum, there has been no showing that exclusion of management personnel from association membership is an unreasonable limitation on State employees. Withholding the benefits of collective bargaining from management personnel has long been approved in private employment. Its carry-over into public employment is a reasonable means of promoting harmonious labor relations." 295 N.E.2d at 776-777.

See also *Elk Grove Firefighters Local No. 2340 v. Willis,* 400 F.Supp. 1097, 1099 (N.D. Ill., E.D. 1975); *City of Greenfield v. Local 1127,* 150 N.W.2d 476 (Wis. 1967); *Goodwin v. Oklahoma City,* 182 P2d 762 (Okl. 1947); *Perez v. Board of Police, Commissioner of City of Los Angeles,* 178 P2d 537 (D.Ct. of Appeals, Cal. 1947). These decisions are illustrative of a widespread policy to deny managerial and confidential employees in the public sector the right to join employee labor organizations. Section 5.3 of the Act reflects a similar legislative policy in our State to the effect that a right to membership by managerial and confidential employees in labor orgainizations interferes with the State's interest in maintaining a loyal and efficient managerial staff.

As contrasted with the managerial and confidential employee, a supervisor, defined by the Act as one having the power to hire, fire, discipline or effectively recommend the same, may join any employee labor organization with the proviso that such supervisory employee not be "represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership . . ." N.J. S.A. 34:13A-5.3. Thus, a review of this provision of the Act provides no prohibition to the membership of supervisory employees in non-supervisory employee organizations; it merely prohibits a hybrid organizion from representing the supervisors in collective negotiations. As the court in *Bowman v. Hackensack Hospital,* 116 N.J. Super. 260, 273 (Ch. Div. 1971) stated:

> "It would appear that our policy, as set forth by the New Jersey Legislature, is not to disqualify an organization from functioning as the collective bargaining representative of non-supervisory employees *because of the fact that there might be supervisors included within its membership.* Rather, it would appear that the only prohibition under the New Jersey act is that supervisors not be included within the same unit as nonsupervisors." (Emphasis added.)

Cf., *Pennsylvania Labor Relations Board v. Eastern Lancaster County School District,* 315 A.2d 382 (Commonwealth Ct. of Pa. 1974).

Thus, although the Act does not expressly preclude the right of supervisory employees to join either supervisory or nonsupervisory labor organizations, it is necessary in the construction of the Act to avoid "conflicts of interest" and to preserve the loyalty which supervisors owe to the State in the performance of their official responsibilities. This proposition has been recognized by our Supreme Court in *Bd. of Ed. of West Orange v. Wilton,* 57 N.J. 404 (1971). In that case the court was concerned with the question of the propriety of a certain supervisory employee's inclusion in a unit of other employees whom the employee in question supervised. In the course of holding that such inclusion was inappropriate the court stated that:

> "One underlying concept which emerges from a study of statutes, texts and judicial decisions in employer-employee relations, whether in the public or private employment sector, is that representatives of the employer and the employees cannot sit on both sides of the negotiating table. Good faith negotiating requires that there be two parties confronting each other on opposite sides of the table. Obviously both employer and employee organizations need the undivided loyalty of their representatives and their members, if fair and equitable settlement of problems is to be accomplished. Unless the participation is of that calibre, the effectiveness of both protagonists at the discussion table would be sharply limited." 57 N.J. at 425.

The court noted that significant potential for conflict arises in performing such common supervisory functions as performance evaluation, discipline, and grievance administration. 57 N.J. at 423. With respect to the appellant in this regard the court stated:

> "In the performance of such tasks she owed undivided loyalty to the Board of Education. If she were joined in an employees' unit which included the principals whose work she was duty bound to appraise in the Board's interest, would she be under pressure, real or psychological, to be less faithful to the Board and more responsive to the wishes of her associates in the negotiating unit? She is obliged, of course, to be fair and nondiscriminatory in evaluating the principals, and if the Association felt that she was consciously or unconsciously in error in doing so, presentation of a grievance would undoubtedly result. In that event she would have to defend against a complaint made by an organization of which she was a member." 57 N.J. at 426.

Moreover, although the *Wilton* case dealt with unit membership, the determination of the question of organization membership may surely receive guidance from the above language and from the following *dicta* by the court:

> "The fact that potential conflict of interest in a given case may bar supervisiors from representation by an organization of nonsupervisory employees does not mean that the former have no organizational rights.

> Under our statute, supervisors are employees and ordinarily have the right to join and be represented by an organization of their own, ie.e., an organization of supervisory personnel. But here again, if there are grades or echelons of supervisors having differing relations to each other because of the quantum of managerial or supervisory authority or duty delegated by the employer, the general exclusory language of N.J.S.A. 34:13A-5.3, quoted above, would seem to throw some light on the legislative intention with respect to the organizational rights of such supervisors." 57 N.J. at 419.

Accordingly, you are hereby advised that supervisors may be prohibited from activity in public employee labor organizations when such activity conflicts with their duties and responsibilities in their supervisory role and that such activity may include serving as an officer or negotiations representative for a nonsupervisory employee organization.

You have also asked whether managerial, confidential or supervisory employees may be granted time off with pay for attendance at conventions of public employee labor organizations.

The Legislature has provided specific authorization for time off with pay for attendance at the conventions of certain organizations. In particular N.J.S.A. 11: 26C-4 provides that:

> "The head of every public department and of every court of this State, the heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities, shall give a leave of absence with pay to every person in the service of the State, County or municipality who is a duly authorized representative of the New Jersey State Patrolmen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc., the Uniformed Firemen's Association, or the New Jersey State Association of Chiefs of Police, to attend any State or national convention of such organization.
>
> "A certificate of attendance to the State convention shall, upon request, be submitted by the representative so attending.
>
> "Leave of absence shall be for a period inclusive of the duration of the convention with a resonable time allowed for time to travel to and from the convention."

In addition, N.J.S.A. 38:23-2 speaks in very similar terms and grants such leave for attendance to the conventions of a great number of organizations including the New Jersey Civil Service Association and the Council of State Employees (now the State Employees' Association).

It is clear, however, that those persons entitled to leaves of absence with pay for attendance at conventions of labor organizations, either authorized by the above statutory provisions or by collective negotiations agreements, are limited by the applicable provisions of the Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3. It is a well settled rule of statutory construction that the Legislature is charged with knowledge of its prior enactments. *Brewer v. Porch*, 53 N.J. 167 (1969). In

addition, where there is a conflict, the more recent statute will govern. *State v. Roberts*, 21 N.J. 552, 555 (1956). Thus, the dictates of the Employer-Employee Relations Act which does not grant a statutory right to managerial and confidential employees to participate in public employee labor organizations must be read to impliedly limit that class of persons who may qualify as "duly authorized representatives" under both N.J.S.A. 11:26C-4 and N.J.S.A. 38:23-2. Accordingly, you are hereby advised that since managerial and confidential employees do not have a statutory right to join or assist a public employee labor relations organization, they are not entitled to a leave of absence for attendance at conventions of those public employee labor organizations. A supervisory employee may receive a leave of absence with pay to attend conventions of either suprevisory or nonsupervisory employee labor organizations when the activity of such supervisory employees does not conflict in any manner with their undivided loyalty, responsibilities and obligations to the State government.

You have additionally requested advice on whether non-supervisory employees in one unit may be granted time off, with which represent other units.* To reiterate, N.J.S.A. 34:13A-5.3 provides in pertinent part that:

> ". . .public employees shall have, and shall be protected in the exercise of the right *to form, join and assist any employee organization*." (Emphasis added)

Accordingly, in this case there is no statutory impediment to the non-supervisory participation in this organizational activity.**

For the above reasons, you are hereby advised that (1) Managerial and confidential employees do not have a right under the Act to join or assist an employee organization; (2) Sypervisory employees having the power to hire, fire, discipline or effectively recommend the same, may join either supervisory or non-supervisory labor organizations in their discretion. However, a non-supervisory labor organization may not represent the interests of supervisors in collective negotiations and supervisors may not participate in the activities of non-supervisory labor organizations in any manner as to create a conflict of interest with the exercise of their supervisory responsibilities to the State government; (3) Managerial and confidential employees having no right to join a public employee labor relations organization are not entitled by law to time off for attendance at public employee labor organization conventions or meetings; (4) Supervisory employees having a right to join either a supervisory or non-supervisory employee labor organization are entitled to time off with pay for attendance at employee labor relations conventions or meetings, so long as the activities of supervisory employees do not conflict with their responsibilities to the State government.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: GUY S. MICHAEL
Deputy Attorney General

* Since a public employee labor organization including non-supervisors may not represent supervisors, the instant question involves only units of non-supervisors.

**However, it should be made clear that employee organizations may not negotiate time off with pay provisions for convention attendance or for other functions for employees in negotiating units represented by other employee organizations. A certified employee representative is authorized to serve as the exclusive representative for collective negotiations solely for those employees in the unit of whom it represents. N.J.S.A. 34:13A-5.3; see also *Lullo v. Intern. Assoc. of Fire Fighters, supra.* This is an established proposition in labor relations and needs no further elaboration.

October 1, 1976

SIDNEY GLASER, *Director*
Division of Taxation
Taxation Building
Trenton, N.J.

FORMAL OPINION NO. 26–1976

Dear Director Glaser:

You have asked whether a general exemption of public pensions from any State tax set forth in various pension laws is applicable to the tax imposed under the New Jersey Gross Income Tax Act. For the following reasons, you are advised that a general exemption of public pensions, paid by this State, from any State tax is applicable to the New Jersey gross income tax.

All of the State administered retirement systems contain a specific statutory exemption from State or municipal taxation of the pensions and other benefits or rights accruing to pensioners in those systems.* In its enactment of the Income Tax Act the Legislature generally included "[P]ensions and annuities to the extent that the proceeds exceed the contributions made by the taxpayer" within the category of taxable gross income, N.J.S.A. 54A:5-1(j). Accordingly, the question arises whether the Legislature intended in any way to alter or eliminate the preexisting exemptions enjoyed by public pensioners for purposes of the application of the Income Tax Act.

The Act does not contain an express repeal of the exemption from any state tax set forth in the retirement system statutes. Moreover, there is no indication of an implicit legislative purpose to eliminate these exemptions for purposes of the income tax. It is important to note that as an aid in discerning the legislative intention, a repeal by implication is not favored. *N.J. State P.B.A. v. Morristown,* 65 N.J. 160, 164 (1976). A legislative intent to repeal the existing exemption of these pensions from all state taxation should appear in unequivocal terms. *Cf. N.J. State P.B.A. v. Morristown, supra,* at 164. Accordingly, in this case it was the clear legislative purpose to allow the general exemption of these public pensions from all state taxation to apply as well to the New Jersey gross income tax.

This legislative design is reinforced by the enactment of specific exemptions for certain additional similar public pensions paid by the federal or state governments and their political subdivisions. For instance, all payments received under the federal Social Security Act or Railroad Retirement Act are excludable income. N.J.S.A. 54A:6-2, 3. Similarly, income received from federal or any state pension, disability