its enactment of the Code intended to modify the existing authority of the Parole Board to revoke parole for the failure to pay a fine.

In conclusion, you are advised that the Code of Criminal Justice prohibits the forfeiture of "street time" in cases of parole revocation. You are further advised that the Parole Board continues to retain the authority to revoke parole in appropriate cases where a parolee fails to make fine payments in the manner directed by the Board.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 11, 1979

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION NO. 22—1979

Dear Director Waddington:

You have asked whether certain Division of Motor Vehicles license suspension proceedings should be conducted by administrative law judges under the Administrative Procedure Act. You have also asked whether the Division may conduct "pre-hearing conferences" in certain cases in order to attempt to resolve them informally with the consent of the parties prior to formal hearing. For the following reasons, it is our opinion that both of these questions should be answered in the affirmative.

I

It is essential to identify the specific type of case to which you refer. Such a case arises when the Division is notified by a court that a motorist has been convicted of a traffic violation or other violation of the Motor Vehicle Code (N.J.S.A. 39:1-1 *et seq.*). Pursuant to N.J.S.A. 39:5-30,[1] the Director has the authority to sanction the offending motorist; with possible sanctions including probation, warning, driver improvement school, and suspension. Notice of proposed suspension is sent to the motorist and a

1. Point system suspensions pursuant to N.J.S.A. 39:5-30.3 also fall within this general category. The point system functions by assigning a specific number of points for each conviction of a traffic violation as set forth in N.J.A.C. 13:19-10.1 *et seq.* When a motorist accumulates 12 or more points within a three-year period, suspension is proposed. Credits are available in particular circumstances, e.g., three credits for each 12-month period of violation-free driving, etc.

"hearing" (sometimes referred to as an "interview" or "conference") is conducted upon request by a hearing officer or "driver improvement analyst" designated by the Director. The motorist normally may introduce evidence of mitigating circumstances, his need for a license, and anticipated hardships resulting from a suspension. At the recommendation of his designee, the Director then provides an appropriate sanction.

A recent amendment to the Adminstrative Procedure Act mandates that:

> All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [N.J.S.A. 52:14B-10(c).]

Thus, the key inquiry is whether the Division's hearings in these cases represent "contested cases" as that term is defined in the Administrative Procedure Act. If so, they will be required to be conducted by an administrative law judge, rather than by Division hearings officers.

At the outset it must be recognized that:

> Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. [*Bell v. Burson,* 402 U.S. 535, 539 (1971).]

In recognition of this fact, the drafters of the Administrative Procedure Act specifically indicated that license revocation proceedings, with certain exceptions, are to be considered as "contested cases." Thus, N.J.S.A. 52:14B-11 mandates that:

> No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases . . . Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.
>
> This section does not apply (1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee

> to maintain insurance coverage as required by any law or regulation.[2]

See also N.J.A.C. 13:19-1.13, incorporating this language almost verbatim into the Division's own regulations.

The only question then is whether license suspension cases fall within any of these three exceptions. N.J.S.A. 39:5-30 provides that the Director may suspend or revoke a driver's license for any violation of the Motor Vehicle Code "after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof." The statute then authorizes the Director to summon witnesses "to give testimony *in a hearing* which he holds *looking toward* a revocation of a license" (emphasis supplied) and to delegate the actual conduct of said hearing to designated employees, who shall then recommend to him "in writing, whether the said licenses or certificates shall or shall not be suspended or revoked." Likewise, N.J.S.A. 39:5-30.3 (governing point system suspensions) states that:

> An accumulation of 12 points within a 3 year period may cause a driver to be subject to a hearing . . . on a rule to show cause why his driver's license should not be suspended. . . .

Clearly, neither statute provides that the Director "is not required to grant a hearing" and, in fact, the implication in each is to the contrary.[3] Under both statutes, the Director, after being informed of a licensee's conviction under the Motor Vehicle Act, has complete discretion as to whether, and in what form, an administrative sanction should be imposed. Lastly, none of these cases concern suspensions for failure to maintain insurance. The license suspension proceedings in the present situation, therefore, falling as they do within none of the exceptions listed in N.J.S.A. 52:14B-11, should be conducted as "contested cases" before administrative law judges.

2. A comparable provision in the Federal Administrative Procedure Act, 5 U.S.C.A. 558(c), which states that "[w]hen application is made for a license required by law, the agency . . . within a reasonable time, shall set and complete [contested case-type] proceedings," has been literally interpreted as independently mandating contested case-type hearings in all license application situations, *United States Steel Corp. v. Train,* 556 F. 2d 822, 833-34 (7 Cir. 1977), *New York Path. & X-Ray Lab, Inc. v. Immigration & N.S.,* 523 F. 2d 79, 82 (2 Cir. 1975). *But see Anti-Pollution League v. Castle,* 572 F. 2d 872, n. at 879 (1 Cir. 1978); *Marathon Oil v. Environmental Protection Agency,* 564 F. 2d 1253, n. at 1260-61 (9 cir. 1977), holding that such provision is primarily concerned merely with setting forth the *timing* of administrative hearings in those license suspension cases which otherwise fall within the definition of a "contested case."

3. The holding in *Tichenor v. Magee,* 4 N.J. Super. 467 (App. Div. 1949) that a hearing is discretionary under N.J.S.A. 39:5-30 no longer appears viable, and particularly in light of judicial pronouncements in more recent cases championing the individual's right to a hearing in license suspension situations. *E.g., Bell v. Buson, supra; Bechler v. Parsekian,* 36 N.J. 242 (1961); *Kantor v. Parsekian,* 72 N.J. Super. 588 (App. Div. 1962).

II

With reference to your question concerning the informal settlement of license suspension proceedings, the Administrative Procedure Act provides that:

> Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order. [N.J.S.A. 52:14B-9(d).]

Since no law prohibits an informal disposition prior to hearing it is clear that the Division may conduct "pre-hearing conferences." In the event an informal voluntary disposition cannot be agreed to after such a conference, a "contested case" hearing should be conducted by an administrative law judge.

It is, therefore, our opinion that Motor Vehicle license suspension hearings held pursuant to N.J.S.A. 39:5-30 should be conducted by administrative law judges as "contested cases." It is further our opinion that the Division of Motor Vehicles may conduct "pre-hearing conference" in an attempt to informally dispose of these license suspension proceedings with the consent of the parties.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: ROBERT M. JAWORSKI
Deputy Attorney General

October 17, 1979

LOUIS J. GAMBACCINI, *Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey

FORMAL OPINION NO. 23—1979

Dear Commissioner Gambaccini:

You have asked whether it would be lawful for insurance companies to be involved in the support of public bond issues. The immediate occasion for your inquiry was the selection of the chairman of the board of a major insurance company to head up a Citizens' Coalition to campaign for passage of the Transportation Rehabilitation and Improvement Bond Issue by the voters on November 6. For the following reasons, it is our opinion that there would be no statutory impediment to insurance companies' involvement in public bond referenda.

The controlling statute in this situation is N.J.S.A. 19:34-32 which makes it a misdemeanor[1] for insurance corporations or associations doing

1. Under the terms of the newly enacted Penal Code, a misdemeanor shall constitute for purposes of sentencing a crime of the fourth degree. N.J.S.A. 2C:43-1(b).