

ATTORNEY GENERAL

The Court of Appeals concluded that to construe the statute in any other manner would raise serious questions as to its constitutionality.

In sum, it may be assumed to be the legislative purpose that the New Jersey statute serves the same valid objectives as comparable statutes interpreted by the courts. The legislative ban on corporate contributions for "any political purpose whatsoever" in N.J.S.A. 19:34-32 would not, therefore, include a prohibition on aid or assistance to a nonpartisan public referendum. You are therefore advised that an insurance corporation and its officers or agents are not prevented from providing financial or other support toward the passage of the 1979 Transportation Rehabilitation and Improvement Bond Issue.<sup>2</sup>

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

October 23, 1979

SIDNEY GLASER, *Director*  
Division of Taxation  
West State and Willow Streets  
Trenton, New Jersey 08625

FORMAL OPINION NO. 24—1979

Dear Director Glaser:

You have asked whether a surviving spouse who was less than 55 years old at the time of his or her senior citizen spouse's death is entitled to the additional annual homestead rebate of \$50 on attaining age 55. You are advised that unless the surviving spouse is over 65, or is permanently and totally disabled, or was 55 at the time of his or her eligible spouse's death, the surviving spouse is not eligible for the additional \$50 rebate.

All residents and citizens of New Jersey are entitled to homestead rebates on real property owned and used as a principal residence. N.J.S.A. 54:4-3.80. Additionally:

*If such citizen and resident of this State is of the age of 65 or more years, or is less than 65 years of age yet permanently and totally disabled, as "disabled" is defined in the "New Jersey Gross Income Tax Act" (54A:1-2f), or is the surviving spouse of a deceased citizen and resident of this State who during his lifetime received a real property tax deduction pursuant to this act or P.L. 1963, c. 172 (C. 54:4-8.40 et seq.), upon the same conditions, with respect to real property, notwithstanding that said surviving spouse is under the age of 65 and is not permanently and totally*

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disabled, *provided that said surviving spouse was 55 years of age or older at the time of death of said citizen* and resident and remains unmarried, said taxpayer *shall* annually, upon proper claim being made therefor, *be entitled to an additional rebate. . . .* [N.J.S.A. 54:4-3.80a.] [Emphasis added.]

The constitutional authority for the statute is found in Art. VIII Sec. 1, para. 5 of the New Jersey Constitution which provides for the homestead rebates as follows:

The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates, and subject to such limits, as may be provided by law. Such rebates or credits *may include a differential rate or credit to citizens and residents who are of the age of 65 or more years, or less than 65 years of age who are permanently and totally disabled according to the provisions of the Federal Social Security Act, or are 55 years of age or more and the surviving spouse of a deceased citizen or resident of this State who during his lifetime received, or who, upon the adoption of this amendment and the enactment of implementing legislation, would have been entitled to receive a rebate or credit related to property taxes.* [Emphasis added.]

You have suggested that a comparison of the underlined passages in the above-quoted statutory and constitutional provisions reveals that the language of the constitutional authorization is broader than the statutory enactment. An examination of the legislative history of these two provisions, however, indicates that the Constitution was amended with the specific intent of authorizing additional rebates for senior citizens and surviving spouses with the precise requirements of the statute in mind (i.e., age 55 or older at the death of the senior citizen spouse). N.J.S.A. 54:4-3.80 was originally enacted as part of L. 1976, c. 72. Between its referral to the Assembly Taxation Committee of the same year, 24 separate actions on this bill (A 1330, 1976) were taken by the legislature. Thus, the bill was frequently amended and carefully considered. The bill originally contained language providing for the additional senior citizen rebate which extended that additional rebate to surviving spouses who were 55 at the time of their senior citizen spouse's death.

On May 13, 1976 the Attorney General issued *Formal Opinion No. 15—1976* which concluded that the additional senior citizen rebate set forth in A-1330 violated the constitutional mandate in Art. VIII, Sec. 1, para. 1 requiring uniformity in property taxation. At that time, Art. VIII, Sec. 1, para. 5 of the Constitution only provided as follows:

The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates, and subject to such limits, as may be provided by law.

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The reaction to the *Formal Opinion* was swift. On the very same day the Senate Revenue Finance and Appropriations Committee deleted the unconstitutional language from the pending bill. However, on May 19, 1976 the Senate restored the provisions providing for additional senior citizen rebates. On May 24, 1976, Assembly Concurrent Resolution No. 109 which was eventually passed and adopted by the voters amending and adding the second sentence to Art. VIII, Sec. 1, para. 5 of the Constitution was introduced. The intention of the proposed constitutional amendment clearly was to make differential senior citizen rebates constitutional. This intention was expressly set forth in the sponsor's statement on the concurrent resolution:

The purpose of this amendment is to provide for a differential homestead rebate or credit on property taxes for senior citizens, disabled persons or their surviving spouses. The senior citizen and disabled homestead rebate or credit, under this amendment, follows the person who otherwise qualifies.

The Constitutional Amendment is *designed to eliminate questions of interpretation of the language granting differential homestead tax rebates or credits for senior citizens, the disabled and surviving spouses* which have arisen by virtue of a recent opinion of the Attorney General which seriously affects the application of differential homestead exemptions for senior citizens *presently provided for in Assembly Committee Substitute Official Copy Reprint, for Assembly Bill No. 1330 of 1976 now pending before the Legislature.* [Emphasis added.]

The subsequent history of ACR 109 1976 and A 1330, 1976 are so inextricably intertwined that one can reasonably conclude that they were viewed by the Legislature as part of a package granting to surviving spouses additional rebates consistent with the statutory formulation. ACR 109 passed in the Assembly on July 2. A 1330 passed in the Assembly on July 7. Both were passed in the Senate on July 8. The Governor approved the statute on August 30, 1976. The voters approved the constitutional amendment on November 2, 1976.

It is an established principle of statutory construction that contemporaneous enactments of the Legislature are to be read consistently and harmoniously whenever possible. *Department of Labor and Industry v. Cruz*. 45 N.J. 372, 377 (1965). By similar reasoning, the same principle should also apply in the interpretation of a constitutional amendment proposed to the people contemporaneously with the enactment of a statute *in pari materia*. The usual situation in which this principle is applied is the case of a statute enacted subsequent to the formal adoption of a constitutional provision. The principle would appear even more applicable in the present situation of statutory and constitutional provisions approved contemporaneously by the Legislature and directed to the same subject matter.

Therefore, it is our opinion that the Legislature intended Art. VIII, Sec. 1, para 5 of the Constitution to only authorize the additional rebate provided for by N.J.S.A. 54:4-3.80 for surviving spouses who are 55 or

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more at the time of a senior citizen spouse's death. The constitutional provision does not provide authorization to grant a senior citizen homestead rebate to a surviving spouse who attains age 55 after the death of the eligible senior citizen spouse.\*

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: JOSEPH C. SMALL  
*Deputy Attorney General*

\* In any event, the constitutional amendment in Art. VIII, Sec. 1 para. 5, is permissive in character and authorizes the legislature to enact in its discretion a homestead rebate law which may include rebates to residents who are "55 years of age or more and the surviving spouse." It is clear that pursuant to this constitutional authorization, the legislature could enact a statute which was more restrictive than the constitutional provision. Therefore, a legislative determination to limit the rebate to only that class of surviving spouse who is at least 55 at the time of the death, of his or her spouse would be consistent with the constitutional amendment even if it could be read to permit the legislature to extend the benefit to surviving spouses who were under that age at the time of their spouse's death.

October 23, 1979

WILLIAM H. FAUVER, *Commissioner*  
Department of Corrections  
Whittlesey Road  
Post Office Box 7387  
Trenton, New Jersey 08628

FORMAL OPINION NO. 25—1979

Dear Commissioner Fauver:

In *Formal Opinion No. 21-1979*, dated October 9, 1979, it was concluded that the forfeiture of credit for time served on parole (street time) on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code of Criminal Justice. As a result of that opinion, you have asked whether a parolee should continue to receive credit toward his sentence for a period of time during which he has absconded from and avoided parole supervision. For the following reasons, it is our opinion that credit for time served on parole may not be claimed for a period of time during which a parolee has unlawfully absconded and absented himself from parole supervision.

N.J.S.A. 2C:43-9(b) provides:

If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of