

The answer is yes.

Undoubtedly the payroll and warrants for payment should have been submitted to the Civil Service Commission pursuant to the 1946 supplement. But the question then arises, what duty now devolves upon the Civil Service Commission to rectify this error of procedure. The funds allocated to the payment of these bonuses have been appropriated and payments have been made to the individuals concerned. I do not see how the Civil Service Commission can now assume any jurisdiction, the statute being silent as to any penalty or action which the Commission may now institute.

3. Whether or not an appeal properly lies before this Commission as per complaint of certain members of the department against the granting of the bonuses under the action of the Board of City Commissioners on December 7, 1948, to certain selected members of the department.

The answer is no, for the reasons set forth in the answers to one and two above.

4. What action, if any, the Civil Service Commission should take under the statutes in consideration of all the facts and circumstances disclosed by the file herewith submitted.

It is our view that the Civil Service Commission should take no action in this matter and should inform the persons allegedly aggrieved that their individual problems should be presented to private counsel.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

MARCH 24, 1949.

HON. HOMER C. ZINK,
Att: MR. AARON NEELD,
Division of Taxation,
State House.

FORMAL OPINION—1949. No. 14.

DEAR SIR:

Your letter of March 2, 1949, requesting an opinion has been received.

As we understand the problem, the Outdoor Advertising Tax Bureau has received two applications for permit to erect and maintain advertising structures, one on either side of an overhead bridge or trestle owned by the Jersey Central Railroad Company and spanning a street in Newark. These applications were accompanied by a city permit issued by the Department of Public Safety, Division of Buildings, City of Newark, New Jersey, and signed by the Superintendent of Buildings.

You quote Section 3 (5), Chapter 168, P. L. 1942, as amended by Chapter 169, P. L. 1947 (R. S. 54:40-22) which provides as follows:

"If the site of the proposed outdoor advertising structure is within the confines of any public highway, park or other public property the applicant shall file with the application a true copy of the written consent of the public authority controlling such public highway, park or other public property."

You present two questions:

1. Whether a building permit or billboard license issued by a municipality for the erection of such overhead structure constitutes sufficient compliance with section 3 (5) above quoted.

The answer to this first question is yes.

Generally, the control of railroad structures, overhead bridges and trestles lies within the power of the municipality. Assuming that the applicant has satisfied all of the requirements as set forth by the municipality, and a permit has issued, the aforementioned statute clearly contemplates the issuance of a permit without the necessity of action on behalf of your department.

Of course you must be satisfied in accordance with Section 12, P. L. 1942, Chapter 168, as amended, that the contemplated structures, in your judgment, will not interfere with any existing sign boards, etc., heretofore licensed, nor will the same create a hazardous condition.

2. You ask for an interpretation of the definition of "confines of any public highway, park or otherwise."

The answer to this question depends on ownership of the fee and will include all property over which the municipality, etc., has legal title. In the case, however, of the State Highway Department, which in many instances has but an easement allowing it and the users of its highway to traverse a piece of property owned by others, it is believed that "confines" may be interpreted as measured horizontally by the width of the property held under the terms of the easement and vertically from the roadbed to the ceiling of the usable area.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.