

May 5, 1949.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Dept. of Conservation and Economic Development,
520 East State Street, Trenton 7, N. J.

FORMAL OPINION—1949. No. 41.

DEAR COMMISSIONER:

Your recent letter requesting opinion as to whether the Planning and Development Council has the same power as the previous commissioners of the old Board of Commerce and Navigation, and asking particularly to be advised whether under the present statute (Chap. 448, P. L. 1948) the functions of the old Board of Commerce and Navigation and the former Council of Navigation are carried over and could be exercised by the Commissioner or by the Planning and Development Council, is at hand.

In order to answer the six questions submitted by you, it will be necessary to give you a history of the Department of Commerce and Navigation.

The original riparian commission act was passed in 1864, Chapter 391. The Board of Commerce and Navigation was created by Chapter 242, P. L. 1915. That carried on until the Department of Commerce and Navigation was created by R. S. 12:2-1. Under R. S. 12:2-13 the board succeeded to and exercised all the powers and performed all the duties formerly exercised and performed by or conferred upon the Board of Riparian Commissioners, the Department of Inland Waterways, the inspectors of power vessels, and the New Jersey Harbor Commission, with which last-named commission the New Jersey Ship Canal Commission was consolidated.

Under R. S. 12:2-14 the board is given full power to control and direct all State projects and work relating to commerce and navigation in any way whatsoever.

R. S. 12:2-15 provides that the board shall make such rules and regulations governing the work of the department as shall become necessary.

R. S. 12:3-4 provides that no person shall fill in, build upon or make any erection on or reclaim any of the lands under the tidewaters of this State without permission of the board of commerce and navigation.

And R. S. 12:3-7 directs that any person desiring to obtain a grant for lands under water which have not been improved and are not authorized to be improved under any grant or license protected by the provisions of sections 12:3-2 to 12:3-9 shall apply to the board therefor, and the board, together with the governor and attorney general shall designate what lands under water for which a grant is desired lie within the exterior lines, and fix such price, reasonable compensation or annual rentals for so much of said lands as lie below high water mark as are to be included in the grant or lease for which application is made, and shall certify the boundaries, and the price, compensation or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the Secretary of State.

Under R. S. 12:3-10 any riparian owner on tidewaters in this State who is desirous to obtain a lease, grant or conveyance from the State of any lands under water in front of his lands, may apply to the board, which may make such lease, grant or conveyance with due regard to the interests of navigation.

R. S. 12:3-12 provides that the board may insert such covenants, clauses and conditions in said grants or leases as they shall think proper to require from the grantee or lessee or ought to be made by the State.

Pursuant to R. S. 12:3-16 it shall be lawful for the board, together with the governor, to fix and determine within the limits prescribed by law, the price or purchase money or annual rental to be paid by any applicant for so much of lands below high water mark, or lands formerly under tidewater belonging to this State, as may be described in any application therefor duly made according to law, and the board, with the approval of the governor, shall, in the name and under the great seal of the State, grant or lease said lands to such applicant accordingly, and all such conveyances or leases shall be prepared by the board or its agents at the cost and expense of the grantee or lessee therein and shall be subscribed by the governor and the board and attested by the Secretary of State.

Chapter 22, P. L. 1945 is an act relating to conservation and provides for the establishment in the executive branch of the State government of a State Department of Conservation and defines its duties, etc. Under section 2 of that act there was established in the executive branch of the State government a State Department of Conservation consisting of a State Commissioner of Conservation and such divisions, councils, officers and employees as are specifically referred to in the act and as may be constituted or employed by virtue of the authority conferred by the act or any other law. The Division of Navigation was established under section 4 of the act.

Section 28 establishes a Navigation Council within the division, which consists of nine members. Section 29 provides as follows:

"The functions, powers and duties, records and property of the department of commerce and navigation and of the board of commerce and navigation are hereby transferred to and vested in the division of navigation established under this act, to be exercised *by the council thereof*, in accordance with the provisions of this act. No action shall be taken by said council except upon the approval of the commissioner of conservation.

"No riparian leases or grants shall hereafter be allowed by less than a majority of the council and no such leases or grants shall hereafter in any case be allowed by the council except when approved and signed by the governor and the commissioner of conservation."

Under section 30 the council was vested with power to formulate comprehensive policies for the prevention and control of beach erosion, with the approval of the commissioner. By section 41 of the 1945 act it is provided that the rules and regulations heretofore promulgated by any of the departments, boards, commissions, authorities or other agencies, the functions, powers and duties of which have been transferred to any of the divisions established by the act, *shall continue with full force and effect* until amended or repealed by the council of such division, subject to the approval of the Commissioner of Conservation.

Chapter 448, P. L. 1948 is "An act relating to the reorganization of the executive and administrative offices, departments and instrumentalities of the State government, establishing and concerning a department of conservation and economic development as a principal department in the executive branch of the State government * * *."

Under section 5 of said act there was established a Division of Planning and Development in the Department of Conservation and Economic Development, which was formerly the Board of Commerce and Navigation. By section 7 all functions of the former Department of Economic Development and the respective divisions therein, and of the co-ordinator and Commissioner of the Department of Economic Development, exclusive of those of, or relating to * * * the Division of Veterans' Services * * *; and all of the functions, powers and duties of the harbor masters

under Title 12 and of the port wardens under Title 12 were transferred to the Department of Conservation and Economic Development and assigned to be exercised and performed through the Division of Planning and Development in the department. Section 8 provides that the Division of planning and Development shall be under the immediate supervision of a director, etc. The director shall administer the work of such division under the direction and supervision of the commissioner. Pursuant to section 11, the Planning and Development Council shall, subject to the approval of the commissioner :

"a. Formulate comprehensive economic policies for the development and use of the natural and economic resources of the state * * *

"b. Formulate comprehensive policies for the preservation and conservation and use of all state forests * * *

"c. Formulate comprehensive policies for the prevention and control of beach erosion."

Section 13 provides :

"No riparian leases or grants shall hereafter be allowed except when approved by *at least a majority of the planning and development council*; and no such leases shall hereafter in any case be allowed except when approved and signed by the governor and the commissioner of Conservation and Economic Development."

Section 107 provides, in part :

"All appropriations and other moneys available and to become available to any department, board, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the department of conservation and economic development or to any office or agency designated, continued or constituted therein, are hereby transferred to the department of conservation and economic development established hereunder, and shall be available for the objects and purposes for which appropriated, subject to any terms, restrictions, limitations or other requirements imposed by state or federal law."

Section 112 provides :

"This act shall not affect the orders, rules and regulations heretofore made or promulgated by any department, commission, council, board, authority, officer or other agency, the functions, powers and duties of which have been herein assigned or transferred to the department of conservation and economic development or to any officer, authority or agency designated, continued or constituted hereunder; but such orders, rules and regulations shall continue with full force and effect until amended or repealed pursuant to law."

The above powers granted to the Board of Commerce and Navigation, Division of Navigation, and the planning board seem to have been continued from 1915 down to date with the additional powers or approval by the Commissioner of Conservation and Economic Development.

Answering your questions :

1. Whether they also function with respect to the acceptance of applications for construction permits where riparian rights have been granted.

The answer is yes.

2. Whether they pass on applications and set prices for easement.

The answer is yes.

3. Whether they pass on applications and set prices for licenses.

The answer is yes.

4. Whether they function in the matter of waterfronts and jetty improvements.

The answer is yes.

5. Do they have any right to pass on improvements to be made and the awarding of contracts.

The answer is yes.

6. Should the expenditures made by the commissioner in the operation of these various works be submitted to them for approval. The answer is no. The commissioner is in charge of expenditures and they are to be made under his jurisdiction and approval.

Regarding the answers to the five questions above, all of these matters are subject to the approval of the commissioner and the governor.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: ROBERT PEACOCK,
Deputy Attorney General.

May 16, 1949.

HON. HARRY C. HARPER,
Commissioner of Labor and Industry,
State House,
Trenton 7, N. J.

FORMAL OPINION—1949. No. 42.

DEAR COMMISSIONER:

Re: Employment of Minors in Agricultural Pursuits.

Receipt is acknowledged of your request for an interpretation of the term "Agricultural pursuits" as used in R. S. 34:2-21.2.

The situation, specifically, is one wherein a minor under 18 years of age was employed by a large nursery industry in the actual raising of horticultural products. During the Easter season he was transferred to a retail farm market owned and operated by the employer nurseryman. The agricultural permit for the minor had