

expired in 1948 and in April, 1949, at which time the minor was injured, no employment certificate was on file.

The question here involved must necessarily be whether the actual duties of the minor at the time of the accident, i. e., selling the products of his employer, are to be classified as agricultural or mercantile.

The New Jersey Supreme Court in 1941 in the case of *Henry A. Dreer, Inc. vs. Unemployment Compensation Commission of New Jersey, et al*, 127 N. J. L. 149, pointed out that the test "is the nature and object of the business." Further the Court said at page 153 ". . . that emphasis is laid on the character, relationship and business of the employer, rather than on the kind of work done by the employee."

Here, as in the case *supra*, the work of the minor was germane and incidental to the business of the employer, and a fortiori, agricultural in character.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By: GRACE J. FORD,  
*Assistant Deputy Attorney General.*

May 5, 1949.

HON. J. LINDSAY DE VALLIERE, *Director,*  
*Division of Budget & Accounting,*  
State House, Trenton, N. J.

FORMAL OPINION—1949. No.43.

DEAR MR. DE VALLIERE:

Receipt of your memorandum of April 25, 1949, is hereby acknowledged.

As we understand the problem, you and Doctor Carpenter of the Civil Service Commission have been petitioned to change the salaries of the Director of the Division of Planning and Development, and the Director of the Division of Veterans' Services from \$7,500.00 to \$10,000.00. The Commissioner urges that the Legislature has failed to set these salaries pursuant to Article II, Section 8 and Article III, Section 21 of Chapter 448, P. L. 1948. We understand, further, that the \$7,500.00 salaries of the directors are line items set forth in the appropriation law (P. L. 1949, Chap. 43).

You ask the question whether the Treasurer has authority to use other funds to transfer to these line items so that each item will be increased from \$7,500.00 to \$10,000.00 as requested by Commissioner Erdman.

The answer is no.

Article II, Section 8, Chapter 448, P. L. 1948, among other things, provides:

"The director of such division shall be appointed by the governor with the advice and consent of the senate and shall serve during the term of office of the governor appointing him and until the director's successor be appointed and has qualified. *He shall receive such salary as shall be provided by law.*"

Article III, Section 21 of the same law provides, among other things, referring to the division of veterans' services:

"The director of such division shall be appointed by the governor with the advice and consent of the senate and shall serve during the term of office of the governor appointing him and until the director's successor be appointed and has qualified. *He shall receive such salary as shall be provided by law.*"

Contrary to the Commissioner of Conservation and Economic Development's statement that the Legislature has failed to act in respect to these salaries as above provided, the fact remains that the Legislature has, by P. L. 1949, Chapter 43, set the salaries of the directors of the aforesaid divisions at \$7,500.00 and the \$7,500.00 in each instance has been made a line item.

This office has repeatedly ruled that the Legislature, having by line item fixed a salary, it is beyond the power of any officer, board or commission of the government, to increase or decrease that amount without express warrant of law for that purpose.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: JOHN W. GRIGGS,  
*Deputy Attorney General.*

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May 5, 1949.

HON. SANFORD BATES, *Commissioner,*  
*Department of Institutions and Agencies,*  
State Office Building,  
Trenton, New Jersey.

FORMAL OPINION—1949, No. 44.

MY DEAR COMMISSIONER:

You advise that you desire an interpretation of the provisions of Chapter 20, P. L. 1949, which became effective April 11, 1949, and which provides a new procedure for imposition of sentence on persons convicted of those certain sex crimes enumerated in the law.

Specifically, you wish to be advised whether the provisions of this law are retroactive in their application to persons who committed these crimes prior to April 11, 1949, and, if the law is retroactive, whether it might be deemed *ex post facto* and unconstitutional by reason of the nature thereof.

It is my opinion and I so advise you that this law is not retroactive and has no application to persons who committed the enumerated sex offenses prior to the effective date of the act for in such case it would be *ex post facto* and, for that reason, unconstitutional.

This conclusion is predicated upon certain legal principles which I will discuss below.