

May 23, 1949.

MR. R. J. ABBOTT,  
*Executive Assistant to the Governor,*  
State House,  
Trenton, New Jersey.

## FORMAL OPINION—1949. No. 55.

DEAR MR. ABBOTT:

With your memorandum of May 3rd you sent me a letter which you received from Mr. Frank A. Tracey, of the Division of Navigation, in reference to the possibility of the State Highway Department paying for the dredging of the proposed channel in the Manasquan River in the vicinity of the new Brielle-Point Pleasant Highway Bridge and paying for such work from the funds allocated for the construction of the bridge.

The question is presented in this form: "Is there anything in the general State Highway law which might prohibit such an expenditure from the Highway funds?"

To avoid considerable detailed analysis of the various statutes from which this opinion has been derived, I give the following list of some of those examined to reach this conclusion, they being the most important ones: P. L. 1894, p. 409; P. L. 1908, p. 604; P. L. 1909, p. 51; P. L. 1912, ch. 396; P. L. 1917, ch. 15; P. L. 1921, ch. 306; P. L. 1930, ch. 253; P. L. 1934, ch. 139; P. L. 1935, ch. 178; P. L. 1940, ch. 52. Others are mentioned hereafter.

By P. L. 1917, Chapter 15, Section 12 (e) the then State Highway Commission and Department was authorized to construct, build and improve, widen, straighten and regrade State highways and for such purpose and for any use incident thereto or connected therewith, to acquire any lands, bridges or approaches thereto and rights therein by gift, devise, purchase or by condemnation. By P. L. 1935, Chapter 178, it is provided that the State Highway Commissioner shall succeed to and exercise all the powers and perform all the duties exercised or performed by the State Highway Department and the State Highway Commission, or either of them, as constituted prior to April 29, 1935, by virtue of any then existing law or laws. (R. S. 27:1-5.)

Unless by inference and stretching the interpretation of P. L. 1917, Chapter 15, Section 12 (e) cited before, I can find no indication of any legislative intent to give the State Highway Commissioner and Department jurisdiction over waterways other than the building of bridges over them or tunnels under them (in limited conditions) as part of the State Highway System. Even if we go this far it would seem that to carry out what is suggested in the memorandum of Mr. Tracey referred to, it should be absolutely necessary to the construction and advancement of the State Highway System which, otherwise, does not include waterways so far as I can see.

Yet to do this certain other statutes and the policy apparent therein would have to be completely ignored.

It is assumed that the Manasquan River at the point involved is both a tide water and navigable stream. By P. L. 1945, Chapter 22, the powers, etc. of the Department of Commerce and Navigation and of the Board of Commerce and Navigation are transferred to the Division of Navigation of the Department of Conservation. By P. L. 1948, Chapter 448, such powers were again transferred to the Department of Conservation and Economic Development.

By various acts including P. L. 1940, Chapter 52, P. L. 1946, Chapter 258, P. L. 1946, Chapter 313 (particularly as to Shrewsbury and *Manasquan* Rivers, when appropriations made); R. S. 12:2-14, R. S. 12:2-17, R. S. 12:3-7, R. S. 12:6-1, R. S. 12:6-13, R. S. 12:6-18 (involving U. S. government), there appears a clear intent to place under the Department of Conservation and Economic Development such projects as are contemplated in the question presented to me for opinion.

I have given the statutes conferring powers and authority upon the State Highway Commissioner and the State Highway Department the broadest possible interpretation, particularly in view of acts limiting the scope for the use of highway funds, but, in view of the other statutes referred to, I am of the opinion that the Legislature has shown a clear intent to place such projects as the present within the province of the present Department of Conservation and Economic Development. That opinion is supported further by the fact that by doing so there is a clearer division of authority and power between the two departments of the State government and less likelihood of overlapping jurisdictional questions, conflict and confusion.

It is therefore my opinion that the intent of the legislation referred to is to withhold from the jurisdiction of the State Highway Commissioner and Department the project mentioned and that therefore such Commissioner and Department could not properly expend the funds and enter into the contracts referred to under the facts and circumstances presented.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: FRANK A. MATHEWS, JR.,  
*Deputy Attorney General.*

m:m

---

MAY 23, 1949.

MRS. RUTH SCISCO, *Commissioner,*  
*Monmouth County Board of Elections,*  
Court House, Freehold, N. J.

FORMAL OPINION—1949. No. 56.

DEAR MRS. SCISCO:

Receipt is acknowledged of your letter of May 21st in which you submit the following query:

“Under Title 19, New Jersey Election Law, Revised Statutes, paragraph 19:31-5, whereby it states that any person who will be twenty-one years of age by next ensuing general election may register and referring to paragraph 19:4-1 whereby a person having the qualification to vote in the general election may register and vote on the primary has been brought to my attention regarding the following question. May a person who will be twenty-one years of age on or before general election and who may vote in the primary have the privilege of voting in a Commission or City Manager election which takes place between the primary and general election?”