

The statute concerning the question is found in Title 58 of the Revised Statutes and Sec. 58:11-1 provides that no person engaged in the distribution or sale of water for potable purposes shall deliver to any consumer any water which, in the opinion of your department, is polluted, contaminated or impure, or which is obtained from any source which, in the opinion of your department, is or may become polluted, contaminated or impure, unless purification by filtration or other means acceptable to the department shall be accomplished before the water is distributed.

R. S. 58:11-2 provides that every person intending to furnish water for potable purposes shall submit to your department a detailed report containing all information regarding the source from which such supply is to be derived, and until such source has been approved said person shall not distribute water to any consumer for potable purposes.

R. S. 58:11-18.10 defines "public water supply" as a system comprising structures which operating alone or with other structures result in the derivation, conveyance (or transmission) or distribution of water for potable or domestic purposes to consumers in twenty or more dwellings or properties.

Under the facts and the law, I am of the opinion that the water supply, such as is described in the memorandum submitted, is a public water supply within the meaning of the statute and, therefore, is subject to the requirements of the law relating to public supplies.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: ROBERT PEACOCK,  
*Deputy Attorney General.*

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SEPTEMBER 1, 1949.

HON. WALTER T. MARGETTS, JR.,  
*State Treasurer,*  
State House,  
Trenton, N. J.

FORMAL OPINION—1949. No. 90.

DEAR MR. MARGETTS:

Receipt is acknowledged of your letter, dated August 12, 1949, in which you ask for an opinion as to whether veterans, and volunteer and exempt firemen, and others specified in R. S. 54:4-3.12 are entitled to exemption from locally-assessed poll taxes in view of Article VIII of the 1947 Constitution.

It is the opinion of this office that all persons enrolled as active members of a fire department, or of any organized volunteer fire department of any taxing district, or fire district under the control of any authorized public body; all exempt firemen of any taxing district; honorably discharged soldiers, sailors and nurses who have served in the army or navy of the United States during any war or rebellion; and their widows during widowhood; honorably discharged persons who have served in

the armed forces of the United States during the present war with Germany, Japan and Italy; members of the national guard during their term of service; and persons who were or are bona fide residents of this State on the day they were or will be mustered into federal military service for the present war (World War II), shall be exempt from locally-assessed poll taxes on proper claim made therefor.

A study of the subject discloses that the Legislature has empowered governing bodies of municipalities to levy poll taxes by R. S. 40:48-8, which provides as follows:

"The governing body may by ordinance provide for the levying of an individual tax of one dollar to be known as a poll tax on every male inhabitant of the municipality domiciled therein of the age of twenty-one years or more, except paupers, idiots and insane persons, but no such tax shall be levied against any exempt fireman of such municipality or against any honorably discharged soldiers or sailors who have served in the army or navy of the United States during any war or rebellion, or against any member of the national guard during his term of service, if the persons so exempt shall present proper certificates from duly constituted authorities showing them entitled to such exemption. Such tax when established shall be collected for each year in the municipality in which he resides on December first of the preceding year and shall be collected as other taxes."

Let us consider the tax clause of the Constitution of 1947 as it applies to the question at hand.

Article VIII, Section 1, Paragraph 1 of the new Constitution provides as follows:

Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

Article VIII, Section 1, Paragraph 2 of the new Constitution provides:

Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

Article VIII, Section 1, Paragraph 3 of the new Constitution provides:

Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars, which exemption shall not be altered or repealed. Any person hereinabove described who has been or shall be declared

by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

Paragraphs 1 and 3 of Section 1 of Article VIII, as recited hereinabove, are limited in their application to property taxes. The Legislature is therefore free to levy taxes, such as excise or franchise, on the exercise of a privilege. *Jersey City vs. Martin*, 126 N. J. L. 358, 359.

A poll tax is not a tax upon property, but a tax against a person upon the right to exercise a personal privilege. See *Cooley on Taxation*, 4th Ed., Sec. 1771, pages 3497, 3498. *Words and Phrases* (Perm. Ed.), Vol. 33, page 6. Therefore, we conclude that Paragraph 1 of Section 1 of Article VIII of the Constitution of 1947 is not applicable. Paragraph 3 of Section 1 of Article VIII, limiting personal exemptions to veterans, and others, is without force in respect to the matter we are considering since said section is restricted to taxation on real and personal property.

With respect to Paragraph 2 of Section 1 of Article VIII, it is to be noted that in the provision thereof relating to exemption from taxation, no reference is made to property. Hence, it is reasonable to infer that the framers, when writing this provision, had in mind not only exemption from taxation on property but exemption from taxation generally. This view is supported by their evident carefulness in mentioning property (real and personal) in all three paragraphs of said Section 1 of Article VIII, and is consonant with the limitation in Paragraph 9 (6) of Section 7 of Article IV that the Legislature shall not pass any private, special or local law relating to taxation or exemption therefrom. After due consideration we have resolved all doubts in favor of this view and have concluded that the provision of Paragraph 2 of Section 1 of Article VIII, relating to exemption from taxation applies to the exemption under consideration.

The statute providing exemption from poll taxes is a general law. See *Hines vs. Board of Chosen Freeholders*, 45 N. J. L. 504.

There being no constitutional limitations upon the power of the Legislature to impose a tax upon the exercise of a privilege and to grant exemptions therefrom based upon reasonable classification, it seems clear to us that R. S. 54:4-3.12, amended by Chapter 39, P. L. 1940, Chapter 70, P. L. 1942, Chapter 71, P. L. 1944, and Chapter 212, P. L. 1946 (New Jersey Statutes Annotated 54:4-3.12, 3.12a, 3.12b, 3.12c), and R. S. 40:48-8, insofar as it relates to exemption from poll taxes, are valid enactments and that the persons enumerated in both R. S. 54:4-3.12 &c. and R. S. 40:48-8 are entitled to exemption from poll taxes.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: BENJAMIN M. TAUB,  
*Deputy Attorney General.*