

named will run concurrently and the punishments will be executed simultaneously. The fact that the terms of imprisonment are to be successive must be clearly and expressly stated."

The foregoing rule confines itself to sentences imposed at the same time, which is a slightly different situation than that which confronts us. Your specific question is disposed of in the following excerpt from the above cited authority as follows:

"Where, however, different sentences are imposed by different courts, the rule as to sentences operating concurrently unless otherwise directed in the sentence does not apply. Under a statute which provides that the term of imprisonment shall commence from the day of sentence, where defendant is sentenced to imprisonment while serving a term under a previous sentence, his term under the two sentences will run concurrently from the day the second is pronounced."

The statutes of New Jersey are silent as to when the sentence of the court shall commence and we must, therefore, again apply the general rule as stated in 16 C. J. 1372, Sec. 3228:

"When not otherwise directed by statute, or by the sentence of the court, as a general rule the term of imprisonment for which defendant is sentenced begins with the first day of actual incarceration in the prison, unless actual imprisonment is prevented by some cause other than the fault or wrong of the defendant. In some jurisdictions, however, it is held that the term of imprisonment shall date from the time sentence is pronounced, unless the convict by his own wrong has prevented it, while in others it begins to operate from the date of entry in the judgment."

The better rule would seem to be that the sentence commences to run on the day of the imposition thereof.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

DECEMBER 21, 1949.

HONORABLE J. LINDSEY DE VALLIERE,
Director, Division of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 115.

DEAR SIR:

Receipt is acknowledged of your letter dated December 8, 1949 in which you ask for our opinion as to whether or not the Commissioner of the Department of Economic Development now has the sole power to make leases for lands of the State

of New Jersey under the tidal waters thereof or is the function still in the hands of the Shell Fisheries Council.

I am of the opinion that all leases, including the provision for the fixing of rentals, must have the approval of a majority number of the Shell Fisheries Council and the Commissioner, and thereafter the lease is to be signed by the Commissioner of Economic Development. I would suggest that hereafter all leases be executed in the following manner:

"In Witness Whereof, I have hereunto set my hand and seal the..... day of.....in the year of our Lord one thousand nine hundred and.... after first approving of the foregoing lease and the same having been likewise approved by a majority of the members of the Shell Fisheries Council."

Originally, the Shell Fisheries Council had the power to lease lands of the State under the tidal waters thereof (see R. S. 50:1-23) and it continued to have such power after the reorganization (see R. S. 13:1a-19; Laws 1945, Chapter 22, page 70). In 1947 R. S. 50:1-23 was amended (Laws 1947, Chapter 359, page 368, paragraph 1), and by this law the Shell Fisheries Board still had power to lease any of the lands of the State under the tidal waters thereof, to be exclusively used for the planting and cultivating of oysters and clams. However, in 1948 the Legislature enacted an act reorganizing the Department of Conservation and Development (see Chapter 448, Laws 1948). The pertinent part of this law relating to Shell Fisheries, R. S. 13:1b-42 to 13:1b-46, further amended the laws relating to Shell Fisheries. R. S. 13:1b-46 now provides that no lease of any of the lands of the State under the tidal waters thereof to be exclusively used and enjoyed by the lessee for the planting and cultivating of oysters and clams, shall hereafter be allowed, except when approved by the majority of the Shell Fisheries Council, and no such lease shall hereafter, in any case, be allowed except when approved and signed by the Commissioner of Economic Development. Laws 1948, Chapter 448, page 1834, paragraph 97).

This opinion is predicated on the fact that the latest declaration of the Legislature clearly intended that the Commissioner of Economic Development approve and sign the lease after an approval thereof by a majority of the members of the Shell Fisheries Council.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: BENJAMIN M. TAUB,
Deputy Attorney General.