

of beauty culture to a place or building called a beauty school and more particularly in the case of a person who already holds a demonstrator's and teacher's license as in the case at bar.

Respectfully submitted,

THEODORE D. PARSONS,
Attorney General,

By: JOHN WARHOL, JR.,
Deputy Attorney General.

JANUARY 11, 1950.

HONORABLE CHARLES R. ERDMAN, *Commissioner,*
Department of Conservation and Economic Development,
520 East State Street,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 5.

DEAR COMMISSIONER ERDMAN:

You have requested our opinion as to whether the State, which operates and maintains the Manasquan Canal at its own expense, may attempt to recover such cost by charging tolls for the use of the Canal. The answer is "No".

Although constructed by the State on land owned by it, the Canal connects two navigable waters of the United States, and thus is itself a navigable water of the United States. *Ex parte Boyer*, 109 U.S. 629; *The Robert W. Parsons*, 191 U.S. 17; *State vs. Columbia Waterpower Co.*, 82 S. C. 181, 63 S. E. 884. The Canal is therefore subject to the control of Congress for regulatory purposes, to insure the free navigation of those waters. *County of Mobile vs. Kimball*, 102 U. S. 691, 699; 11 C. J. 1140. Until the Federal government has dictated otherwise, the State has the right to charge tolls as compensation for the use of canals owned and operated by it. *Sands vs. Manistee River Improvement Co.*, 123 U. S. 288, 295; *Huse vs. Clover*, 119 U.S. 543, 548. See also *S. C. Highway Dept. v. Barnwell Bros.*, 503 U.S. 177, 187; *Clyde-Mallory Lines vs. Alabama*, 296 U. S. 261, 267; *State vs. Columbia River Waterpower Co. supra*, 63 S. E. 885. In respect to the Manasquan Canal, however, it appears that the United States has exercised its power to prevent the State from exacting tolls.

In 1906 Congress passed a statute (33 U. S. C. A., Section 566) authorizing the State of New Jersey or its agents "to improve the channels on the New Jersey seacoast, or any portion of said coast, or the waters adjacent thereto, lying between thirty-eight degrees, fifty-six minutes and forty degrees, twenty minutes, north latitude, (the Canal lies within these parallels) by dredging, or by the construction of piers, jetties, or breakwaters, or other river and harbor work of any description or nature adapted to attain the ends now pursued by the United States government for the advantage of said coast or for the relief of commerce; *Provided**** That no tolls or other charges upon commerce shall be imposed by those making such improvements. * * *" This proviso exemplifies a policy against tolls which has been

widely adopted by the Federal government in recent years. See, for example, 33 U. S. C. A., Section 5 prohibiting tolls on federally owned canals; and 33 U. S. C. A., Sections 6, 8 and 9, prohibiting tolls on several other waters.

Although it could be urged that the construction of a canal through dry land belonging to the State does not fall within the classification of "river and harbor work" within the meaning of the above-quoted statute, a contrary interpretation was placed thereon by both the Secretary of War and the State of New Jersey, through the old Board of Commerce and Navigation, when the latter applied to the Secretary of War for a permit to construct the Canal. The permit, dated December 16, 1915, recited that the State had applied for authority to construct the Canal in accordance with the provisions of the Act of March 3, 1899, "and also the provisions of an Act of Congress approved June 30, 1906, entitled 'An Act to improve the channels along the New Jersey seacoast'" (33 U. S. C. A., Section 566). The permit then proceeded with a grant of authority to the State for the canal construction "in accordance with the provisions of the Acts of Congress aforesaid". One of the conditions of the grant was as follows:

"13. That said canal shall be constructed, operated and maintained in accordance with the laws of the United States applicable thereto".

The foregoing excerpts from the permit plainly indicate that the State agreed to build and operate the Canal in accordance with the Act of 1906 (33 U.S.C.A., Section 566), which was viewed by both parties as applicable to the project. Therefore the Act of 1906, with its prohibition against tolls, should be regarded as concluding the issue presented.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

tpc;d

JANUARY 10, 1950.

DR. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 6.

DEAR COMMISSIONER:

Your letter at hand stating that your department has under consideration the allocation from coast protection funds of \$5,000 to Middle Township, Cape May County, for the building of coast protection structures at Reeds Beach, a locality in the township fronting on Delaware Bay and inquiring whether or not your department is authorized to allocate funds to said township from the coast protection appropriation in Chapter 43, P. L. 1949.