

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.*

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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.

Chapter 258, Laws of 1946 provides that in addition to the powers conferred by the provisions of the act to which this is a supplement, the state department of conservation, through the division of navigation, is authorized and empowered to repair, reconstruct, or construct bulkheads, breakwaters, groins or jetties on any and every beach front along the Atlantic Ocean, or any beach front along Delaware bay and Delaware river, or at any inlet or any inland waters adjacent to any inlet along the coast of the State of New Jersey to repair damage caused by erosion and storm, or to prevent erosion of the beaches and to stabilize the inlets.

Chapter 43 of the Laws of 1949 provides for beach protection along the Atlantic coast, for the construction of beach protection measures, including bulkheads, back-fill, groins, and jetties, and the pumping of sand, advertising and inspection costs; providing fifty percent of the cost of each project shall be borne by each municipality participating in the project. Following the above paragraph, the act states that any municipality participating in a beach protection project shall deposit its fifty percent share of participation with the department of conservation, division of navigation, and all projects are to be constructed under contract with and under the supervision of the former division of navigation. All allocations heretofore made to any municipality and any balances unused in the "Beach Erosion Account" as of July 1, 1949, are hereby reappropriated and subject to the provisions as heretofore stated. No allocation of beach erosion moneys shall be made to any municipality without the written consent of the Governor.

The appropriation act above cited (Chap. 43, P.L. 1949) follows the instruction to the division of navigation by Chap. 256, Laws of 1946 and you would have authority to allocate the sum of \$5,000 to the contract for beach erosion in Middle Township in case Middle Township allocated the same amount, said project to be constructed under contract with and under the supervision of the former division of navigation.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: ROBERT PEACOCK,  
*Deputy Attorney General.*

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JANUARY 19, 1950.

THE HONORABLE LLOYD B. MARSH,  
*Secretary of State,*  
State House,  
Trenton, New Jersey.

FORMAL OPINION—1950. No. 7.

DEAR SIR:

You have informed us that you are preparing for the printer your annual compilation of Title 19 (Elections) of Revised Statutes and Other Acts Concerning Elections, and you desire to be advised whether, in view of the opinion in the case of *James Imbrie, et als., vs. Lloyd B. Marsh, et als.*, Supreme Court of New Jersey