

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

(No. A 68, September Term, 1949), you should include therein amendments effected by P.L. 1949, c. 24 ("An Act concerning elections, and amending sections 19:3-7, 19:13-8, 19:13-15, 19:13-20, 19:13-21, 19:14-2, 19:23-7, 19:23-12; 19:23-13, 19:23-15 and 19:23-16 of the Revised Statutes.").

Our categorical answer to your question is "yes."

Whatever the effect of the opinion in the Imbrie case upon P.L. 1949, c. 24, you are not warranted in ignoring the existence of said act; and you are bound, therefore, to include it in your compilation. As was said by Mr. Justice Collins, who delivered the opinion of our Court of Errors and Appeals (1902) in the case of *Allison vs. Corker*, 67 N. J. L. 596:

. . . But I am prepared to go further and hold that an unconstitutional statute is nevertheless a statute — that is, a legislative act. Such a statute is commonly spoken of as void. I should prefer to call it unenforceable because in conflict with a paramount law. If properly to be called void, it is so only with reference to claims based upon it. Neither of the three great departments to which the constitution has committed government by the people can encroach upon the domain of the other. . . . An unconstitutional statute is not merely blank paper. The solemn act of the legislature is a fact to be reckoned with. Nowhere has power been vested to expunge it or remove it from its proper place among statutes.

Having disposed of your direct query by the direct answer hereinabove set forth, we remark that you seem to have the impression that the intendment of the court's opinion in the Imbrie case is that Chapters 21, 22, 24 and 25 of the Laws of 1949 are "unconstitutional and void" *in toto* and, therefore, wholly unenforceable. Such, however, is not our impression; and, in view of the fact that certain official oaths are ordinarily filed with you as Secretary of State and, for that reason, you may be queried with respect to the taking thereof, we proceed to explain the effect of the said opinion.

It is true that Chief Justice Vanderbilt, who delivered the opinion of the Supreme Court, said: "In the view that we take of the exclusive nature of an oath prescribed in the Constitution, Chapters 21, 22, 24 and 25 must be declared unconstitutional and void." However, this statement must be read in light of the opinion as a whole and particularly in light of the fact that the opinion concludes by saying that the judgment below is affirmed. And the judgment below (Appellate Division, Superior Court) was that ". . . we hold that Chapters 21 to 25 inclusive of the Laws of 1949 are invalid insofar as they relate to the governor, senators and members of the general assembly, and candidates for those offices". And, as was said in the Supreme Court opinion in the case: "From that determination the defendants have appealed to this court". Thus, the issue actually before the Supreme Court was whether to affirm or reverse the judgment of the Appellate Division of the Superior Court. Upon that basis, the effect of the opinion of the Supreme Court is that Chapters 21, 22, 24 and 25 of the Laws of 1949 (the court having properly ignored Chapter 23 for the reason that it had no relevance to the issue in the case) are unenforceable only as to the governor, senators and members of the general assembly, and candidates for those offices.

However, we are constrained to say that, in view of the reasoning by which the Supreme Court reached its conclusion, it would be absurd for us to advise that as to all State officers other than the governor, senators and members of the general assembly Chapters 21, 22 and 24 (1949) are still to be given full force and effect

(Chapter 25 having spent its force because of its applicancy only to candidates at the 1949 general election). Such advice on our part would only hold open the door for further attack upon these laws by other State officers, and we see no point in prolonging a legal controversy which, in view of the Supreme Court's opinion in the Imbrie case, can only come to the same end.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: DOMINIC A. CAVICCHIA,  
*Deputy Attorney General.*

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JANUARY 23, 1950.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*  
*Dept. of Conservation & Economic Development,*  
Trenton, New Jersey.

FORMAL OPINION—1950. No. 8.

DEAR MR. ERDMAN:

Your letter of January 18, 1950, is at hand.

The opinion you seek is whether or not harbormasters appointed by your department (navigation section) have jurisdiction (1) on the Shrewsbury River, and (2) on Sandy Hook Bay.

The answer is that harbormasters appointed by the navigation section, under the above department, have jurisdiction on the Shrewsbury River and Sandy Hook Bay.

The original board of commerce and navigation, which has been transferred by statute to the department of conservation and economic development, had power to appoint harbormasters in any locality where an inland waterway shall have been constructed or improved by the State. (12:6-4 R. S.)

Such harbormasters shall have power to regulate all water traffic in inland waterways and upon other waters under the jurisdiction of the State, and shall have explicit power to enforce all laws and regulations relating to or regulating traffic or inspecting the equipment of vessel on such inland waterways and other waterways within the control of the State. (12:6-7 R. S.)

Your board had power to improve by deepening and widening such streams, creeks, etc., as connect with or are tributaries to the inland waterway system, that flow through any of the tidal waters bordering or adjacent to the Atlantic Ocean. (12:6-8 R. S.)

Any stream, creek, river or inland waterway improved pursuant to R. S. 12:6-8 of this title shall constitute and form part of the inland water system of this State, and thereafter shall be maintained as such by the State. (12:6-9 R. S.)

The Legislature passed an act conferring powers on the board of commerce and navigation to provide for a harbor of refuge in Sandy Hook Bay near the borough of Atlantic Highlands and to do all things necessary therewith for effectuating the purposes of this act, and an appropriation was made under said act. (12:5-9 R. S.)