

JUNE 22, 1950.

HON. J. LINDSAY DEVALLIERE,
Director of the Division of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 42.

DEAR DIRECTOR:

Receipt is acknowledged of your inter-departmental communication of June twenty-first, in which you state that the Highway Department has requested permission to transfer \$785,000.00 from its operating account to its capital construction account, and request an opinion as to whether there is in the "flexibility section" of the current appropriation act (P. L. 1949, c. 43) any provision prohibiting such a transfer.

Our opinion is that there is in the flexibility section of the current appropriation act (P. L. 1949, c. 43, sec. 4) no provision which prohibits the transfer of money from an operating account to a capital construction account, and that the transfer of \$785,000.00 from the Highway Department's operating account to its capital construction account may be made if the State Treasurer consents thereto.

In your communication you call attention to the first proviso of the "flexibility section" of the current appropriation act (P. L. 1949, c. 43, sec. 4) which reads as follows:

. . . *provided, however,* that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose; . . .

You state that the language of this proviso "seems to indicate that the Legislature has definitely fixed the amount of capital appropriation for permanent improvements." Our view, however, is to the contrary. To us it is obvious that the Legislature after providing generally in the section that "any department or other State agency receiving an appropriation . . . may apply . . . for permission to transfer a part of any item granted to such department or agency to any other item in such appropriation," qualified the general effect of the provision by writing into the section a restriction against a transfer from an item "for permanent improvements" to an item "for maintenance or for any temporary purpose." The office of a proviso in a statute is to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation. *Rutgers Chapter of Delta Upsilon Fraternity vs. City of New Brunswick* (Sup. Ct. 1942), 129 N. J. L. 238; affirmed (E. & A. 1943) 130 *Id.* 216.

It is clear, then, that by the proviso in question the Legislature intended to provide against the increase of an item for purposes other than permanent improvements with funds appropriated for permanent improvements. We are unable to read into the proviso a restriction against increasing an item for permanent improvements. And we are confirmed in this view, we think, by the second proviso, which prescribes "that any item for capital improvement may be transferred to any other item of capital improvement on the approval of the State Treasurer."

In this connection we point out that until 1949 the annual appropriation act had for years included the "flexibility section" with only one (the first) proviso, i. e.

"that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose." In 1949, however, the second proviso ("that any item for capital improvement may be transferred to any other item of capital improvement on the approval of the State Treasurer") made its appearance in the section for the first time. In our view the term "capital improvement" was used in this proviso as a synonym for the term "permanent improvement" in the first proviso, and that the proviso itself was added as a precaution against the misinterpretation that funds appropriated for permanent improvements could not be transferred to augment an appropriation for a like purpose.

The construction we have herein placed upon the "flexibility section" is not to be understood to permit the increase of an item in the instance where the Legislature has expressed itself to the effect that the appropriation is not to exceed the sum named. Such an expression is, we think, clearly indicative of a legislative intent to keep expenditures for such item within the amount specified; and we cannot conceive that the Legislature, having made an appropriation in such rigid terms, intended by the "flexibility section" to undo the rigidity so imposed.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

JULY 7, 1950.

HONORABLE SAMUEL L. BODINE,
President of the Senate,
Flemington, New Jersey.

FORMAL OPINION—1950. No. 43.

DEAR MR. PRESIDENT:

Receipt is acknowledged of your letter of July sixth, in which you state that "there is a possibility that when the Constitutional Session of the Legislature convenes on Saturday, July 8, that there will not be a quorum present either in the Senate or in the House of Assembly" and request an opinion as to "whether it is proper procedure to provide for a recess from day to day until July 17th when a quorum will probably be available."

It is our opinion, and we advise you, that the members of the Legislature have a constitutional duty to assemble on July eighth, which is the forty-fifth day (Sundays excepted) after sine die adjournment of the regular session, in special session "for the sole purpose of acting . . . upon bills returned by the Governor;" but that, in the event a quorum of each house (which is a majority of all the members thereof) is not present, those present may adjourn from day to day until such time as a quorum is present.

Article V, Section I, paragraph 14 (b), of the Constitution of 1947 provides, in part:

(b) If on the tenth day the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall