

In other words the intent of the provisions of R. S. 14:4-9 was to place title to assets of the then insolvent corporation in the receiver, an independent entity created by the statute, in order that he might preserve these assets in the best interests of all concerned. See *Shachat vs. Standard Auto Supply Co.* 106 N. J. Eq. at 110 (1930). As has been said heretofore, the order of the Chancery Division terminating the receivership, and directing the reconveyance of the assets of the corporation to it, merely restored control of those assets to the original owner, namely the stockholders of the original company. A change of ownership did not take place, as the corporation had never been dissolved.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: DANIEL DE BRIER,
Deputy Attorney General

deB :k

SEPTEMBER 15, 1950.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 61.

DEAR COMMISSIONER BATES :

This acknowledges your inquiry of September 15th, relating to the improvement and beautification of the burial plot for deceased indigent prisoners from the State Prison. You indicate that the Prison authorities are desirous of utilizing monies from the Inmates' Welfare Fund for the improvement of this plot and you wish to be informed whether this would be a proper expenditure from the fund as contemplated by the statute.

It is our opinion and we advise you that such an expenditure from the Prison Inmates' Welfare Fund is not within the legislative intent as expressed in the statute and, therefore, cannot be permitted.

The Welfare Fund derives from interest which accumulates on monies of the inmate population maintained in a general trust fund. The manner in which these monies shall be deposited and maintained is provided for in R. S. 30:4-67.1.

The most significant language in the cited section of the law and which, of necessity, controls this situation is as follows :

"Any interest paid by a bank or trust company wherein said fund is maintained may be utilized by the board of managers of such institution for the use, benefit and general welfare of the inmate population as a whole."

Admittedly, this burial plot is utilized for the interment of indigent prisoners who die while in confinement. Of necessity, the number of prisoners buried therein

represents but a small portion of the inmate population as a whole for it is inconceivable that a great number of prisoners would die under conditions of pauperism while in confinement. The benefit of the burial plot flows to this small percentage and it cannot be said that it is maintained for the "use, benefit and general welfare of the inmate population as a whole."

Since these monies constitute a fund in the nature of a trust, the expenditure therefrom must be in strict compliance with the spirit and letter of the law for the purposes intended by the statute. The use which is proposed is not properly within the provisions of the act.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

SEPTEMBER 22, 1950.

HON. FRANK W. SHERSHIN,
80 First Street.
Clifton, New Jersey.

FORMAL OPINION—1950. No. 62.

DEAR ASSEMBLYMAN SHERSHIN:

You have inquired whether the warden of your County jail who has been the warden for only five years but who has been in the service of the County for a total period of 19 years, not continuously, and not in the same position, would be eligible for a pension under Chapter 228, Laws of 1949 (Revised Statutes 43:9-5.1).

The facts as submitted by you did not state that the warden is physically incapacitated but because the determination of his eligibility for pension is requested under the provisions of this statute, it must be assumed that he is. Your real concern then is whether the warden qualifies as to years of service. The answer is yes. Chapter 228 of the Laws of 1949 provides that:

"The Board of Chosen Freeholders of any county may, in its discretion, adopt a resolution providing for the payment of a pension to a warden or keeper of the county jail, who has been in the employ of such county for a period of not less than sixteen years and who has become physically incapacitated for further service to the county where such physical condition was caused or aggravated by injuries received while on duty in the service of the county."

The purpose of this statute is to authorize the pensioning of wardens or keepers of county jails in certain limited cases. The pensioning under this statute is permissive and is not mandatory. By the terms of the statute three conditions are imposed which must be met. First, that the warden or keeper must have been in the employment of the County for not less than 16 years. Second, that the warden or keeper