

NOVEMBER 14, 1950.

HON. AARON K. NEED, *Deputy Director*  
*Division of Taxation,*  
 State House,  
 Trenton, New Jersey.

## FORMAL OPINION—1950. No. 78.

DEAR SIR:

You have requested my opinion on the following question:

Will interstate carriers of persons using the New Jersey turnpike be subject to the  $\frac{1}{2}$ c a mile tax provided by R. S. 48:4-20.

The answer is "No."

R. S. 48:4-20 provides for an excise tax for the use of highways which are maintained by the public and is intended to compensate the public in part of the cost of construction and maintenance of such public roads. The New Jersey Turnpike Authority Act of 1948 provides that all expenses incurred in carrying out the provisions of the Turnpike Act shall be payable solely from funds provided under the authority of that Act, and the Turnpike Authority is not authorized to incur indebtedness or liability on behalf of or payable by the State or any political subdivision thereof. The Turnpike Act contemplated the imposition of tolls for the use of a turnpike project, and any such turnpike project constructed pursuant to such Act is not a highway within the intent of R. S. 48:4-20.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

tdp;vtd

NOVEMBER 17, 1950.

COL. CHARLES H. SCHOEFFEL, *Superintendent,*  
*New Jersey State Police,*  
 Trenton, New Jersey.

## FORMAL OPINION—1950. No. 79.

DEAR COLONEL SCHOEFFEL:

Your letter requesting an opinion on the validity of a court order expunging the burglary charge against Earl Russell, and also asking whether or not the sheriff of Bergen County must return the fingerprints in connection with this arrest is at hand.

On the question of expunging the burglary charge from the record, will say that under R. S. 2:192-15 it is provided that in all cases where a criminal conviction has been entered against any person and sentence suspended thereon, or where a fine of not more than \$500.00 has been imposed, and no subsequent conviction entered, it

shall be lawful after the lapse of ten years from the date of such conviction for the person so convicted to present a duly verified petition to the court wherein the conviction was entered, setting forth the facts and praying relief under this section.

Upon reading and filing such petition the court may by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of the matter, a copy of which order shall be served in the usual manner upon the prosecutor of the pleas and upon the chief of police or other executive head of the police department of the municipality wherein the offense was committed.

There are exceptions to the above act which state that the evidence of such conviction shall be expunged from the record excepting convictions involving treason, anarchy, hostility to government, all capital cases, perjury, carrying concealed weapons or weapons of any deadly nature or type, rape, seduction, aiding, assisting or concealing persons accused of high misdemeanors, aiding the escape of inmates of prisons, embracery, arson or burglary.

It is my opinion that under the exceptions above set forth the court has no authority to expunge from the record a conviction of burglary.

As to your second question, as to whether or not fingerprints should be returned, will say that the bureau of identification was created under R. S. 53:1-2.

R. S. 53-1-13 provides that the supervisor of the bureau of identification shall procure and file for record fingerprints, plates, photographs, pictures, descriptions, and measurements as may be pertinent, of any person convicted of an indictable offense, as well as known and habitual criminals.

The supervisor of the bureau of identification may procure for record fingerprints and other identification data of all persons confined in any workhouse, jail, reformatory, penitentiary or other penal institution and shall file for record such other information as he may receive from law enforcement officers of the state. The wardens, jailers or keepers of workhouses, jails, reformatories, penitentiaries or other penal institutions shall furnish the state bureau of identification with fingerprints and photographs of all prisoners who are or may be confined in the respective institutions.

Under R. S. 53:1-15 the sheriff, chief of police, members of the state police and any law enforcement agent shall immediately upon the arrest of any person for an indictable offense or of any person believed to be wanted for an indictable offense or believed to be an habitual criminal take the fingerprints of such person according to the fingerprint system of identification established by the superintendent of state police and forward without delay two copies, together with photographs and other descriptions to the state bureau of identification.

For the purpose of submitting to the governor and the legislature a report of statistics on crime conditions the clerk of every court before which a prisoner is arranged on an indictable offense shall promptly report to the bureau of identification the sentence of the court or other disposition of the case.

This act providing for the fingerprinting and photographing of persons arrested for indictable offenses and the dissemination of copies thereof in advance of conviction is not unconstitutional as being an invasion of rights and privileges. *McGovern vs. Van Riper*, 140 Eq. 341. And the court in that same case held that this section was constitutional.

The taking of fingerprints in the first place and the whole process of arrest of a possibly innocent person are a humiliation to which he must submit for the benefit of society. To the same end, the police are justified in retaining such records, in certain cases, after an acquittal or a failure of the grand jury to indict. Sometimes a grand

jury dismisses a charge because it seems trivial; sometimes the trial jury must acquit a guilty person because the evidence does not establish guilt beyond a reasonable doubt. If a person be lawfully arrested and fingerprinted, the police are justified in keeping the fingerprints for possible use in the future even though no indictment is found. But in the absence of statute, discretion in the matter belongs to the police. This is cited in *Fernicola vs. Keenan*, 136 Eq. 10.

Under the above law and decisions of our courts, it is my opinion that the police are not bound to return fingerprints or records of any person taken in accordance therewith. It is their duty to retain them in their files.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General.*

By: ROBERT PEACOCK,  
*Deputy Attorney General.*

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NOVEMBER 28, 1950.

MR. WALTER R. DARBY,  
*Director of Local Government,*  
Trenton, New Jersey.

FORMAL OPINION—1950. No. 80.

DEAR DIRECTOR:

Receipt is acknowledged of your memorandum of November twenty-second in which you request an opinion on the following question: "If the commission form of government is adopted in a township and the township has more than one fire district within its territory, upon the adoption of commission form of government, are the fire districts automatically extinguished or do they continue to operate as theretofore?"

It is our opinion that when a township in which there are fire districts adopts the commission form of government, such districts are not ipso facto abolished (automatically extinguished).

The creation and abolition of fire districts in townships are specifically provided for in R. S. 40:151-1 *et seq.* The commission form of government law provides (R. S. 40:71-9) in part as follows:

Upon the adoption of chapters 70 to 76 of this title (section 40:70-1 *et seq.*), and the organization of the commissioners first elected, the governing body or bodies and all other boards and bodies whether state or local municipal agencies then existing in the municipality, except the board of education and the district court or courts, shall be ipso facto abolished and the terms of all councilmen, aldermen and all other officers, whether elective or appointive, shall immediately cease and determine, and all the powers and duties devolved by law upon such boards and bodies shall pass to, vest in and be performed by the board of commissioners elected under the provisions of said chapters 70 to 76, but nothing in this section contained shall prohibit the creation of subordinate boards authorized by section 40:72-7 of this title.