

then constitutional officer known as the Keeper of the State Prison. And whether referred to in the statutes as the "Keeper of the State Prison" or as the "Principal Keeper of the State Prison," he is one and the same officer.

In our deliberation of this matter we have not overlooked the provision of the Constitution of 1947 (Art. V, Sec. I, par. 12) which prescribes that the Governor "shall nominate and appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law." This provision is traceable to the Constitution of 1844 (Art. VII, Sec. II, par. 8). Mr. Justice Collins of our Supreme Court (1903) discussing, in *Ross vs. Freeholders of Essex*, 69 N. J. L. 143, affirmed 69 Id. 291 (E. & A. 1903), the similar provision of the Constitution of 1844, said: ". . . Had the Park Commission act been silent as to how the commissioners authorized should be appointed, I entertain no doubt that their appointment would have lain with the Governor, on the Senate's advice and consent." We think we have made it clear that the sections of the Revised Statutes above indicated as controlling in the matter here under review, coupled with the legislative history thereof as above set forth, evince an unmistakable legislative intent to make due provision by statute law for filling a vacancy in the office here in question.

Respectfully yours,

THEODORE D. PARSONS,  
*Attorney General.*

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

FEBRUARY 9, 1951.

HON. W. T. VANDERLIPP, *Director,*  
*Division of Planning and Development,*  
Trenton, New Jersey.

FORMAL OPINION—1951. No. 9.

DEAR MR. VANDERLIPP:

Further consideration has been given to your request for opinion as to whether Frank Holmes has authority to put up 30 or more pilings in the sand below high-water mark in front of his property without a permit from your board.

The answer to this is that he has no authority to make any erection or permanent obstruction of any kind without a permit from your board.

Under the Act of 1864, on the right to occupy lands under water in this State, the riparian commission was instructed to make a survey to ascertain the rights of the State in lands under water and to fix and establish exterior lines beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind should be permitted to be made.

Under the second section of that act it was provided that until a report was made no grant or lease of any lands was to be made and permission was granted the commission to stay all proceedings, erections and obstructions until further direction of the Legislature.

In 1869 a supplement to the 1864 act mentioned exterior lines for piers, and the act further stated that no "*erection or structure of any kind shall hereafter be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line \* \* \* and which shall in no case extend beyond the line indicated for piers \* \* \* nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges\* \* \**."

Sec. 15 of the supplementary act of 1869 prescribes the procedure when a person desires a grant for land under water, and states that the grantee may reclaim, improve and appropriate to his own use, the lands contained and described in the certificate subject to the regulations and provisions of the first and second sections of the act.

Under Sec. 19 of the 1869 act the commissioners were given permission to bring suit for ejectment against persons trespassing on or occupying lands of the State.

In 1891 there was passed an act which amended the original act of 1864. The amendatory act (p. 216) refers to the wharf act of 1851 and repeals it as to tide-waters of this State. It provided, however, that the *said repeal shall not be construed* to restore any supposed rights, usage or local common law, founded upon the tacit consent of the State or otherwise to fill in any land under water below mean high tide; and without the grant or permission of said commissioners, *no person shall fill in, build upon or make any erection on or reclaim any of the lands under the tidewaters of this State. Any person so offending shall be guilty of a purpresture.*

This act was construed by our courts in *American Dock vs. Trustees for the Support of Public Schools*, which gives a description of the rights of the State of New Jersey and shows its ownership in said lands, and refers to the law that I have cited above. The court said that public grants whether they be of lands or franchises are strictly construed. Public grants differ from grants between private persons. Grants between individuals are construed favorably for the grantee. Public grants are construed most favorably for the public and against the grantee. The grantee takes nothing not clearly given. (*American Dock vs. Trustees for the Support of Public Schools*, 39 N. J. Eq. 425.)

And in a similar case, Chief Justice Beasley, speaking on this subject said that "the State is never presumed to have parted with any of its property in the absence of conclusive proof of an intention to do so; such proof must exist either in express terms or in necessary implications." *Stevens vs. P. & N. R. R. Co.*, 5 Vr. 532, 553.

The acts above referred to bring us down to R. S. 12:5-3 which reads as follows:

"All plans for the development of any water front upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water-front development shall be first submitted to the board. No such development or improvement shall be commenced or executed without the approval of the board first had and received, or as hereinafter in this chapter provided."

Under R. S. 12:5-2 it is provided that the board may, by appropriate action in any court, prevent the encroachment or trespass upon the water front of any of the navigable waters of this State or bounding thereon or upon the riparian lands

of the State and compel the removal of any such encroachment or trespass and restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters.

In R. S. 12:3-4, on the repeal of the wharf act of 1851, it is specifically set forth:

"As to the future each revocable license, if the said lands covered by the license have not been wholly or in part lawfully reclaimed or built upon, is hereby revoked, and no occupation or reclamation of land under water without such legislative act or revocable license shall divest the title of the State, or confer any rights upon the party who has reclaimed or who is in possession of the same."

That is construed in the case of *In re Camden*, 1 N. J. Misc. 623.

R. S. 12:5-6 provides that any development or improvement as outlined in 12:5-3 which is commenced or executed without first obtaining the approval of your board shall be deemed to be a purpresture and public nuisance and shall be abated in the name of the State in such action as shall be appropriate.

It is my opinion that no person has a right to dredge in front of any waters of this State or build any structure in front of said riparian lands for the development of any water front upon any navigable water or stream of this State or bounding thereon without first obtaining the permission of your board.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By :/s/ ROBERT PEACOCK,  
*Deputy Attorney General.*

RP: N

FEBRUARY 16, 1951.

HON. J. LINDSAY DE VALLIERE,  
*Division of Budget and Accounting,*  
*Department of the Treasury,*  
Trenton, New Jersey.

FORMAL OPINION—1951. No. 10.

DEAR DIRECTOR:

In your communication of February fifteenth you request, on behalf of the Joint Legislative Committee on Appropriations, an opinion as to whether, under the provisions of the Tri-State Compact (R. S. 32:18-1 et seq.) creating the Interstate Sanitation Commission, the sum of \$15,000.00 is the minimum or maximum amount which the State of New Jersey is obligated to appropriate to said commission yearly.