

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.

It is our opinion that the sum of \$15,000.00 specified in R. S. 32:18-15 is neither the minimum nor the maximum amount which the State of New Jersey is obligated to appropriate to the Interstate Sanitation Commission yearly, but is the maximum amount which the State of New Jersey is obligated to appropriate only for the year, if any, in which the Governor does not approve a recommendation by the commission for a total appropriation which, by the percentages fixed in said section, calls for an appropriation by the State of New Jersey of an amount in excess of \$15,000.00.

The compact (R. S. 32:18-15) provides as follows:

#### ARTICLE XIV

1. The signatory States agree to appropriate annually for the salaries, office and other administrative expenses such sum or sums as shall be recommended by the commission and approved by the Governors of the signatory States, the State of New York and the State of New Jersey agreeing each to appropriate forty-five per cent (45%) thereof, and the State of Connecticut agreeing to appropriate ten per cent (10%) thereof. The State of New York and the State of New Jersey obligate themselves hereunder, however, only to the extent of fifteen thousand dollars (\$15,000.00) each in any one year, and the State of Connecticut obligates itself hereunder only to the extent of three thousand, three hundred thirty-three dollars and thirty-four cents (\$3,333.34) in any one year.

It will be noted that the sum specified as the yearly obligation for each signatory State reflects the percentage first fixed. The total of the specified sums is \$33,333.34. This reflects forty-five per cent (45%) each for New Jersey and New York, and ten per cent (10%) for Connecticut. But the significant feature is that the percentage appropriation first fixed is conditioned upon both the recommendation of the commission and the approval of the Governor. In other words, if the commission's recommendation does not have the Governor's approval, the State has no obligation to appropriate more than \$15,000.00 to the commission for the applicable year. Manifestly, the requirement of such approval is a protection to any signatory State whenever the amount recommended might not, in the judgment of the Governor, be grounded in necessity.

It follows, therefore, that the Governor's approval of the sum recommended by the commission places upon the Legislature the obligation to make the appropriation. Failure on the part of the Legislature to make the appropriation will result in a failure on the part of the State to comply with the terms of the compact.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

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

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