

act as a stay, it would seem advisable for you to notify counsel for the prisoner that a notice of appeal filed by him is not considered as a stay of execution.

Very truly yours,

THEODORE D. PARSONS,
Attorney General of New Jersey.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

JULY 2, 1951.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation,
520 East State Street,
Trenton, N. J.

FORMAL OPINION—1951. No. 15.

DEAR COMMISSIONER ERDMAN:

I have your letter of June 8th on the question presented as to whether or not the Riverton Yacht Club has a right to fill in, build upon or make any erection of or reclaim any of the lands under the tidewaters of this State without the grant or permission of the Department of Conservation and Economic Development.

It is my opinion that the Riverton Yacht Club has no right to fill in, build upon or make any erection on or reclaim any land under the tidewaters of this State in front of its yacht club without the grant or permission of the Department of Conservation and Economic Development.

The Legislature of New Jersey passed an act (P. L. 1852, p. 208) to incorporate the Riverton Improvement Company, under which act permission was granted to lay out streets and erect thereon the Town of Riverton; to construct wharves on the river for landing steamboats and other vessels. Under this act, Daniel L. Miller retained a lot on which to erect a dwelling. In section 6 the act provided that the company was authorized to improve that portion of the land to be held by erecting buildings, laying out lots and streets and building a wharf for commercial and shipping purposes, and not to injure the navigation of said river.

The Riverton Improvement Company sold the property to R. Biddle in 1868, and Biddle conveyed to Riverton Iron Pier Company in 1886. That company sold to Riverton Yacht Club in 1918.

Under 12:3-4 (P. L. 1891, p. 216) no person or corporation shall fill in, build upon or make any erection on or reclaim any of the lands under the tidewaters of this State without the grant or permission of the Department of Conservation and Economic Development, and any person or corporation so offending shall be guilty of a purpresture. By the reorganization Act of 1948, p. 1783 the powers and duties formerly exercised by the Board of Commerce and Navigation were transferred to the Department of Conservation and Economic Development.

A legislative grant is to be strictly construed and its general terms should not be extended to include specific rights not clearly included within its language. *Morris Canal vs. Central R. R.* 16 N. J. Eq. 419; *Townsend vs. Brown*, 24 N. J. L. 80; *New Jersey Zink vs. Morris Canal*, 44 N. J. Eq. 398; *Katzenbach vs. Armstrong Cork Co.*, 99 N. J. Eq. 32.

Under the cases cited above, it was held that so far as such reclamation took place within the proper limits, said right is a mere license and subject to withdrawal by the State if not previously acted upon by actual reclamation or improvements and as there has been a specific appropriation by the Legislature of such portions of the land in question as have not been actually reclaimed or otherwise improved or built upon at the time of the passage of P. L. 1891, p. 216, the defendant will be restrained from proceeding with the reclamation and improvement of such lands. The Department of Conservation and Economic Development has a right under R. S. 12:3-8 to begin ejectment proceedings. This has been carried down from section 12 of the original supplement of 1869, authorizing the old commission to bring ejectment proceedings for trespass on lands under water. *Seacoast &c. vs. American Timber Co.*, 92 Eq. 221.

The alleged right claimed by the Riverton Yacht Club to reclaim riparian land or to erect any building adjacent to its upland is a mere license or privilege since said club has not built or reclaimed any of the land prior to the 1891 act cited above. The Riverton Improvement Company under the legislative grant of 1852 could only build a wharf for commercial and shipping purposes and not to injure the navigation of said river. The Riverton Yacht Club is not engaged in commercial pursuits and for reasons stated has no right to erect buildings on the land under water without the grant or permission of the Department of Conservation and Economic Development.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By : ROBERT PEACOCK,
Deputy Attorney General.

APRIL 16, 1951.

HONORABLE SANFORD BATES,
Commissioner of Institutions and Agencies,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 16.

DEAR COMMISSIONER :

Reference is made to your letter of March twentieth, in which you ask whether persons employed in connection with the operation of commissaries in State institutions are State employees.

The answer is "Yes."

In your letter you point out that the persons so employed have no civil service status and that their wages are paid from profits derived from the operation of the respective commissaries. These circumstances are of no consequence in the determination of this question.

Commissaries in State institutions are maintained by warrant of law. Section 30:4-15 of the Revised Statutes provides, in part, that

The board of managers of a charitable, hospital, relief or training institution or noninstitutional agency may maintain a commissary or store for the sale of commodities to patients or inmates under rules adopted by the board. The cost of establishing the commissary or store may be defrayed out of any funds appropriated for current maintenance. . . .