

in construction work of any kind. It must be concluded that the intent was not to permit their employment as such.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By : LOUIS S. COHEN,
Deputy Attorney General.

LSC:rk

OCTOBER 1, 1951.

HON. J. LINDSAY DEVALLIERE, *Director,*
Division of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 29.

DEAR DIRECTOR:

Receipt is acknowledged of your letter of September thirteenth, in which you present to us for opinion the question whether contracts made by the Department of Conservation and Economic Development, "in connection with the appropriation of \$50,000.00 for the State Advertising Council," are subject to the provisions of law requiring State agencies to advertise for bids when the payment of State funds in excess of one thousand dollars is involved. We take it that you refer to the \$50,000.00 item in the current appropriation act labelled "Promotional Expenses (New Jersey Council)" and, as well, to the provisions of R. S. 52:34-1.

It is our opinion, and we advise you, that the provisions of R. S. 52:34-1 do not apply to expenditures from the appropriation labelled "Promotional Expenses (New Jersey Council)"; and that the Department of Conservation and Economic Development may enter into any contract or contracts in effectuation of the purpose of the appropriation, without advertising for bids.

The provisions of R. S. 52:34-1 are as follows:

No contract or agreement for the construction of any building, for the making of any alterations, extensions or repairs thereto, for the doing of any work or labor, or for the furnishing of any goods, chattels, supplies or materials of any kind, the cost or contract price whereof is to be paid with State funds and shall exceed the sum of one thousand dollars, shall be awarded, made or entered into by the board of managers or board of trustees of any State institution, or by any State department or commission, or by any person acting for or on behalf of the State, without first having publicly advertised for bids for the same, according to the specifications

to be furnished to or for the inspection of prospective bidders by the board of managers or board of trustees of any State institution, or by the State department or commission, or by the person acting for or on behalf of the State, authorized to procure the same.

It has been represented to us that from the very beginning the practice has been to contract with a private advertising agency for the preparation and servicing of the larger annual advertising venture, at a cost in excess of one thousand dollars. The conclusion hereinabove expressed, however, does not rest upon the consideration that a contract of this nature does not involve work or labor within the meaning of R. S. 52:34-1; for such a contract is itself one resulting from the exercise of discretion, and is not one of necessity. Indeed, the conclusion we have expressed rests upon the very construction that contracts authorized by P. L. 1937, c. 154 (R. S. 52:9c-1 to 52:9c-4, since repealed) were not intended to be subject to provisions of law which were then in existence and which were incorporated into the Revised Statutes as R. S. 52:34-1 *et seq.*

In section 1 of P. L. 1937, c. 154 (R. S. 52:9c-1), it was provided that the council thereby created was to be a commission "to advertise the agricultural, educational, industrial, recreational and residential advantages" of the State, in section 3 (R. S. 52:9c-3) it was provided that the council "shall formulate plans for effectuating this act, and in its discretion, enter into a contract or contracts from time to time for the purpose hereof from any appropriation" made to it by the Legislature; and in section 4 (R. S. 52:9c-4) it was provided that appropriations were to be made to the State Board of Commerce and Navigation and were to be administered and expended by that board "under the direct authority of the council herein created." The provision concerning appropriation to the Board of Commerce and Navigation is of no moment, since by subsequent—and therefore superseding—law, each annual appropriation for the purpose in question has been made to the agency succeeding to the functions, powers and duties of the New Jersey Council. It is the other provisions that are significant, in that they evince a legislative intent that the council was to have free rein in effectuating the purpose of the act under which it (the council) was created.

By the provisions of P. L. 1944, c. 85, R. S. 52:9c-1 to R. S. 52:9c-4 were repealed; and the New Jersey Council was abolished and its "functions, powers and duties" were transferred to the Department of Economic Development (created by the same act). It must follow, then, that the Legislature of 1944, which abolished the council and enjoined that its functions, powers and duties should devolve upon the Department of Economic Development, intended that the successor agency was not only to replace the council for the purpose of advertising the agricultural, educational, industrial, recreational and residential advantages of the State, but also that in effectuating that purpose the new agency was to enter into contracts from time to time "in its discretion" and have "direct authority" over the administration and expenditure of appropriations.

By P. L. 1948, c. 448, the Legislature provided that "all the functions, powers and duties of the existing Department of Economic Development and of each of the divisions therein," etc., were transferred to and vested in the Department of Conservation and Economic Development established by the same act. And by this provision the Department of Conservation and Economic Development succeeded to those functions, powers and duties of the New Jersey Council which, by P. L. 1944, c. 85, had earlier devolved upon the Department of Economic Development.

Accordingly, the Department of Conservation and Economic Development may by contract, and without advertising for bids, commit expenditures in any amount from the appropriation labelled "Promotional Expenses (New Jersey Council)."

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By : DOMINIC A. CAVICCHIA,
Deputy Attorney General.

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OCTOBER 8, 1951.

DR. LESTER H. CLEE,
President, Civil Service Commission,
State House,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 30.

MY DEAR DR. CLEE:

You are desirous of knowing whether under the terms of R. S. 38:23-1 an officer or employee of this State is entitled to leave of absence with pay while engaged in field training. The answer is "Yes" and to that extent Civil Service Circular No. 18, dated June 13, 1943, as revised April 11, 1951, should be amended accordingly.

You also inquire whether pursuant to R. S. 38:12-4 as amended by P. L. 1941, chapter 109, section 23, which statute contains approximately the same wording as R. S. 38:23-1, but which affects members of the National Guard, the Naval Militia, or New Jersey Guard, an officer or employee of the State is entitled to leave of absence with pay while engaged in field training. The answer is "Yes" and to that extent Circular No. 18 aforesaid must be amended.

You inquire whether in conformity with a certain opinion rendered by the Superior Court of New Jersey, Appellate Division, entitled *Sylvester J. Lynch, Plaintiff-Appellant, vs. Borough of Edgewater, Defendant-Respondent*, 14 N. J. Super. 329, that portion of Circular 18 above which limits payment of salary in full to a period of two weeks or less should be amended, and whether one being called into military service to attend a training course is entitled to full pay during the entire time of such training procedure contrary to the circular aforesaid.

The pertinent section of the statute R. S. 38:23-1 provides:

"An officer or employee of the State or a county or municipality, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve Force and United States Marine Corps Reserve, or other organization affiliated therewith, shall be entitled to leave of absence from his respective duty without loss of pay or time on all days on which he shall be engaged in field training. Such leave of absence shall be in addition to the regular vacation allowed such employee."