

in the statute, and the offense charged must come within both the letter and the spirit of the statute. As the Legislature adopts criminal statutes for the purpose of preventing or punishing definite mischiefs, and as statutes often embrace all conduct likely to result in such mischiefs and often contain no statement of exceptions thereto, one who is charged with violation of a criminal statute must be permitted to show, if he can, that he is not within the spirit of the statute even though his conduct is apparently within the letter of the law. This principle is of great importance in cases of mere technical violation of law, where the statutory language is all embracive but where the accused person never committed the mischief the statute was enacted to prevent, for it is contrary to the spirit of justice and of the common law to apply criminal sanctions in cases where the conduct of the accused fails to violate the spirit of the law." See *O'Regan and Schlosser*, "Criminal Laws of New Jersey," Vol. 1, page 84, &c.

The mischief sought to be controlled and discouraged by the Legislature in section 12 of the Parole Law was recidivism. It is the plain fact that the prisoner whose case we discuss here was not a recidivist in 1925 when he committed the crime for which he was incarcerated in 1939. His voluntary surrender to the authorities and his confession to the crime is laudable, and it is inconceivable that the language of this law can be construed in such fashion as to penalize the prisoner as an habitual offender when the record clearly demonstrates that he was not.

The Parole Board should be informed that the prisoner should be considered as eligible for release on parole without the application of the limitations imposed by section 12 of the Parole Law.

Very truly yours,

THEODORE D. PARSONS,
Attorney General of New Jersey.

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

JULY 7, 1952.

HON. J. LINDSAY DE VALLIERE,
Director, Division of Budget & Accounting,
Department of the Treasury,
State House,
Trenton, New Jersey.

FORMAL OPINION—1952. No. 19.

DEAR MR. DE VALLIERE:

I have your recent request for the opinion of this office, with reference to the effect of chapter 271, P. L. 1952, upon Item T 22 of the Appropriations Act for the current fiscal year ending June 30, 1953. (Chapter 43, P. L. 1952.)

Chapter 271, P. L. 1952, aforementioned, repealed as of July 1, 1952, the Apportionment Fund Act, namely, chapter 254, P. L. 1944. This latter statute

made an annual appropriation of \$1,000,000.00 to be apportioned among the municipalities of our State employing full time policemen and firemen, or both. The statute directs that these moneys be used for the maintenance of police and firemen's pension funds in those municipalities wherein such funds are established, and where not so established, for the support of police and fire departments.

Item T 22 of the current appropriations act is as follows:

"T 22. *Police and Firemen's Apportionment Fund*

Apportionment Fund as provided in chapter 254, P. L. 1944 . . . \$1,000,000.00

The issue before us, is whether Item T 22 is to be administered as an effective and valid appropriation during the current fiscal year, or whether on the other hand, it is to be regarded as repealed, due to the repeal of the Apportionment Fund Act, by chapter 271, P. L. 1952.

It is my opinion, and I so advise you, that Item T 22 of the current appropriations act remains fully effective and valid for its stated purpose, and is to be administered as such.

As has been observed heretofore, the basic authorization for the \$1,000,000 annual appropriation is the Apportionment Fund Act, namely chapter 254, P. L. 1944. This act, constituted, in itself, a valid and proper appropriation measure. The Legislature, however, pursuant to the requirements of section 3 of chapter 33, P. L. 1945 annually enacts an appropriations act, the purpose of which is to include in one document, in so far as is possible, a complete picture of the fiscal needs of the State Government. Section 3 of the statute referred to is as follows:

"So far as known or can be reasonably foreseen, all needs for the support of the State Government and for all other State purposes shall be provided for in one general appropriation law covering one and the same fiscal year except that, if change in fiscal year is made, necessary provision may be made to effect the transition."

In accordance with this statute, Item T 22 was included as a specific appropriation in the current appropriations act. When enacted, Item T 22 was, in itself, a full and complete authorization for the appropriation in question, until repealed as is hereinafter discussed, irrespective of what subsequent disposition was made of the enabling Apportionment Fund Act, namely, chapter 254, P. L. 1944.

The foregoing leads to the real question before us—was Item T 22 repealed or rendered invalid by the repeal of the Apportionment Fund Act?

In order to conclude that Item T 22 was rendered invalid, a specific or implied repeal thereof must be found. The facts are clear that no specific repeal occurred. The Legislature could have enacted a specific repealing act if this was desired. In the absence of a specific repealer, are we to presume that chapter 271, P. L. 1952 worked an implied repeal of Item T 22? I think not.

Repeals by implication are not to be lightly adopted. As was stated by our court in *Bednarik vs. Bednarik*, 18 N. J. Misc. at 649 (1940):

"It is an established rule of statutory construction that repeals by implication are not favored and that where it is possible to reconcile two statutes the court should make every effort to sustain both. *Winne vs. Casale*, 99 N. J. L. 345; affirmed, 100 N. J. Law 291."

In the same vein, in section 2014 of Sutherland on "Statutory Construction," which states:

"The bent of the rules of interpretation and construction is to give harmonious operation and effect to all of the acts upon a subject, where such a construction is reasonably possible, . . . Where the repealing effect of a statute is doubtful, the statute is to be strictly construed to effectuate its consistent operation with previous legislation."

The foregoing citations in support of the rule that statutes are to be construed to effectuate the "consistent operation" of all statutes on a given subject, make necessary a reference to certain other legislation, affected by the several statutes with what we have heretofore been concerned in this discussion.

The repealing statute, namely, chapter 271, P. L. 1952, was one of several acts enacted by the 1952 Legislature, in connection with the establishment of the Consolidated Police and Firemen's Pension Fund Commission. This commission, established by chapter 358, P. L. 1952, consolidates under its control and management all local police and firemen's pension funds established under the provisions of chapter 160, P. L. 1920, as amended. The legislative plan set forth in the 1952 statute, is to fund existing deficits in local police and firemen's pension funds through a thirty year program to which the State, commencing July 1, 1953, is to make annual appropriations. This statute makes no mention of the plan of contribution established by the Apportionment Fund Act. Accordingly, we must inquire as to whether the Legislature intended that the \$1,000,000 annual appropriation continue until July 1, 1953, when the new plan of contribution commences.

I think the Legislature did so intend. In the first place, it is to be presumed that the Legislature in enacting the current appropriations act, including Item T 22, effective July 1, 1952, the Consolidated Police and Firemen's Pension Fund Commission Act, and another companion act, namely, chapter 272, P. L. 1952, likewise effective July 1, 1952, was cognizant that it had repealed, as of July 1, 1952, the Apportionment Fund Act. Had the Legislature intended to repeal Item T 22 it could have done so by express words. *Oakland vs. Board of Conservation and Development*, 98 N. J. L. at 102 (1922).

Secondly, in order to give meaning and consistency of operation to the plan of consolidating the local police and firemen's pension funds, to give equal force and effect to the various statutes to which I have referred, all effective on the same date, and to provide for the funding of existing deficits over thirty years, partially thereof the medium of contributions to be made annually by the State, commencing July 1, 1953, it is necessary that we assume the Legislature intended that the previous plan of contribution continue during the current fiscal year, and until the new plan of contribution becomes effective next July. By this type of interpretation, we reach, as our courts direct we do, that construction that gives consistent and harmonious operation and effect to the various statutes discussed herein.

What other assistance do we have, in arriving at the legislative intent? Chapter 271, P. L. 1952, prior to enactment, was designated as Senate Bill 278, 1952. The statement attached to this bill, when introduced, read as follows:

"STATEMENT

Senate Bill No. 129, entitled 'An act to consolidate and place under the control of a State commission all pension funds heretofore created pursuant to chapter 160 of the laws of 1920, as amended and supplemented, for policemen and firemen; creating a State commission for the control and administration of such consolidated fund; providing for the achievement and maintenance of the actuarial solvency of such fund; amending sections 43:16-1, 43:16-2, 43:16-5, 43:16-6 and 43:16-7, and supplementing chapter sixteen of Title 43 of the Revised Statutes' would consolidate local municipal and county police and firemen's pension funds and place such consolidated fund under the control and management of a State commission created thereby for that purpose. Said bill provides, among other things, for annual contributions by the State of New Jersey to the consolidated fund over a period of years with the object of ultimately bringing such fund to a state of actuarial solvency and maintaining it in such a condition. The provision for these State contributions, therefore, renders unnecessary the annual State appropriation of \$1,000,000.00 apportionable among the municipalities of the State employing full time policemen and firemen for local pension fund purposes as provided by chapter 254, P. L. 1944. In view of the absence of further necessity for the last mentioned enabling act, the foregoing bill provides for its repealer, effective July 1, 1952, *after the appropriation for the year 1952 has been made.*" (Italics supplied.)

The last sentence of the statement is indicative of the intention on the part of at least the author of the bill, that the \$1,000,000 appropriation, as contained in Item T 22 of the current appropriations act, was to remain valid during the current fiscal year, to be disbursed for the purposes stated.

The significance, if any, to be given to a statement attached to a legislative bill, as an aid in arriving at legislative intent, has been discussed from time to time by our courts, the most recent discussion being that of Mr. Justice Jacobs, in his concurring opinion in the Supreme Court decision of *Board of National Missions vs. Neeld*, 9 N. J. at 358 (1952). Mr. Justice Jacobs stated:

"However, in *Hoffman vs. Hock*, 8 N. J. 397, 408 (1952) this court recently indicated that such statement may not in anywise be used as an extrinsic aid in the ascertainment of the legislative purpose, meaning or intent . . ."

"In *Flagg vs. Johansen*, 124 N. J. L. 456, 459 (Sup. Ct. 1940) the court described the introducer's statement as a 'frail and unreliable' source of legislative intent which should not be considered. It seems to me that this fails to distinguish between legal admissibility and weight. The introducer's statement clearly constitutes relevant evidence on any proper issue as to the legislative purpose, meaning or intent; it sets forth the interpretation of the draftsman or sponsor of the legislation, is circulated amongst his fellow members of the Senate or Assembly, as the case may be, and becomes a matter of record available for inspection by all, then and thereafter. It may be very complete and embody a fully documented narrative of purpose entitled to substantial consideration. See e. g., Assembly No. 15 introduced on March 21, 1952, and bearing a statement which is in form

comparable to a detailed committee report. On the other hand it may be inadequate and perhaps misleading and entitled to little consideration. But before this court can tell what kind of statement it is it must have the privilege of looking at it, and that is what *Flagg vs. Johansen* denied. I, for one, am for removing the blinkers. See *Winne vs. Casale*, 100 N. J. L. 291, 295 (E. & A. 1924) where Chief Justice Gummere found significance in the introducer's statement and *Schwegmann Bros. vs. Calvert Distiller's Corp.*, *supra*, where Justice Douglas remarked that 'It is the sponsors that we look to when the meaning of the statutory words is in doubt.' In construing particular statutory phraseology such as that embodied in L. 1948, c. 268 we must, unless we are to usurp functions of the other branches of government, seek to ascertain and effectuate the legislative meaning rather than our own. To that task we should bring minds unafraid to explore."

Cognizant as I am of the limitation placed upon the statement appended to a legislative bill, as a means of ascertaining the legislative intent, nevertheless, in the spirit of Justice Jacobs' opinion, the statement attached to the statute with which we are presently concerned, namely, chapter 271, P. L. 1952, is presented for whatever weight it may have, in connection with the facts and law herein discussed, in support of the conclusion reached by this opinion that the Legislature intended that Item T 22 remain valid until July 1, 1953.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: DANIEL DE BRIER,
Deputy Attorney General.

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JULY 30, 1952.

HON. WILLIAM J. DEARDEN, *Acting Director,*
Division of Motor Vehicles,
State House.

FORMAL OPINION—1952. No. 20.

DEAR MR. DEARDEN:

I have your letter of July 22, 1952, in which you request an opinion as to whether or not the organization known as the "New Jersey Timing Association" in operating motor vehicle races against time over a marked track, comes within the purview of chapter 299, P. L. 1952.

The answer to this question is, "Yes."

Chapter 299, P. L. 1952 provided, in part, as follows:

"No person, partnership, association or corporation shall manage, operate or conduct a motor vehicle race or exhibition of motor vehicle driving skill except by virtue of a license to manage, operate or conduct the same first had and obtained from the Department of Law and Public Safety * * *."