

NOVEMBER 10, 1952.

HON. J. LINDSAY DEVALLIÈRE,  
*Division of Budget and Accounting,*  
 State House, Trenton, N. J.

## FORMAL OPINION—1952. No. 39.

DEAR MR. DEVALLIÈRE:

I have your memorandum directed to the Attorney General under date of October 14, 1952 in which you ask the following question:

"Is it your opinion that any portion of the \$339,420 allocated by the State Legislature in the 1952-53 budget for new positions in the Division of Motor Vehicles may be used for purposes other than the employment of new employees?"

The answer to this question is, "No."

This appropriation is a line item and is self-explanatory. It is made for the single and specific purpose of adding new employees in the Division regardless of where they may be assigned for work.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: JOHN J. KITCHEN,  
*Deputy Attorney General.*

jjk:n

DECEMBER 1, 1952.

DR. LESTER H. CLEE, *President,*  
*Civil Service Commission,*  
 State House, Trenton, N. J.

## FORMAL OPINION—1952. No. 40.

DEAR DR. CLEE:

You have requested an opinion as to whether or not you have authority to approve appointments in the unclassified service of persons appointed by the heads of each institution coming under the jurisdiction of the Department of Institutions and Agencies, and similar appointments made in the other 13 major departments by persons other than the 13 principal department heads.

As we understand it, the Chairman of the State Parole Board takes the position that he is entitled to one clerk or secretary and one confidential employee or agent in the unclassified service, pursuant to the provisions of R. S. 11:4-4(m).

The discussion of R. S. 11:4-4(m) is restricted to the question of its applicability to the State Parole Board and its right to appoint one clerk or secretary

and one confidential employee or agent in the unclassified service. What follows concerning the State Parole Board may or may not apply to the various other boards and commissions depending upon a study of the establishment, history and functions of such boards and commissions.

R. S. 11:4-4(m) provides:

"One clerk or secretary and one confidential employee or agent (in the unclassified service) to each Justice of the Supreme Court, the Chancellor, each Vice Chancellor, judge, principal executive officer and each State department, *board* or commission, when such Justice, Chancellor, Vice Chancellor, judge, principal executive officer, department head, *board* or commission certifies to the commission that such clerk or secretary and such additional confidential employee or agent is essential to the work of the court, department, *board* or commission."

Under R. S. 30:1-2 (P. L. 1948, chap. 87) the Legislature continued the Department of Institutions and Agencies and constituted it a principal department in the executive branch of the State Government. Such department consists of the State board of control of institutions and agencies, which shall be the head of the department, the Commissioner of Institutions and Agencies, who shall be the principal executive officer of the department, with such divisions, bureaus, branches, committees, officers and employees specifically referred to in the act.

By R. S. 30:4-123.1 (P. L. 1948, chap. 84) the provision conferring power upon the board of managers to grant paroles was repealed. By this act there was created and established within the Department of Institutions and Agencies a State Parole Board of three members: a chairman, and two associate members.

Because of R. S. 30:1-2 (P. L. 1948, chap. 87) a "principal executive officer" under R. S. 11:4-4(m) cannot mean the parole board because P. L. 1948, chap. 87 says the "Commissioner of Institutions and Agencies (who) shall be the principal executive officer of the department."

The State Parole Board may come under the word "board" defined in R. S. 11:4-4(m) *supra*, even though the parole board was created and established *within* the Department of Institutions and Agencies on the theory that although it took the place of the various boards of managers in regard to parole matters (by the repeal of R. S. 30:4-106.1, 2, 3) it nevertheless established a distinct "board." If the Legislature had intended that the parole board be merely an arm of the board of managers in matters relating to parole it could have done this by amendment of P. L. 1918, chap. 147, transferring matters relating to parole from the board of managers to the parole board. However, the Legislature did not do this. It chose rather to establish a parole board defining its composition, powers and duties and expressly repealed the sections by which the board of managers had power over parole. The fact that the Legislature established the parole board *within* the Department of Institutions and Agencies may be merely indicative of the Legislature's intention of keeping the various departments limited to 14 under the reorganization, but does not necessarily mean that a "board" established within one of the 14 principal departments should not constitute a "board" within R. S. 11:4-4(m).

It would seem further that if the Legislature intended to exclude a board, whether within or without one of the 14 departments, from the provisions of R. S. 11:4-4(m), it would have done so, especially in view of the fact that R. S. 11:4-4(m)

was amended twice, once on June 12, 1948 and again on May 23, 1952 both occasions being subsequent to the amendment of R. S. 30:1-2 (P. L. 1948, chap. 87) without deleting, defining or explaining the word "board."

May it not be assumed that the Legislature left the word "board" in R. S. 11:4-4(m) because it intended that it should remain in? This assumption becomes more forceful when it is realized that the word "board" was left in with the complete knowledge of the Legislature that it had reduced the various departments and agencies to 14 principal departments and no one of the 14 departments constitutes a "board." Therefore, it may be reasoned that the Legislature, anticipating the obscurity which would result by the reorganization, would have excluded "boards" but for the fact that it meant intentionally to leave it in.

R. S. 11:4-4(m) applies to the State Parole Board simply because the statute includes "boards" as a class of agencies that may appoint in the unclassified service, strict construction notwithstanding.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General.*

By: JOHN W. GRIGGS,  
*Deputy Attorney General.*

jwg:n

DECEMBER 22, 1952.

THE HONORABLE SANFORD BATES, *Commissioner,*  
*Department of Institutions and Agencies,*  
State Office Building,  
Trenton, New Jersey.

FORMAL OPINION—1952. No. 41.

DEAR COMMISSIONER BATES:

You have requested an interpretation of the provisions of chapter 56, P. L. 1950, which permits a prisoner in confinement in default of fine to discharge the fine at the rate of \$3 per day for each day of imprisonment.

In the case under consideration it appears that the prisoner was given a sentence having a minimum and a maximum term and, in addition, a fine was imposed upon him. In default of payment thereof he stands committed. You indicate that the parole board has granted him a parole, effective immediately, with regard to the minimum-maximum sentence imposed upon him, and his present incarceration relates solely to failure to pay the fine.

You desire to be advised whether the sentence upon which he was paroled will continue to run to its maximum expiration date at the same time that he is working out the fine.

It is our opinion and we advise you that such a prisoner is deemed to have the dual status of a prisoner paroled on his minimum-maximum sentence and a convict in confinement serving time in default of payment of the fine imposed upon him.

We find no authority in chapter 84, P. L. 1948, the Parole Law, which would permit or authorize the State Parole Board to hold a sentence in suspension and