

MARCH 13, 1953.

HON. WALTER T. MARGETTS, JR.,  
*State Treasurer,*  
Trenton, New Jersey.

## FORMAL OPINION—1953. No. 8.

DEAR SIR:

This will acknowledge receipt of your letter of March 2, 1953, wherein you request an opinion concerning exemptions to the statute requiring a permit for the erection, use and maintenance of a certain sign. The sign mentioned in your inquiry is approximately 4' x 6' and is located on the north side of Red Bank Avenue at the northwest corner of Third Avenue, National Park Borough, Gloucester County. The sign contains the following words:

"The Texas Company  
Marine Department  
Warehouse and Office"

A directional arrow has painted on it:

"Dock Area"

The question presented in your communication is:

"Is a permit required and payment of fee necessary for the above mentioned sign?"

My answer to the question is "Yes."

The answer to your question may be found in N. J. S. A. 54:40-35(3) and (6). This reads as follows:

"54:40-35. Permit not required for certain signs.

No permit shall be required for the erection, use or maintenance of any sign, billboard, structure, object or other device which is to be used solely for any of the following purposes:

(3) For any cautionary, informative or directory sign, signal or device erected on any public highway exclusively in the interest of public safety, convenience or health when permission has been given therefor by the public authority having jurisdiction of such public highway.

(6) For any private directional sign not exceeding two square feet in area."

It is true the sign in question is cautionary, informative and directory, but it is not used and maintained exclusively in the interest of public safety, convenience or health as it serves both the public and The Texas Company. The Legislature in creating a class of exempt signs was careful to use the word "exclusive" to limit this benefit. The Texas Company does not come within the class organization devoted exclusively to the public interest.

It seems to me that (6) above mentioned is the more important paragraph which answers your query. The exemption placed in (6) was for any private directional

sign not exceeding two square feet in area. The sign in question is somewhat greater than twenty-four square feet in area, and therefore the exemption does not obtain. The need for a permit and payment of fees is, therefore, required for the erection, use and maintenance of the sign in accordance with the statute.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: OSIE M. SILBER,  
*Deputy Attorney General.*

oms;d

MARCH 19, 1953.

HON. RUTH A. PILGER,  
*Chairman of the Committee on Elections,*  
Assembly Chamber,  
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 9.

DEAR MRS. PILGER:

Receipt is acknowledged of your request for my opinion as to the right of citizens of this State, in certain cases, to vote by absentee ballot.

Your inquiry states:

"As Chairman of the Elections Committee in the House of Assembly several bills have been sent to my committee providing for the voting by citizens who are confined to their homes or who are out of the State, through the use of an absentee ballot.

"I have been contacted by several lawyers concerning this legislation and several of them have advised me that voting through the use of absentee ballots is a proper subject of legislation and that all that is necessary is to amend Title 19 of the Revised Statutes to accomplish this purpose.

"Several other lawyers, in whom I have equal confidence, have advised me that any bill amending Title 19 of the Revised Statutes would be unconstitutional because before legislation can be passed to permit voting by absentee ballot the Constitution will have to be amended. The advocates of this theory point out that Article II of the Constitution provides that no elector in actual military service of the State or the United States shall be deprived of his vote by reason of his absence from his election district, and the Legislature shall have the power to provide the manner in which such absent electors may vote, and because it mentions the fact that the Legislature shall have power to provide for ballots for people in military service, it thereby prohibits legislation to be passed enabling anyone else to vote by absentee ballot.

"I am holding all of these bills in my committee until I receive your advice as to which legal theory is correct, \* \* \*."