

the absentee elector's official ballot should be cast. (P. L. 1920, Chapter 349, pp. 792, 793, 794, 795, 796.) This statute was later repealed.

The claim that an amendment to the Constitution is necessary in order to provide for a civilian absentee ballot is without merit.

The Constitution, by Article II, paragraph 3 prescribes the suffrage qualifications. Paragraph 4 of the same Article gives to the Legislature the right to provide for absentee voting by members of the Armed Forces.

These two paragraphs of Article II deal with distinct and severable propositions.

A consideration of the cited cases and of the legislative precedent and practice heretofore prevailing, with respect to the voting of absentee ballots, leads me to the conclusion that it is competent for the Legislature to provide for the participation of electors in elections, by the use of absentee ballots.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk

MARCH 16, 1953.

STATE INVESTMENT COUNCIL,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 10.

DEAR SIRS:

The State Investment Council has requested my opinion as to the investment jurisdiction of the Director of Investment, and the attendant supervisory responsibilities of the State Investment Council over the following items:

(a) One thousand eight hundred and eighty-seven shares of stock of the United New Jersey Railroad and Canal Company, held in the account of the General Treasury Fund;

(b) Certain riparian leases held in the account of the Trustees for the Support of Public Schools;

(c) Certain real estate and personal property held in certain Escheat Funds.

(a) *As to the shares of stock of the United New Jersey Railroad and Canal Company:*

Chapter 270, P. L. 1950, which established the State Investment Council and the Division of Investment, committed certain designated funds to the investment jurisdiction of the Director of Investment. The General Treasury Fund is not specifically mentioned. Chapter 270, P. L. 1950, however, does transfer to the Director of Investment, certain investment powers formerly vested in the State Treasurer by Chapter 148, P. L. 1944.

This latter statute provides :

"1. In any case in which the State Treasurer holds moneys of the State under a requirement that said moneys be held for a particular time or be held for a particular use, he may invest such moneys in bonds or notes of the United States until such particular time has arrived or until such time as said moneys are required to be applied to the particular case."

Likewise, of course, Chapter 270, P. L. 1950, broadens the list of securities in which funds so held by the treasurer may be invested.

I am informed by the Division of Budget and Accounting, Department of the Treasury, that the securities of the United New Jersey Railroad and Canal Company mentioned above, have been held by the State for many years, apparently having been acquired at the time the railroad tracks were built between Jersey City, New Jersey, and Philadelphia, Pa.

The State Treasurer is under no legal compulsion to sell the stock in question. This is a matter entirely within his good judgment and discretion. Even if the stock is sold, and cash realized, the State Treasurer would then be under no legal compulsion to invest the proceeds. It would only be at such time that the State Treasurer should decide to sell the securities, and to invest the cash thereby realized, that the investment jurisdiction of the Director of Investment would attach to the given situation.

It is therefore my opinion that inasmuch as the stock is being held in that form, that neither the Director of Investment nor the State Investment Council has any investment responsibility in the matter.

(b) Riparian leases held in the account of the Trustees for the Support of Public Schools:

Chapter 1, P. L. 1903 (R. S. 18:10-5) provides that all lands belonging to the State now or formerly lying under water are appropriated for the support of public schools. The same statute (R. S. 18:10-6) also provides that "All leases of lands appropriated for the support of public schools by section 18:10-5 of this title shall be held by the board of trustees as a part of the principal of the school fund, and the income arising from such leases shall be a part of the income of the school fund."

In connection with this fund, paragraph 2 of Section IV of Article VIII of our State Constitution, provides as follows:

"2. The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever."

The 1903 act aforementioned (R. S. 18:10-8) limited the investment of moneys in this fund to school district bonds, bonds of the United States, of New Jersey or of any county or municipality of this State. The enactment, however, of Chapter 270, P. L. 1950, and particularly Section 2 thereof, resulted in the investment jurisdiction over this fund being transferred from the Trustees for the Support of Public Schools to the Division of Investment, and accordingly permitted the investment of these funds in those types of investments authorized by Chapter 270, P. L. 1950.

It follows, therefore, I believe, that the investment of moneys belonging to this fund is a responsibility of the Director of Investment. As long as the leases themselves, which are the subject matter of our present inquiry, remain in this form, they are not committed to the investment jurisdiction of the Director of Investment, but remain the property of the Trustees of the Fund, and are to be held by the Trustees as a part of the principal of the school fund, under the provisions of R. S. 18:10-6 cited above. (See *The American Dock and Improvement Company, et al. vs. The Trustees for the Support of Public Schools, et al.*, 35 N. J. Eq. 181, and *State vs. Owen*, 23 N. J. Misc. 123.) Income arising from these leases is treated as part of the income of the school fund to be disbursed annually as directed by R. S. 18:10-16.

(c) *Real estate and personal property held in certain escheat funds.*

I assume that this inquiry relates to property other than cash or negotiable securities, as the disposition by the State Treasurer of these items is specifically regulated by the provisions of Chapter 155, P. L. 1946 (R. S. 2A:37-21). Should the State Treasurer decide to convert personal property to cash, such cash could be regarded as constituting moneys being held for a particular time or a particular use. Accordingly, should the State Treasurer decide to invest this cash, investment jurisdiction relating thereto, would be exercised by the Director of Investment pursuant to the provisions of Chapter 270, P. L. 1950. On the other hand, should the State Treasurer retain such property as such, neither the Director of Investment nor the Investment Council would have any responsibility in the matter.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DANIEL DE BRIER,
Deputy Attorney General.

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