

which require complete freedom around the wheel area. Pole trailers, dump trucks and tanks must also be of the type which necessitates such complete freedom as specified in the act; otherwise, they are required to be equipped with mud flaps on the rearmost wheels.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOHN J. KITCHEN,
Deputy Attorney General.

MAY 4, 1953.

HON. J. LINDSAY DEVALLIERE,
Director, Division of Budget and Accounting,
Department of the Treasury,
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 14.

DEAR MR. DEVALLIERE:

Receipt is acknowledged of your request for my opinion concerning the claim submitted to you by Messrs. James M. Davis, Jr., John A. Mathews and Milton M. Conford, in the sum of \$22,500, for services rendered in connection with litigation instituted by the State of New Jersey, resulting in the voiding of the sale of the Burlington-Bristol bridge and the Tacony-Palmyra bridge.

This claim was the subject of litigation in the case of *Haines vs. Burlington County Bridge Commission*, 8 N. J. 539 (Supreme Court, 1952). There an action was instituted by Henry S. Haines and others against the Burlington County Bridge Commission and others for injunctive relief. The Superior Court, Chancery Division, allowed counsel fees to these attorneys in the sum of \$22,500 and directed payment out of the general bridge fund, and defendants appealed. The Superior Court, Appellate Division, affirmed the decree, and certification was thereupon had to the Supreme Court. The Supreme Court, Vanderbilt, C. J., held that there was no "fund in court" within the meaning of the court rule permitting allowance of fee for legal services from such fund, notwithstanding fact that property which was subject to litigation was under control of court through issuance of temporary restraints.

The claim was next discussed in the case of *Driscoll vs. Burlington-Bristol Bridge Co.*, 8 N. J. 433, 494 (Supreme Court, 1952) wherein the court held that special counsel in this litigation could not be compensated from the "bridge fund" and indicated that compensation of such a nature could be paid only by legislative appropriation.

In summarizing its conclusions on this point the Court held:

"It is apparent from the foregoing that the Legislature contemplated that special counsel for the State, its agencies or officers should be compensated out of funds appropriated by it and not by the court in a particular proceeding in which special counsel might be appearing." (page 494.)

OPINIONS

Thereafter, the matter was presented to the Legislature and in the Supplemental Appropriations bill of this year (Senate No. 249—Chapter 101) the following item was inserted:

“DEPARTMENT OF LAW AND PUBLIC SAFETY,

DIVISION OF LAW

“Amount to cover fees of former Senator James Davis, of Burlington, John A. Mathews, of Essex County, and Milton B. Conford, of Union County, representing costs in the litigation of the recent Burlington Bridge matter \$22,500.00

The Supplemental Appropriations bill is an adequate and comprehensive piece of legislation in itself. It makes appropriations not only for the support of the State government, but for several public purposes, of which in the judgment of the Legislature the recited item is one. No additional legislation is necessary to authorize payment of the appropriated item, and I am of the opinion that the amount should be paid to the named individuals in accordance with the mandate of the appropriation law.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk
Encl: Voucher

MAY 5, 1953.

HON. J. LINDSAY DEVALLIERE, *Director,*
Division of Budget and Accounting,
Department of the Treasury
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 15.

DEAR MR. DEVALLIERE:

Receipt is acknowledged of your request for my opinion relative to certain claims for contingent and incidental expenses, presented to you by the Honorable G. Clifford Thomas, Chairman of the House Committee on Incidental Expenses. You ask to be advised as to the power of the House of Assembly, the committees and members thereof, to incur these expenses and is there legislative authority therefor.