The distinction between an office, and a position and employment, having been judicially recognized and defined, the statute is operative and effective with respect to positions and employments, and the occupants thereof must comply with the law by taking and subscribing the required oath of allegiance.

The result is, therefore, that the condemned portions of the statute, being severable, have been excised and rejected, thus leaving the remainder of the statute intact.

> "The settled rule regarding severability as laid down in the cases is that while a statute may be in part constitutional and in part unconstitutional, if the Legislature would have passed the constitutional parts independently of those deemed unconstitutional and the different parts of the statute are not so intimately connected with and dependent upon each other so as to make the statute one composite whole, unconstitutional parts may be rejected and the constitutional parts may stand. *Johnson* vs. *State,* 59 N. J. L. 535 (E. & A., 1896); *Riccio* vs. *Hoboken,* 69 N. J. L. 649 (E. & A., 1903); *McCran* vs. *Ocean Grove,* 96 N. J. L. 158 (E. & A., 1921); *Wilentz* vs. *Galvin,* 125 N. J. L. 455 (Sup. Ct., 1940)." *Lane Distributors, Inc.* vs. *Tilton,* 7 N. J. 349, 370 (Sup. Ct., 1951).

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

JL:rk

JULY 1, 1953.

COLONEL RUSSELL A. SNOOK,
Superintendent, Division of State Police,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 27.

DEAR COLONEL SNOOK:

You have requested our opinion as to whether a municipality of this State may enact or enforce an ordinance which (a) compels a dealer in liquefied petroleum gas, required to obtain a State license, to also secure from the municipality a permit to transport, use or store such commodity, and (b) limits domestic installations to 100 gallons water capacity and industrial installations to 500 gallons water capacity.

In my opinion, neither of such provisions is valid, because each is in conflict with Chapter 139, Laws of 1950, and with the rules and regulations of the Division of State Police issued pursuant thereto.

The statute authorizes the State Police to promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling and transporting by motor vehicle and utilizing liquefied petroleum gas. The statute further provides that said regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety con-

cerning the same subject matter. It is then declared that the published standards of the National Board of Fire Underwriters shall be deemed the generally accepted standards.

Section seven of the act provides:

> "No municipality or other political subdivision shall adopt or enforce any ordinance or regulation in conflict with the provisions of this act or with the regulations promulgated under section two of this act."

The regulations of the State Police provide for the issuance of permits by State officials for the bulk transportation, handling, utilization and storage of liquefied petroleum gas, and prohibit such operations without the securing of such permits. Furthermore, said regulations do not limit the capacity of domestic or industrial installations, but they do require approval of installations in excess of 2,000 gallons, as well as certain fire protection measures where the installation exceeds 150,000 gallons.

In determining whether the ordinance conflicts with the State law or regulations so as to be invalid, it is important to decide whether the Legislature intended such law and regulations to prohibit any municipal action more restrictive than that taken by the State. The answer depends upon the nature, scope and purpose of the State law, as well as its relation to other legislation.

In our opinion, the purpose of Chapter 139 was to establish a uniform scheme of regulation of the liquefied petroleum gas industry throughout this State. Moreover, the reference to the published standards of the National Board of Fire Underwriters indicates an intent to make such regulations conform with safety standards and practices generally recognized throughout the United States. The Legislature appears to have contemplated that the interests of the public in both safety and commerce would best be protected by a uniform set of regulations for all areas of this State, particularly on such matters as permits for transportation, utilization and storage, and the capacity of installations used by the industry. When, therefore, a State regulation covering one of these matters has been promulgated, more stringent municipal regulation of the same matter is precluded.

As a general rule, an ordinance is deemed to be in conflict with a State law or regulation when it prohibits acts permitted by the State. *McQuillan, Municipal Corporations* (3rd Ed.) Sec. 15.20; 43 *Corp. Jur.* 217-218; *Hudson and Manhattan Railroad Co.* vs. *Hoboken,* 75 N. J. L. 302; *Pennsylvania Railroad Co.* vs. *Jersey City,* 84 N. J. L. 716.

Thus, in *Strauss* vs. *Bradley Beach,* 117 N. J. L. 45 affirmed on opinion below, 118 N. J. L. 561, our courts held invalid an ordinance prohibiting all peddling within the borough, in so far as such ordinance was applied to a veteran holding a license to peddle under a State law. The opinion of Mr. Justice Lloyd in the Supreme Court said (117 N. J. L. at p. 46):

> "There is no doubt we think of the purpose of the statutes. It was to class veterans of the various wars as a body and to entitle them to a privilege of peddling throughout the State regardless of the action of municipalities, whether such action took a prohibitive form or a regulative form. The statute is applicable to the State generally, making no exceptions, and if in conflict with a municipal ordinance the latter must cease to be effective."

The foregoing decision was also cited and approved in 1947 in the similar case of *Higgins* vs. *Krogman*, 140 N. J. Eq. 518, where the ordinance restricted the city's licensees from peddling on boardwalks and on the beach.

Also pertinent here is the case of *Bussone* vs. *Blatchford*, 164 Pa. Super. 545, 67 Atl. 2d 587, which invalidated an ordinance prohibiting the sale of liquor on certain premises for which the owner had been granted a license by the Pennsylvania Liquor Control Board. The court succinctly stated the applicable rule as follows (67 Atl. 2d at p. 589):

> "A municipality cannot lawfully forbid what the Legislature has expressly licensed, authorized or required, or authorize what the Legislature has expressly forbidden."

This opinion has not overlooked Section 40:48–1 of the Revised Statutes, which authorizes the governing body of every municipality to make and enforce ordinances to "regulate the use, storage, sale and disposal of inflammable or combustible materials, and to provide for the protection of life and property from fire, explosions and other dangers." For the reasons already given, it is our view that this statute should not be construed as authorizing the enactment of ordinances more restrictive than the State regulations above mentioned. A contrary determination would, in our opinion, result in a conflict with Chapter 139 of the Laws of 1950 in so far as R. S. 40:48–1 applies to liquefied petroleum gas. In that event, Chapter 139 and the regulations thereunder would prevail. Where there are two conflicting statutes applying to a particular subject, one being general and the other specific, the statute specifically pertaining to that subject controls. *Allgaier* vs. *Township of Woodbridge*, 5 N. J. Super. 21, 25; *Ackley* vs. *Norcross*, 122 N. J. L. 569, aff'd. 124 N. J. L. 133.

For the foregoing reasons, we conclude that a municipality in this State may not require a permit for the transportation, utilization, or storage of liquefied petroleum gas from a dealer holding a State license for these purposes, nor may any ordinance limit the size of liquefied petroleum gas installations. Such provisions of any existing ordinance would attempt to prohibit what the State has expressly licensed or authorized, and thus would be in conflict with the controlling provisions of Chapter 139 of the Laws of 1950 and the regulations issued pursuant thereto.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

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