

that time, subject to their holding over until their new appointments by the Governor. They evince a legislative intent to institute a new scheme of uninterrupted terms, in such manner as eventually to affect the occurrence of a vacancy at the same time and date in every successive year.

Moreover, Section 1 aforesaid also provides that "any vacancy in the membership of the Board shall be filled for the unexpired term in the manner provided for an original appointment". The effect of this provision, viewed in the light of the related provisions heretofore recited, is to preserve the integrity of the legislative scheme of term continuity.

The general rule is that the term of office, when not otherwise provided by statute, begins in the case of appointive offices on the date of appointment. However, as we have already indicated, Chapter 323 of the Laws of 1950 fixes by intendment, if not by specification, the time from which the term of a member of the State Board of Architects begins to run.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: FREDERIC G. WEBER,
Deputy Attorney General.

JULY 6, 1953.

HON. ALFRED E. DRISCOLL, *Governor,*
HON. WALTER T. MARGETTS, JR., *State Treasurer,*
HON. J. LINDSAY DEVALLIÈRE, *State Comptroller.*

FORMAL OPINION—1953. No. 29.

DEAR SIRs:

This is to acknowledge your letter of June 30, 1953, referring to the proposed sale of \$150,000,000 of New Jersey Highway Authority bonds, to be submitted for guaranty by the State, as described in an official statement of the Authority. You request my opinion as to the legality of the State guaranty under the terms of the Guaranty Act (P. L. 1952, c. 17), approved by the voters at the 1952 general referendum, and the legality of consenting to a reservation in the Authority of the right and power to issue additional bonds equally secured by the revenues of the Garden State Parkway.

I have reviewed the pertinent provisions of our State Constitution, the New Jersey Highway Authority Act (P. L. 1952, c. 16) as well as the Guaranty Act.

The New Jersey Highway Authority, and its enabling statute, was patterned upon the New Jersey Turnpike Act which our Supreme Court reviewed and sustained in *New Jersey Turnpike Authority vs. Parsons*, 3 N. J. 235, 69A. (2d) 875 (1949). The validity of the Guaranty Act was considered and approved by the same court in *Behnke vs. New Jersey Highway Authority, et al.* May 25, 1953.

In outline and in detail the Legislature conferred upon the New Jersey Highway Authority the corporate and financial powers successfully employed by the New Jersey Turnpike Authority. Thus, negotiable bonds may be issued for any corporate

purpose, without limit as to kind or amount, provided that the interest rate does not exceed 6% per annum. Moreover the Authority is empowered to covenant as to the source and methods of debt service and as to the rank or priority of bonds.

The Guaranty Act created a liability on the part of the State of New Jersey for the guaranty of Authority bonds subject to an aggregate limit of \$285,000,000 of bonds bearing interest of not more than 3% per annum, maturing within 35 years of their respective dates, issued in connection with the construction, maintenance, repair or operation of all or any part of the Garden State Parkway. The endorsement of the guaranty upon Authority's bonds depends upon a certificate, consenting to the issuance of such bonds signed by the Governor, the State Treasurer and State Comptroller or any two of such officials.

In proposing to offer \$150,000,000 of its bonds for guaranty by the State, I note that the Authority has reserved the power, which it possesses by law, to issue its own bonds in excess of the State-guaranteed \$285,000,000 to be equally secured, together with guaranteed bonds, from the revenues of the Garden State Parkway. It is noted also that while the law does not express this limitation, the Authority has covenanted that the additional bonds will be issued only with the consent of the Governor and either the State Treasurer or State Comptroller. Moreover, these additional bonds can be utilized only if necessary to complete the Garden State Parkway from Paterson-Paramus to Cape May, or to pay for a feeder road from Paramus to the New York State boundary, or to buy from the State any of the existing four sections of the Garden State Parkway completed with State funds. Moreover, the Authority has covenanted that it will charge tolls which will never be less than 100% of debt service on all such bonds and beginning with 1956, will be not less than 120% of that amount.

It is my opinion, and you are so advised, that:

1. The \$150,000,000 of Series A guaranteed bonds, or any part thereof, as set forth in the official statement of the Authority to which your letter refers, are authorized and in conformity with both the New Jersey Highway Authority Act, the Guaranty Act and the referendum of November 1952 which permitted a State guaranty of not more than \$285,000,000 of New Jersey Highway Authority bonds issued for the construction, maintenance, repair and operation of the Garden State Parkway;
2. The Governor, State Treasurer and State Comptroller or any two of such officials may lawfully sign a certificate consenting to the issuance of such bonds;
3. The Governor, State Treasurer and State Comptroller or any two of such State officials including the Governor have power to assent to the resolution authorizing such bonds;
4. Upon presentation by the Authority to the State Treasurer of said bonds, together with the certificate consenting to the issuance thereof signed by the Governor, State Treasurer and State Comptroller or any two of such officials, the State Treasurer may lawfully and properly file such certificate in the office of the Secretary of State together with the record of the amounts and other description of the terms of such bonds and upon such filing of said certificate and record, the punctual payment of principal of and interest on such bonds will be unconditionally guaranteed by the State of New Jersey;
5. Such guaranty may lawfully be expressed or endorsed upon such bonds by the signature of the State Treasurer or any person in the Department of the Treasury appointed by him for that purpose; and

6. The reservation by the Authority of the power to issue its bonds in excess of \$285,000,000 to be equally secured with State guaranteed bonds, by the revenues of the Garden State Parkway, is permitted both by the New Jersey Highway Authority Act and the Guaranty Act.

The State's vital interest in the timely and successful completion of the Garden State Parkway is matched by the people's concern that State revenues will not be required to contribute to the payment of obligations incurred by the Authority. The restrictions accepted by the Authority and the covenants which it has given are capable of achieving both objectives. In my opinion, the Authority, in issuing further securities at a later date, and the Governor, State Treasurer, and Comptroller, in consenting to such action at that time will be obligated at such time to satisfy themselves that Garden State Parkway revenues always will be adequate to discharge all Highway Authority debts.

Respectfully,

THEODORE D. PARSONS,
Attorney General.

JULY 6, 1953.

HON. WILLIAM J. DEARDEN, *Director,*
Division of Motor Vehicles,
State House, Trenton, N. J.

FORMAL OPINION—1953. No. 30.

DEAR SIR:

Your request for a formal opinion concerning your authority under Title 39 has been received. Your question is whether or not where a fine has erroneously been assessed may you refund the amount to the defendant.

The answer to this question is, No.

Title 39 specifically provides the manner in which you must dispose of all fines forwarded to your office. This generally is covered by R. S. 39:5-40 and provides:

"Except as otherwise provided by this subtitle all moneys received in accordance with the provisions of this Title, whether from fines, penalties, forfeitures, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the commissioner, who shall pay the same over to the state treasurer to be credited to the state highway fund and used for the purposes of such fund as provided by section 52:22-20 of the Title "State government, departments and officers".

No provision is made in Title 39 for you to refund any moneys paid to you by way of fine or as otherwise provided in the above quotation.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: JOHN J. KITCHEN,
Deputy Attorney General.