

OCTOBER 19, 1953.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 39.

DEAR COMMISSIONER ERDMAN:

You have requested our opinion as to whether the State, acting through the Division of Planning and Development in your Department, has the right to issue riparian grants (including irrevocable leases) for restricted purposes, such as a public park, place, or street, for a consideration less than the usual price charged for unrestricted grants in the same vicinity.

In my opinion, the Division does have this right, provided that the consideration represents the fair value of what has been granted.

Article VIII, Section IV, paragraph 2 of the Constitution of 1947 provides, as did also the Constitution of 1844, that all money, stock and other property appropriated for the fund for the support of free public schools shall be securely invested and remain a perpetual fund. By the Act of 1894 (P. L. 1894, p. 123) all riparian lands of the State were irrevocably appropriated to the school fund, and all moneys received from the sale and rental of such lands were directed to be invested by the trustees of the fund. In view of these respective constitutional and statutory provisions, it was held in *Henderson vs. Atlantic City*, 64 N. J. Eq. 583, that the Board of Riparian Commissioners had no power to make a grant of riparian lands to the city for park or street purposes for a nominal consideration only. The Court observed, however (64 N. J. Eq. at page 587) that perhaps a privilege could be granted to a municipality to use the riparian land as a park until such time as the State thought it to the benefit of the school fund to transmute the land into money by sale or lease.

This last dictum by the Court supports the constitutionality of section 12:3-36 of the Revised Statutes, which authorizes the Board of Commerce and Navigation (whose functions are now exercised through the Division of Planning and Development) to grant to a municipality a revocable lease of or a permit to use riparian lands for public park or street purposes for a nominal consideration until such time as the board shall decide to make a grant in fee of the land for adequate compensation. I have found no decision indicating that this section violates the above mentioned constitutional provision, and accordingly it is my opinion that said statute is valid.

Authority to convey riparian lands for the purposes of a public park, place or street is vested in the Division of Planning and Development by virtue of section 12:3-33 of the Revised Statutes, which however is silent as to the consideration to be charged for such grant. It seems clear, nevertheless, that the duty of the Division is to obtain the "fair value" of the lands conveyed. See *In re Camden*, 1 N. J. Misc. 623, 640. What is fair value in any particular case is to be determined by the Division in the exercise of the "reasonable discretion" lodged in that body by virtue of the various statutes governing riparian grants. See *Seaside Realty Co. vs. Atlantic City*, 74 N. J. L. 178, 181; *Attorney General vs. Goetchius*, 142 N. J. Eq. 636, 641.

I conclude that while a conveyance or irrevocable lease of riparian lands by the State must be for more than a nominal consideration, the sum demanded for a grant restricted to public use for a park or street need not be as great as for an unrestricted grant, because the value of the former is plainly less than the value of the latter.

Very truly yours,

Deputy Attorney General.
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

tpc;d

OCTOBER 26, 1953.

DR. LESTER H. CLEE, *President,*
Civil Service Commission,
State House,
Trenton, New Jersey.

FORMAL OPINION—1953. No. 40.

MY DEAR DR. CLEE:

As we understand it, you raise the question whether R. S. 11:27-11.1 allows holders of the Congressional Medal of Honor, Distinguished Service Cross, or Navy Cross to one appointment or one promotion, or whether this statute entitles the holder thereof to both an appointment and any number of subsequent promotions.

It is our conclusion that the holder of such an award is entitled to but one appointment, or in lieu thereof, one promotion.

R. S. 11:27-11.1 provides as follows:

“* * * The head or person in charge of any department or subdivision of this State and the various counties and municipalities thereof, to whom such soldier, sailor, marine or nurse as above provided shall apply for employment or promotion, shall within his discretion employ or promote such person, as in his judgment shall deem proper and necessary for the good of his department. Upon said promotion, appointment or employment, the said person shall then become subject to and under the direct supervision, rules and regulations governing such employment by the Civil Service Commission.”

It would appear to us that the statute clearly gives to the head of the department the right to employ or promote such holder as in the judgment of the appointing authority shall be proper for the good of his department. This statement is clearly a limitation upon both the department head and the recipient and allows to the latter either the appointment or promotion as a reward for his distinguished service.