

If it is impracticable to so arrange the buildings used for such purposes, such Boards of Chosen Freeholders shall provide such places as shall be necessary to accomplish the purposes of this section." It is of interest to observe that historically this section of the Revised Statutes had its origin in Chapter 237, P. L. 1898.

Our Legislature and the Supreme Court has erected adequate safeguards for the segregated detention of juveniles separate and apart from adult offenders. There is no deficiency in our law. The obligation imposed by statute to provide these proper places of detention for juvenile offenders is clear.

We do not conceive it to be the function of the Attorney General to seek compliance with these statutes for there is no such provision in law. In the alternative, we can only suggest that you make personal contact with the judge of the County Court or of the Juvenile and Domestic Relations Court of any county wherein it is found that inadequate provision has been made for the detention of juvenile offenders and request that the Court bring this matter forthwith to the attention of the Board of Freeholders so that compliance may be had with the law and with the Rules of Court above cited.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: EUGENE T. URBANIAK,  
*Deputy Attorney General.*

ETU:HH

NOVEMBER 18, 1953.

HONORABLE CHARLES R. ERDMAN, JR., *Commissioner,*  
*Department of Conservation and Economic Development,*  
520 East State Street,  
Trenton, New Jersey.

FORMAL OPINION—1953. No. 46.

DEAR COMMISSIONER:

You have requested this office for our opinion on certain questions arising under the new municipal planning enabling act (Chapter 433, P. L. 1953).

You have raised essentially two questions:

1. Under the new act, which becomes effective on January 1, 1954, does a planning board which is in existence and legally constituted as of December 31, 1953, continue to exist?
2. If so, what powers does it possess without further action by the governing body of the municipality?

Under Chapter 433 of the Laws of 1953, planning boards will have basically two functions: to prepare and adopt a master plan for the development of the municipality, and to approve or disapprove subdivisions. Planning boards will also have the authority and duty of acting as the zoning commission under Article 3 of Chapter 55 of Title 40 of the Revised Statutes.

The answers to your questions turn upon the construction of Section 3, last paragraph; Section 27, and Section 28 of the act, which read as follows:

"Sec. 3 (last paragraph).

The governing body may by ordinance grant any of the powers exercisable by a planning board to a planning board continued by Section twenty-seven [40:55-1.27] of this act or to be created under Section four [40:55-1.4] of this act, but no particular power may be exercised until expressly granted by ordinance and until compliance is made with the conditions, standards, procedures and regulations enumerated in the sections describing such power."

"Sec. 27. Any municipal planning board created under the authority of law prior to the adoption of this act [40:55-1.1 et seq.] shall be continued by this act, and the members appointed to said board shall continue in office until the completion of their terms, unless sooner terminated, and any action previously taken by said planning board shall be deemed to continue in full force and effect except as hereinafter in this section provided.

All rules and regulations adopted by planning boards under the authority of law regulating subdivision of lands shall continue in effect until July first, one thousand nine hundred and fifty-four, unless prior thereto the governing body of the municipality shall have adopted an ordinance pursuant to this act for the regulation of subdivisions, in which event such rules and regulations shall cease to be in effect upon the date such ordinance becomes effective."

"Sec. 28. Repealer. Sections 40:55-1 to 40:55-21, both inclusive, of the Revised Statutes are repealed."

In my opinion, the answers to the several questions raised by you may be stated as follows:

1. Where a planning board is in existence and legally constituted as of December 31, 1953, that board will continue to exist under the new act, by virtue of Section 3, last paragraph, and Section 27, both quoted above. The repealer contained in Section 28 must be read in conjunction with the other two sections mentioned, and as so read, it does not abolish existing planning boards. Such boards are continued by virtue of the other pertinent provisions of the new act, even though the act under which they were originally created is repealed.

2. After January 1, 1954, existing planning boards will have no authority to adopt new rules or regulations concerning the subdivision of land unless or until the governing body of the municipality has adopted a valid ordinance pursuant to the new act for the regulation of subdivisions. However, by virtue of Section 27, subdivision rules and regulations adopted by planning boards prior to January 1, 1954, will continue in effect, and the board may continue to operate thereunder, until July 1, 1954, unless or until the governing body has adopted a subdivision ordinance pursuant to the new act; provided the board was given the power of subdivision control by ordinance validly adopted under the "old" law now in effect. The continued effectiveness of existing subdivision regulations after January 1, 1954, until their expiration as noted, plainly implies the application and enforcement thereof by the planning board. Although the last paragraph of Section 3 declares that "no particular power may be exercised until expressly granted by ordinance," Section 27 must be

deemed to make an exception to the rule of Section 3, under the settled doctrine that a general regulation contained in a statute yields to the particular and is modified *pro tanto*. "The special provision is deemed an exception engrafted upon the general rule." *State vs. Masnik*, 125 N. J. L. 34, 36 (E. & A., 1940).

3. Even though a governing body may be satisfied with its present planning board organization, an existing planning board will not be able after July 1, 1954, to exercise any power concerning subdivision of land until such power is expressly granted to it by ordinance under the new act, and until compliance is had with the conditions, standards, procedures and regulations enumerated in the sections of the ordinance describing such power. A principal purpose of the new act is the establishment of standards which must be met by planning boards in exercising their powers with respect to subdivisions.

4. An existing planning board will under the new act possess the power to prepare and adopt a master plan without any further action by the governing body of the municipality, since the power with respect to master plans will be vested in the planning board by the new statute itself. Thus, Section 10 of the new act provides that "The planning board may prepare, and after public hearing, adopt, and from time to time amend, a master plan for the physical development of the municipality. . . ." By contrast, Section 14 provides that "The governing body may *by ordinance* provide for the regulation of subdivisions within the municipality. . . ." The last paragraph of Section 3 of the act, in my opinion, was intended to apply exclusively to those powers of a planning board which can be exercised only by virtue of an ordinance, i.e., powers relating to subdivision.

5. A master plan validly adopted prior to January 1, 1954, and any other action validly taken by the board prior to that date, will remain in effect by virtue of the first paragraph of Section 27, except as hereinbefore noted.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: THOMAS P. COOK,  
*Deputy Attorney General.*

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NOVEMBER 5, 1953.

THE HONORABLE SANFORD BATES, *Commissioner,*  
*Department of Institutions and Agencies,*  
State Office Building,  
Trenton, New Jersey.

FORMAL OPINION—1953. No. 47.

DEAR COMMISSIONER BATES:

You have inquired whether an individual convicted of "assault with intent to commit" rape, sodomy or carnal abuse is to be dealt with in the manner provided for in N. J. S. 2A:164-3, commonly referred to as the Sex Offender Law.

Upon examination of the pertinent statutes involved, we are of the opinion and we advise you that persons convicted of "assault with intent to commit" rape, sodomy or carnal abuse are not within the purview of the aforementioned statute.