

ment officer of any other State agency. The commissioner shall dispose of the said forfeiture in the manner provided by section 39:5-40 of this Title. Forfeitures imposed and collected as a result of a complaint instituted by a local officer shall be by the magistrate forwarded to the proper financial officer of the county, wherein they were collected, to be used by the county as a fund for road repairs therein. As amended L. 1942, c. 339, p. 1179, § 2."

R. S. 39:5-40 and 39:5-41 provide for the use and disposition of the forfeitures above mentioned. There is no provision in Title 39 for the withholding of court costs from any forfeiture of bail.

It is my opinion that if costs of court were deducted from forfeitures it would amount to the taxing of court costs against the State, and there is no provision in Title 39 for the deduction of such costs.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: JOHN J. KITCHEN,  
*Deputy Attorney General.*

JJK:MH

DECEMBER 3, 1953.

HON. J. L. BROWN, *Acting Commissioner,*  
*Department of Labor and Industry,*  
State House,  
Trenton 7, New Jersey.

FORMAL OPINION—1953. No. 52.

DEAR ACTING COMMISSIONER:

This is to acknowledge receipt of your letter requesting an opinion concerning the Department of Labor and Industry's jurisdiction over electric power plants insofar as they may be affected by the provisions of N. J. S. A. 34:6-1. The problem revolves about the resolving of the following query: Is an electric power plant a factory where the manufacture of goods of any kind is carried on? If the answer is in the affirmative, then N. J. S. A. 34:6-1 and the other provisions of Chapters 4 and 6 of Title 34 of this statute will repose jurisdiction in the Department.

It is my opinion that an electric power plant is a factory where the manufacture of goods is carried on and, therefore, comes within the jurisdiction of N. J. S. A. 34:6-1. Our statutes prescribe the instances when the Department of Labor and Industry shall exercise jurisdiction. N. J. S. A. 34:6-1 provides, among other things, that:

"Every factory, workshop, mill, or place where the manufacture of goods of any kind is carried on shall, under the supervision and the direction of the Commissioner, be provided with \* \* \*, etc."

In order for a factory to come under the Department's supervision it must fall within the limitations expressed in the statute. The highest courts of our State in interpreting the legislation in question have held that a factory to come within the jurisdiction of this legislation was one that manufactured goods. See *Griffith vs. Mountain Ice Co.*, 74 L. p. 274. An examination of the law in this State discloses that our Court of Errors and Appeals has considered the question of whether or not the production and control of electric power was for a manufacturing and productive purpose. In the case of *Bates Machine Co. vs. Trenton and New Brunswick Railroad Co.*, 70 N. J. L. p. 684, our highest Court in construing the application of the Mechanics Lien Law to the erection of machinery for manufacturing purposes held that an electric power plant was a factory where something was produced. The Court in this case said:

"We must conclude, therefore, that the words 'manufacturing purposes' have an accepted meaning that is broad enough to cover the production by mechanical means of electric power and that they should be read in that sense in the statute in question, provided the context is one that fairly indicates that such was the meaning in which the Legislature employed them."

Subsequently, thereafter in the case of *Scrymser vs. Seabright Electric Light Co.*, 74 N. J. Eq. 587 (1908), Vice-Chancellor Stevenson, speaking for the Court, discussed the problem of restraining an electric power plant as coming within the restrictive covenants, and from continuing as a common law nuisance. The test question was whether or not an electric power plant was a factory for the production of goods. The Court there said:

"In my judgment, it is useless to go into speculative questions as to the nature of electricity or the nature of the product, if there be a product, of the electric plant which the defendant operated at the time of the filing of the bill. At different periods in the history of electrical discovery very different views have been entertained on this subject. At one time this plant might have been regarded as a manufactory of a 'fluid.' More recently it might be deemed to be turning out electrons or ions. All speculation is stopped, I think, by the recent decision of the Court of Errors and Appeals in the case of *Bates Machine Co. vs. Trenton and New Brunswick Railroad Co.*, *supra*, and the cases cited in the opinion of the Court delivered by Mr. Justice Garrison. This recent decision seems to me to answer the question in regard to the character of the defendant's plant, which has been argued in this case in favor of the complainant. This electric light station with the necessary incidents attending its operation is, in my judgment, as clearly a manufactory within the meaning of this protective covenant as it is a manufactory within the meaning of the Mechanics Lien Law. If a distinction can be made in favor of the defendant in this case, I think that it would be left to the higher Court to draw such distinction."

From a reading of the two above cases it is evident that our Courts have construed the legislation to mean that an electric power plant is a factory where the manufacture of goods is carried on, particularly so far as it relates to the application of the Mechanics Lien Law and to the restrictive covenants. Relying upon the statement of Vice-Chancellor Stevenson in the *Scrymser vs. Seabright Electric Light Co.* case, *supra*, if a further distinction was to be made to the contrary, such distinction should be made by our highest Court.

In view of the opinions presented by our Courts, I am of the opinion that an electric power plant is a factory that produces goods and, therefore, comes within the jurisdiction of the Department of Labor and Industry as set forth in Title 34 of Chapters 4 and 6 of the New Jersey Statutes Annotated. Under these statutes it will be necessary for the subject power plant to submit to all the mandatory requirements of the law and appropriate rules and regulations wherever set out.

Respectfully submitted,

THEODORE D. PARSONS,  
*Attorney General,*

By: LOUIS S. COHEN,  
*Deputy Attorney General.*

TDP:LSC:kms

DECEMBER 21, 1953.

DR. E. S. HALLINGER, *Secretary,*  
*State Board of Medical Examiners,*  
28 West State Street,  
Trenton, New Jersey.

FORMAL OPINION—1953. No. 53.

DEAR DR. HALLINGER:

This will acknowledge receipt of your communication wherein you request an opinion as follows:

“Will you kindly give me an opinion as to whether the candidates who were admitted to the October 1953 examination under Chapter 363, P. L. 1953 (A-120) and failed are permitted to be re-examined at the next regular examination which will be held in June, 1954.”

It is our opinion that candidates who applied for admission to the examination under the provisions of Chapter 363 of the Laws of 1953 and were admitted to the October 1953 examination but failed, are permitted to be re-examined at the next regular examination.

Chapter 363 of the Laws of 1953 sets forth the requirements for certain residents of this State who apply for admission to the examination. It provides that any person who meets such requirements, upon proof thereof to the State Board of Medical Examiners, shall be admitted to the examination by said Board. It is silent as to what examination the applicant shall be admitted and is also silent as to re-examination. To the extent of such silence, Chapter 363 is apparently deemed by the Board to be somewhat ambiguous.

In seeking the meaning of an ambiguous statute, we should look to the pre-existing body of law. It is presumed that the Legislature, in enacting a statute, had knowledge and took cognizance of existing laws on the same subject or relating thereto (*Matter of Simmons*, 130 App. Div. 350, affirmed 195 N. Y. 573). In the construction of an ambiguous law, every effort should be made to arrive at a meaning in harmony with other laws relating to the same or kindred matters (*Smith vs. People*, 47 N. Y. 330).