dealer notify the Director of acquisition of a branch, or branches, and that the locations may be added to the original license in order to carry out the regulatory features of the act. We further conclude that the statute in question deals with the licensing of dealers and not with particular sites.

Yours very truly,
GROVER C. RICHMAN, JR.,
Attorney General.

By : ANDREW A. SALVEST,
Deputy Attorney General.

GCR:AAS:jaw

May 28, 1954.

HON. DANIEL BERGSMA,
State Commissioner of Health,
State House,
Trenton, New Jersey.

FORMAL OPINION—1954. No. 10

DEAR DR. BERGSMA:

You have requested our opinion as to whether your department has jurisdiction to entertain and act upon an application by a municipality, under R.S. 40:63-3, for permission to erect or lay a trunk sewer main through two other municipalities to a disposal plant presently maintained in a fourth municipality by the applicant.

In my opinion, the answer is in the affirmative.

A comprehensive scheme for the disposition of sewage by a municipality was established by Chapter 152, Article XXI, of the Home Rule Act of 1917, now incorporated in Chapter 63 of Title 40 of the Revised Statutes. Section 1 of the chapter (R.S. 40:63-1) contains a sweeping grant of power to a municipality to construct sewers and disposal works "within or without the municipality." The section reads:

> "The governing body of every municipality may, by ordinance, provide for and cause to be constructed within or without the municipality, any main sewer or sewers, lateral sewer or sewers, intercepting sewer or sewers, storm sewer or sewers, underground drain or drains, system of sewers, system of drains, system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewage disposal works, sewage receptacles, pumping stations, or any or all such improvements, and such other erections, works, establishments and fixtures as may be required to provide proper sewerage and drainage for the municipality; and may use and occupy any streets, highways, alleys and other public places, within or without the municipality, for such purpose or purposes, or any tidewater creek, or watercourse or portion thereof, and may acquire by purchase, gift or condemnation, and take and appropriate in the name of and for the municipality, any land or interest in land that may be needed therefor, within or without the municipality."

Section 2, however, requires the consent of such other municipality to any such operations within its borders, as follows: (R.S. 40:63-2):

> "No work shall be undertaken, or land acquired, or any public street, highway, alley or other public place occupied, or any sewer or drain outlet, or system thereof, filtration plant, sewerage disposal works or receptacles

acquired, occupied or used under this article in any other municipality, without the consent, expressed by resolution ,of the governing body and of the board of health of such other municipality, upon application made therefor in writing to each of them * * * ."

Then follows Section 40:63-3, which contains a grant of jurisdiction to your department in this language:

"In case of the refusal of the governing body and board of health of any municipality to which application is made by any other municipality for the location and erection of sewage works therein, or of the refusal of either of them to grant permission therefor, or in case the governing body or the board of health of the municipality to which application is made, shall fail to take final action therein within sixty days after the filing of the application by the applying municipality, such municipality may at any time, within thirty days after such refusal, or within thirty days after the expiration of said period of sixty days, apply to the state department of health, which shall have power, after hearing the municipalities interested, to grant the application for the erection of the sewage disposal works notwithstanding the refusal of the application by the governing body or board of health of the municipality to which application was made, or failure to act as aforesaid, upon being satisfied that the topographical and other physical conditions existing in the applying municipality are such as to make the erection of a sewage disposal works within its boundaries impracticable as an improvement for the benefit of the whole applying municipality."

The question has been raised whether the words "sewage works" and "sewage disposal works," as used in the last quoted section, include a trunk sewer main, as well as a treatment plant, disposal bed, or similar works. In my view, those terms should be construed here as including every part of the sewer system for which the consent of other municipalities is required under the preceding section (40:63-2), i.e., any land to be acquired, any street or public place to be occupied, any sewer or drain outlet, or system thereof, filtration plant, sewerage disposal works or receptacles. A trunk sewer main clearly forms a part of a system of sewers or drain outlets within the meaning of Section 40:63-2. That and the succeeding section should also be read in connection with the general grant of power in Section 40:63-1, which specifically mentions "any main sewer or sewers."

The word "works" has frequently been used as a comprehensive term denoting an entire plant, including all of the real estate, buildings, machinery and other equipment used in the particular business. *Tyrone Gas and Water Co.* vs. *Borough of Tyrone,* 299 Pa. 533, 149 Atl. 713, 716 (1930); *Kern* vs. *Welz and Zerweck,* 136 N.Y.S. 412, 416, 151 App. Div. 432 (1912); *Barker* vs. *Portland Traction Co.,* 180 Ore. 586, 173 P. 2d 288, 296 (1946). The word is considered as the equivalent of the word "plant," and the term "sewerage plant" has been held to include constructed sewer pipes, although not yet connected with any machinery or other apparatus. *Brennan* vs. *Sewerage and Water Board,* 108 La. 569, 32 So. 563, 569 (1902); see also *Poor* vs. *Town of Duncombe,* 231 Iowa 907, 2 N.W. 2d 294, 300 (1942).

In the light of these authorities and in view of the two sections which precede R.S. 40:63-3, that section plainly reveals a legislative intent to allow the state department of health, in case of a refusal by another municipality, to grant an application for the erection of any essential part of a sewer system therein if the state department is satisfied that the topographical and other physical conditions existing in the applying municipality are such as to make the erection of a sewage disposal works within its boundaries impracticable as an improvement for the benefit of the whole applying municipality.

This brings us to another question, which you have also raised—whether the impracticability resulting from such topographical and physical conditions may be economic rather than purely physical.

My answer is "Yes," but only where the financial burden involved in such a project would, as a result of such physical conditions, be prohibitive. The word "impracticable" has been defined as meaning "not practicable; incapable of being performed or accomplished by the means employed or at command." *Security-First National Bank* vs. *J. G. Ruddle Properties,* 218 Cal. 435, 23 Pac. 2d 1016 (1933), citing Webster's International Dictionary. From the economic point of view, it means something more than expensive or inexpedient. As was said in *State* vs. *Public Service Commission,* 339 Mo. 641, 98 S.W. 2d 699, 703 (1936)), it means "impossible or unreasonably difficult of performance," rather than merely inexpedient. Whether the point of unreasonable difficulty or financial impracticability has been reached in any particular case must be determined on the facts there presented.

Very truly yours,
GROVER C. RICHMAN, JR.,
Attorney General.

By : THOMAS P. COOK,
Deputy Attorney General.

GCR:TPC:kms

June 11, 1954.

WILLIAM F. KELLY, JR., *President,*
Civil Service Commission,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1954. No. 11

DEAR MR. KELLY:

Your inquiry concerning the rights of disabled veterans under the Civil Service Act presents two fact situations:

> "In one of the cases, (A) the applicant had served more than ninety days during the present Emergency and it was definitely ascertained that he had contracted tuberculosis *before* the period of the Emergency was declared and for which he was later qualified by the United States Veterans' Bureau for compensation for a service connected disability. This applicant was considered by this Department as being a veteran because he had served more than ninety days, but he was not admitted as a disabled veteran.
>
> In another case, (B) the applicant was inducted into the armed forces within ninety days of the termination of World War II but continued in such service for over a year thereafter. At some time during this total period, which cannot be definitely ascertained, said applicant suffered a service connected disability and he was later qualified for a service connected disability. This applicant was also admitted as a veteran but not as a disabled veteran."

By the provisions of R.S. 11:27-3, as amended, "Veterans with a record of disability incurred in line of duty, as herein defined in section 11:27-1 of this Title," who receive a passing rating in a competitive examination are placed at the top of the employment list.