

DECEMBER 31, 1954.

DR. WILLIAM C. COPE, Director
Division of Planning and Development
Dept. of Conservation and Economic Development
520 East State Street
Trenton, New Jersey

FORMAL OPINION 1954—No. 25

DEAR DIRECTOR COPE:

You request our opinion on the authority of the Bureau of Navigation to license power vessels and operators and to police the operation of power vessels on privately owned bodies of water above tidewater in the State of New Jersey.

We refer to Chapter 236 of the Laws of 1954. That enactment is comprehensive legislation governing the licensing and regulation of power vessels on non-tidal waters. The Department of Conservation and Economic Development issues licenses for power vessels and operators, while the Bureau of Navigation is vested with policing authority. We deal with your inquiry as if directed to the Department's powers in general, not to the narrower scope of the Bureau of Navigation's powers under Chapter 236 of the Laws of 1954.

Our opinion is that the Department has authority to license power vessels and operators and to police the operation of power vessels on privately owned bodies of water above tidewater.

Chapter 236 of the Laws of 1954, as well as its predecessor statute (R. S. 12:7-1 to 34), applies generally, without limitation to the regulation of power vessels on public bodies of water only. Cf. Motor Vehicle Act, excluding regulation of private roads (R. S. 39:4-1).

There are numerous parallels in the law for the exercise of the police power over the use of waters on private property. At common law, public nuisances maintained on private property are subject to abatement. Ponds containing stagnant or unwholesome waters constitute a nuisance. Farnham, Vol. 3, *Waters and Water Rights*, 2628 (1904). Privately owned water courses may be regulated for flood control purposes. See *Passaic v. Clifton*, 14 N. J. 136 (1953). The right to take water from the owner's land by subsurface wells is lawfully made subject to the approval of the Water Policy and Supply Council. R. S. 58:1-1 et seq. *In re Plainfield-Union Water Co.*, 14 N. J. 296 (1954).

In the leading case of *McCarter, Attorney General v. Hudson County Water Co.*, 70 N. J. Eq. 695 (E. & A. 1906), aff'd, 209 U. S. 349 (1908), the statute (P. L. 1905, c. 238) barring diversion of the waters of any fresh water lake or stream for use in another state was upheld as constitutional. Mr. Justice Holmes sustained the restriction on private property rights as a valid exercise of the police power. The legislative objective of preventing the diversion of waters outside the state was granted precedence over the property rights of individual riparian owners, because of the threat to the public welfare and health in such diversion. Cf. Farnham, Vol. 1, *Waters and Water Rights* 282 (1904), stating that the rights of riparian owners are always subordinate to public rights.

In other fields of law, regulations of activities on private property with penalties for violations are commonplace. The shooting of firearms (N. J. S. 2A:151-11, 50) and firecrackers (R. S. 21:3-2) and the possession of explosives (R. S. 21:1A-15) are prohibited under or except for specified circumstances on private property. The statutes governing hunting and fishing make special exemptions for such activities on private property (R. S. 23:3-1 and R. S. 23:1-2).

Compelling reasons in the public welfare sanction governmental invasions of what otherwise constitute inviolable property rights. Considerations for the protection of the public safety are present in Chapter 236 of the Laws of 1954, with respect both to public and private bodies of water. Unsafe operation of power vessels by unqualified operators imperils the safety of citizens of the State. It clearly serves the public interest that power vessels and operators be licensed and regulations be enforced on private, as well as public, fresh water lakes and streams.

The right of regulation includes the right of entry by inspectors of the Bureau of Navigation. Only persons with a proprietary interest or other right of entry can lawfully engage in power boating on privately owned bodies of water; an operator's license issued by the Department of Conservation and Economic Development confers no privilege on unauthorized persons to operate power vessels on private lakes and streams. See *Walden v. Pines Lake Land Co.*, 126 N. J. Eq. 249, 251 (E. & A. 1939); *Cobb v. Davenport*, 32 N. J. L. 369 (Sup. Ct. 1867).

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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DECEMBER 31, 1954.

HON. FREDERICK M. RAUBINGER
Commissioner of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION 1954—No. 26

DEAR COMMISSIONER:

You have requested our opinion on a question arising under Chapter 249 of the Laws of 1954, which provides a schedule of minimum salaries and increments for school teachers. You ask whether the time spent by a teacher in serving under an emergency certificate is included in the employment experience which determines the teacher's position on the salary schedule.

In our opinion, the answer is no.

The act defines "teacher" as including "any full-time member of the professional staff of any district * * * who holds a valid permanent, limited or provisional certificate appropriate to his office, position, or employment." The salary schedule provided in the act is for "teachers in this State", and is based upon "years of employment". The term "year of employment" is defined in the act as meaning "employment by a teacher for one academic year" in one of the institutions listed. Section 9 of the act reads as follows:

"The provisions of this act shall not apply to any person whose appropriate certificate, valid for his office, position or employment is an emergency certificate and to persons employed as substitutes on a day-by-day basis."