

Contributions to the state unemployment compensation fund by both the employer and employee are based on a percentage of wages paid. R. S. 43:21—7.

Wages are defined in R. S. 43:21—19 (o) which provides, in part:

“‘Wages’ means remuneration payable by employers for employment . . .”

Having concluded that the supplemental unemployment benefits are not remuneration, it follows by definition that such payments are not wages and, consequently, are not to be considered in the determination of contributions required of employers and employees under the Unemployment Compensation Law.

In light of this, our answer to your second inquiry is in the negative.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: THOMAS L. FRANKLIN,
Deputy Attorney General.

TLF:lc

NOVEMBER 16, 1955.

HON. ABRAM M. VERMEULEN,
Director, Division of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 40.

DEAR DIRECTOR VERMEULEN:

You have requested advice as to whether the Treasury Department or the Legislative Budget and Finance Director (N. J. S. A. 52:11—32 et seq) has responsibility for the fiscal control of the following state agencies:

South Jersey Port Commission
Commission on Interstate Cooperation
Interstate Sanitation Commission
Commission on State Tax Policy
State Beach Erosion Commission
Commission on Narcotic Control
New Jersey Metropolitan Rapid Transit Commission
Commission on Election Laws Study
Commission on Inter-Governmental Relations
Juvenile Delinquency Study Commission
Legislative Commission on Water Supply
Advisory Commission on Lesser Offenders
Commission to Study Sea Storm Damage

N. J. S. A. 52:27B-12, P. L. 1944, C. 112, Article 3, Section 3, provides that the Commissioner of Taxation and Finance “* * * shall carry into effect and execute the formulation of the annual budget * * *.” By the terms of N. J. S. A. 52:18A-6, P. L. 1948, C. 92, Section 6, the powers, functions and duties of the Commissioner of Taxation and Finance exercised through the Bureau of the Budget were transferred to the State Treasurer to be performed through the Division of Budget and Accounting. This places the responsibility of preparing the budget in your hands.

N. J. S. A. 52:27B-14 requires each agency to file with the Commissioner (now Treasurer) its request for appropriation. Subsequently, the Treasurer or a member of the department designated by him is required to examine the requests and determine the necessity for them, N. J. S. A. 52:27B-18. The requests are then transmitted to the Governor together with findings, comments and recommendations. The statute then provides that the Governor shall consider the requests, findings and recommendations and formulate a budget message for transmission to the Legislature, N. J. S. A. 52:27B-20.

The Office of Legislative Budget and Finance Director was created by P. L. 1954, Chapter 267, N. J. S. A. 52:11—32 et seq. Agencies in the legislative branch are required to present requests for appropriation to the Legislative Budget and Finance Director who is required to receive, examine and certify them to the Governor, N. J. S. A. 52:11—34.

The intention of P. L. 1954, Chapter 267, as gathered from its context and comparison with the prior law, would seem to be to relieve the Treasurer and the Division of Budget and Accounting of responsibility for preparation of that portion of the budget dealing with the Legislature and its agencies and to transfer that function to the Legislative Budget and Finance Director. The Report and Recommendations of The New Jersey Commission on Legislative Procedure and Research submitted November 15, 1954 also indicates that such was the legislative intent. At page 60 of the report the Commission recommends that a Legislative Budget and Finance Office be established in charge of a Legislative Budget and Finance Officer who shall

“* * * exercise the functions now exercised by the Director of Budget and Accounting in the Department of the Treasury in connection with the preparation of the budgets of, and the examination, auditing and adjustment of encumbrances and statements of indebtedness incurred by, the Legislature and its agencies so that the Legislature shall be in full and complete control of the administration of its own appropriations and those of its agencies.”

To the extent that they deal with the Legislature and legislative agencies, therefore, the provisions of N. J. S. A. 52:27B-10 et seq., may be regarded as impliedly repealed.

The question of responsibility for the fiscal control of the agencies, as to which you have requested advice, turns upon whether they are in the executive or legislative branch. In determining the branch of our trichotomous form of government in which a particular agency lies we must look to the statutes by which they were created and attempt to discern their essential functions.

Article 4, Section 5, Paragraph 2 of the Constitution provides as follows:

“The Legislature may appoint any commission, committee or other body whose main purpose is to aid or assist it in performing its functions. Members of the Legislature may be appointed to serve on any such body.”

Paragraph 5 of the above section prohibits the Legislature from electing or appointing “any executive, administrative or judicial officer except the State Auditor.”

Article 3 provides:

“The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.”

The constitutional intention is thus seen to permit the Legislature to appoint commission to aid it in its legislative functions, but to prohibit it from making appointments to executive bodies. The manner of the appointment of the members of the various commissions is thus significant. Bearing these considerations in mind, we shall attempt to categorize the agencies concerning which you have requested advice.

SOUTH JERSEY PORT COMMISSION

The Commission was created by Chapter 336, P. L. 1926: It was continued by R. S. 12:11—3 and by Chapter 167, P. L. 1942. R. S. 12:11—3 placed the appointive power in the governor with the advice and consent of the senate; Chapter 167, P. L. 1942, amending R. S. 12:11—3, provided that the members of the commission should be elected by the Legislature by concurrent resolution. The latter provision became ineffective on the adoption of the Constitution of 1947 in view of the above-cited provisions. Subsequently, appointments have been made by the chief executive pursuant to the power vested in him by Article 5, Section 1, Paragraph 1, vesting the executive power in him, Article 5, Section 1, Paragraph 11, enjoining him to "take care that the laws be faithfully executed" and Article 5, Section 1, Paragraph 12, giving him the power to "appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law."

Governor Driscoll made appointments to the South Jersey Port Commission with confirmation following by the Senate during the years 1949 to 1953. Those so appointed are:

Archibald W. Brown
 J. Oscar Hunt
 Charles E. Gant
 William De Long, Jr.
 Carl R. Youngberg
 William W. Chalmers

R. S. 12.11-6, as amended, gives the commission

"* * * authority subject to the approval of the board of commerce and navigation, over the survey, development, control and operation of port facilities in the district and the coordination of the same with existing or future agencies of transportation * * *. It shall make an annual report to the legislature."

R. S. 12:11-7 sets forth the general powers and duties of the commission. That section grants power to confer with municipal bodies, to confer with railroad, steamship, warehouse and other officials in the district on transportation facilities, to determine the location; type; size and construction of requisite port facilities, to acquire real property, to regulate construction and operation, to expend monies when appropriated and to employ clerical and engineering assistants. R. S. 12:11-8 permits it to make recommendations to the legislature and to Congress. R. S. 12:11-10 permits the commission to make orders to municipalities, corporations or individuals concerning the development of the district. R. S. 12:11-11 authorizes it to make investigations.

An analysis of the above functions and powers leads to the conclusion that the commission is essentially an administrative body exercising executive powers. We, therefore, are of the opinion that its fiscal control lies with the Treasury Department rather than with the Legislative Budget and Finance Director.

COMMISSION ON INTERSTATE COOPERATION

Chapter 21, P. L. 1936, N. J. S. A. 52:9B-1 created the Commission on Interstate Cooperation. It is composed of five members of the Senate, five members of the Assembly and five officials of the state named by the Governor, N. J. S. A. 52:9B-4. Its primary functions, as outlined in N. J. S. A. 52:9B-1, are to

"* * * carry forward the participation of the state as a member of the council of state governments * * * to confer with officials of other states * * * to formulate proposals for co-operation between this state and other states and with the federal government, and to organize and maintain governmental machinery for such purposes."

N. J. S. A. 52:9B-6 requires that "the commission shall report to the governor and to the legislature * * *."

It is seen that the essential functions of the Commission on Interstate Co-operation are to confer with officials of other states, to formulate proposals for co-operation between states and to report to the Governor and the legislature. In our opinion, these functions are principally in aid of the legislative process and, therefore, we advise you that its fiscal control should be exercised by the Legislative Budget and Finance Director.

INTERSTATE SANITATION COMMISSION

The Interstate Sanitation Commission has been created pursuant to a compact between the States of New Jersey, New York and Connecticut, R. S. 32:18-1 et seq. Appointments of New Jersey members are made by the Governor. It is required to make an annual report to the Governor and Legislature of each State making recommendations for legislative action, if advisable, R. S. 32:18-6. It is empowered to fix a date after which a municipality shall discharge only treated sewage into the waters under its jurisdiction, R. S. 32:18-11. It also has power to investigate and determine if its orders have been complied with and to bring actions to enforce compliance, R. S. 32:18-12. The New Jersey statute, R. S. 32:19-3, grants power to make rules, regulations and orders. See *Interstate San. Com'n. v. Township of Weehawken*, 1 N. J. 330 (1949). While some of the functions may be described as quasi-legislative, the statutes outlined above grant powers of an administrative nature, which, in our opinion, are vested in the executive branch. We, therefore, advise you that fiscal control of the Interstate Sanitation Commission is the function of the Treasury Department.

COMMISSION ON STATE TAX POLICY

The Commission on State Tax Policy was created by Chapter 157, P. L. 1945, as amended by Chapter 6, P. L. 1949, N. J. S. A. 53:pI-1. It consists of seven members, one a member of the Senate appointed by the President of the Senate, one a member of the Assembly appointed by the Speaker, and five citizen members appointed by the Governor.

N. J. S. A. 52:9I-3 provides that:

"The Commission shall engage in continuous study of the State and local tax structure and related fiscal problems, with particular attention to (a) all laws relating to the assessment and collection of taxes in this State; (b) all proposals for change in such laws; and (c) the impact of Federal tax laws on the state financial structure."

N. J. S. A. 52:9I-5 requires the commission to report the results of its studies to the Governor and the Legislature together with its recommendations for changes in the tax laws.

We conclude that the function of the Commission on State Tax Policy is to aid the legislature in the formulation of changes in the tax laws. The fiscal control of this agency, therefore, lies with the Legislative Budget and Finance Director.

STATE BEACH EROSION COMMISSION

Chapter 14, P. L. 1949, N. J. S. A. 52:9J-1 created the State Beach Erosion Commission.

" * * * to investigate and study the subject of the protection and preservation of beaches and shore front of the State from erosion and other damage from the elements, to effectuate such protection and preservation of the said beaches and shore front, and other purposes incidental thereto."

The commission is composed of four members of the Senate, four members of the Assembly and four members appointed by the Governor, N. J. S. A. 52:9J-2.

N. J. S. A. 52:9J-3 provides that "the commission shall consider and provide ways and means to protect and preserve the beaches and shore front of the State." State departments are enjoined by the terms of N. J. S. A. 52:9J-4 to render assistance to the commission "in making its studies." N. J. S. A. 52:9J-5 requires it to report annually to the Legislature and to the Governor with its recommendations and findings. N. J. S. A. 52:9J-6 provides that appropriations are to be used in "preparing a State program for coast protection based upon the regional planning concept."

We conclude that the functions of the commission are principally to make studies of beach erosion and related problems and to make recommendations to the legislature. The Legislative Budget and Finance Director therefore has responsibility for the fiscal control of the State Beach Erosion Commission.

COMMISSION ON NARCOTIC CONTROL.

The Commission on Narcotic Control is also a commission created to aid the legislature. It has the duty of engaging "in the continuous study of the laws of the State relating to narcotic drugs." N. J. S. A. 24:20-3. That section further imposes upon the commission the duty of making recommendations "as to changes and improvements in such laws." In our opinion, fiscal control is vested in the Legislative Budget and Finance Director.

NEW JERSEY METROPOLITAN RAPID TRANSIT COMMISSION.

Chapter 194, P. L. 1952, N. J. S. A. 32:22-1: created the commission. However, it was consolidated with a similar commission of the State of New York into a bi-state commission known as the Metropolitan Rapid Transit Commission. Chapter 44, P. L. 1954, N. J. S. A. 32:22-12.

Its functions are described in N. J. S. A. 32:22-15 as follows:

"The commission shall study present and prospective rapid transit needs of the New Jersey-New York metropolitan area and develop, recommend and report as soon as possible measures for meeting such needs. The commission may enter upon public or private property of either State in order to carry out its functions."

We conclude that its functions are to make a study and advise the legislature. In our opinion fiscal control is vested in the Legislative Budget and Finance Director.

ELECTION LAWS STUDY COMMISSION.

Joint Resolution No. 14 of 1953, P. L. 1953, p. 2215, created the commission. It consists of nine members.

" * * * three of whom shall be named by the Governor from the State at large; one of whom shall be a senator to be named by the President of the

Senate, two of whom shall be named by the President of the Senate from the State at large, one of whom shall be an Assemblyman to be named by the Speaker of the General Assembly, and two of whom shall be named by the Speaker of the General Assembly from the State at large."

"3. The commission is authorized, empowered and directed to study the statutes relating to elections, to call upon State, municipal and county officials for their co-operation in advancing the work of the commission, and to conduct hearings from time to time in an endeavor to ascertain in what respects the election laws shall be simplified, correlated and revised.

4. The commission shall make such recommendations as it shall deem proper and prepare such legislation as it shall deem necessary to accomplish the purpose and shall make its report no later than January, one thousand nine hundred and fifty-four, to the Governor and the next session of the Legislature."

The time for filing the report has been extended by a more recent resolution.

It is seen that the commission was created to assist in the preparation of legislation concerning election laws. Because of its purpose we find that its fiscal control should be directed by the Legislative Budget and Finance Director.

STATE COMMISSION ON INTER-GOVERNMENTAL RELATIONS.

The State Commission on Inter-Governmental Relations was created by Joint Resolution No. 15, P. L. 1955, p. 2455 (in 1954) volume.

Section 1 of the Resolution provides that

"The commission shall consist of two members of the Senate to be appointed by the President of the Senate, and two members of the General Assembly to be appointed by the Speaker thereof, and five members to be appointed by the Governor."

Section 4 provides:

"The commission shall study the subjects of inter-governmental relations referred to in the preamble of this resolution, shall make itself available to co-operate with the Federal Commission on Inter-Governmental Relations, and shall from time to time report to the Governor and the Legislature results of its studies."

We conclude that the functions of the commission relate to the powers of the legislature and, therefore, advise you that fiscal control is vested in the Legislative Budget and Finance Director.

JUVENILE DELINQUENCY STUDY COMMISSION.

Joint Resolution No. 4 of 1954, P. L. 1954, p. 1010, created the above-named commission for the purpose of engaging "in a continuous investigation and study of the causes of juvenile delinquency. It is composed of 2 members of the Senate, 2 members of the Assembly and 8 citizens of the State, 4 of whom are appointed by the Governor, 2 by the President of the Senate and 2 by the Speaker of the Assembly. The Commissioner of Education is also a member. It is required to report to the Governor and the Legislature and to make such recommendations as it shall deem fit.

We are of the opinion that the commission is in the legislative branch and its fiscal control, accordingly, lies with the Legislative Budget and Finance Director.

LEGISLATIVE COMMISSION ON WATER SUPPLY.

Joint resolution No. 3 of 1955 provides for a commission to study and report to the Legislature as to the acquisition and development of the water supply resources of the State. It is composed of 7 members. One citizen-at-large appointed by the

Governor, 3 Senators and 3 Assemblymen. The Commission is empowered to hold hearings, engage engineers and employ assistants in making its study. It was required to make a report by August 1, 1955.

In view of its legislative character, we advise you that fiscal control lies with the Legislative Budget and Finance Director.

ADVISORY COMMISSION ON LESSER OFFENDERS.

The above commission was created by Joint Resolution No. 10 of 1954, P. L. 1954, p. 1021.

Section 1 provides, in part, as follows:

"The commission shall consist of 11 members: A Senator to be designated by the President of the Senate, an Assemblyman to be designated by the Speaker of the General Assembly and the following to be designated by the Governor: A municipal magistrate, a prosecutor, a Superior Court judge, a County Court judge, a freeholder, a sheriff, a representative of the Department of Institutions and Agencies, a probation officer and a chairman having special training and qualifications in this field."

Section 2 directs the commission to study the problem of "providing adequate care, treatment, confinement and satisfactory types of employment for persons convicted of lesser offenses * * *". It is also directed to examine into the probation systems and suggest methods of improvement. Section 3 directs that the commission shall study the possibility of using work farms to relieve idleness. Section 4 requires the commission to report its recommendations to the Governor and the Legislature.

We conclude that the commission is within the legislative branch of the State government and that the Legislative Budget and Finance Director is charged with its fiscal control.

COMMISSION TO STUDY SEA STORM DAMAGE.

Assembly Concurrent Resolution No. 2 of 1954 created this commission consisting of 4 members of the Senate and 4 members of the Assembly.

Section 3 of the Resolution imposed upon the commission the duty of studying sea storm damage to bridges, highways, etc., and required it to recommend to the legislature ways and means of affording assistance to counties and municipalities to restore facilities damaged by storms.

This agency is also in the legislative branch, in our opinion.

We advise you that fiscal control is, therefore, vested in the Legislative Budget and Finance Director.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.