

A similar situation as that existing in Mississippi with regard to the time of holding elections exists in New Jersey. By the terms of R. S. 19:2-3 the general election is required to be held on the Tuesday after the first Monday in November of each year. It is also to be noted that the date of the legal ascertainment of the election results is the Monday following the general election day. R. S. 19:19-1 provides that the Board of Canvassers of each county shall meet on the Monday following the election day. R. S. 19:19-8 provides that the members of the Board of Canvassers shall determine the votes cast and make statements of the result of the election. The Board of Canvassers is also required to issue a certificate to the successful candidate, R. S. 19:20-5. The Governor is then required to issue a commission to those officers so elected, Constitution, Article 5, Sec. 1, Paragraph 12; *State v. Governor*, 25 N. J. L. 331 (Sup. Ct. 1856).

Accordingly, we advise you that the beginning and ending dates of the terms of office of County Clerks and Surrogates are the Mondays following the general election day in the appropriate year of election.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.

December 14, 1955.

HONORABLE JOSEPH E. McLEAN,
Commissioner of Conservation and Economic Development,
State House Annex,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 45.

DEAR COMMISSIONER McLEAN:

You have requested our advice as to your relation to the following councils in your department:

Shell Fisheries Council
Fish and Game Council
Planning and Development Council
Veterans' Services Council
Water Policy and Supply Council
State Housing Council

Specifically, you ask whether you have the power to approve or disapprove their actions, whether you are required to sign their minutes, and whether signing of the minutes indicates approval of their actions.

Chapter 22, P. L. 1945, established in the Executive Branch of the government the State Department of Conservation consisting of several divisions including the Division of Water Policy and Supply, The Division of Fish and Game and The Division of Shell Fisheries, N. J. S. A. 13:1A-1 et seq. Subsequently, Chapter 448, P. L. 1948, N. J. S. A. 13:1B-1 et seq., created the Department of Conservation and Economic Development. The duty of administering the work of the depart-

ment was assigned to the commissioner, N. J. S. A. 13:1B-3, and all of the powers and functions of the various divisions and councils of the former State Department of Conservation were transferred to the Department of Conservation and Economic Development, N. J. S. A. 13:1B-6.

SHELL FISHERIES COUNCIL

The Shell Fisheries Council was created by Chapter 22, P. L. 1945, N. J. S. A. 13:1A-18. It was the successor to the Board of Shell Fisheries which was created by Chapter 387, P. L. 1915 and which exercised "full control and direction of the shell fish industry and of the protection of shell fish throughout the entire State." Section 7, Chapter 387, P. L. 1915. This broad power of control continued to reside in the Board of Shell Fisheries through the 1931 act, Section 5, Chapter 187, P. L. 1931, and the Revision of 1937, R. S. 50:1-5.

Section 19 of Chapter 22, P. L. 1945, N. J. S. A. 13:1A-19, provided:

"The functions, powers and duties, records and property of the Department of Shell Fisheries and of the Board of Shell Fisheries are hereby transferred to and vested in the Division of Shell Fisheries established under this act, to be exercised and used by the council thereof, in accordance with the provisions of this act. No action shall be taken by said council except upon approval by the Commissioner of Conservation."

Section 20 provided:

"The council, in addition to other powers and duties vested in it by this act, shall, subject to the approval of the commissioner, formulate comprehensive policies for the preservation and improvement of the shellfish industry of the State."

Later, by Chapter 448, P. L. 1948, all of the functions and powers of the Division of Shell Fisheries and of the Shell Fisheries Council of the former State Department of Conservation were transferred to the Department of Conservation and Economic Development to be exercised through the Division of Shell Fisheries, N. J. S. A. 13:1B-42, administered by the Director under the direction and supervision of the commissioner, N. J. S. A. 13:1B-43.

The result of the foregoing statutory enactments is to vest all of the powers formerly exercised by the Board of Shell Fisheries and the Shell Fisheries Council, including control of the shell fish industry, the rule-making power, the licensing power, the power to grant leases, etc., in the Department of Conservation and Economic Development to be exercised through the Division of Shell Fisheries by the Director thereof under your general supervision and direction.

The powers of the Shell Fisheries Council remain only those set forth in Sections 96 and 97 of Chapter 448, P. L. 1948, N. J. S. A. 13:1B-45 and 13:1B-46.

They provide:

"The Shell Fisheries Council shall, subject to the approval of the commissioner, formulate comprehensive policies for the preservation and improvement of the shell-fish industry of the State.

The council shall also:

- a. Consult with and advise the commissioner and the director of the Division of Shell Fisheries with respect to the work of the division.
- b. Study the activities of the Division of Shell Fisheries and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions.

No lease of any of the lands of the State under the tidal waters thereof, to be exclusively used and enjoyed by the lessee for the planting and cultivating of oysters and clams, shall hereafter be allowed except when approved by at least a majority of the Shell Fisheries Council; and no such lease shall thereafter in any case be allowed except when approved and signed by the Commissioner of Conservation and Economic Development."

No requirement that you sign minutes of meetings is found in the statutes. You are required, however, to approve or disapprove the formulation of comprehensive policies. This may be indicated if you so desire by endorsing your approval on the minutes of the council or in any other manner you deem appropriate. The granting of leases would seem to require execution by the Director of the Division of Shell Fisheries, approval by at least a majority of the section of the Shell Fisheries Council concerned and your approval and signature, N. J. S. A. 13:1B-46, *supra*, R. S. 50:1-18, as amended.

FISH AND GAME COUNCIL

The Fish and Game Council was created by Chapter 22, P. L. 1945, N. J. S. A. 13:1A-13. It succeeded the Board of Fish and Game Commissioners which had existed pursuant to R. S. 23:2-1. The powers of the former board, R. S. 23:2-2 (protection of fish and game, enforcement, closing streams, investigation, control of hatching stations, etc.) were transferred to the Division of Fish and Game "to be exercised and used by the council", N. J. S. A. 13:1A-14. The 1945 statute further provided that "No action shall be taken by said council except upon approval by the Commissioner of Conservation." N. J. S. A. 13:1A-14, *supra*.

Chapter 448, P. L. 1948 transferred the powers of the Council to the Department of Conservation and Economic Development to be "exercised and performed through the Division of Fish and Game." N. J. S. A. 13:1B-23. The Division was placed under the supervision of a Director who was given the power to "administer the work of such division under the direction and supervision of the commissioner." N. J. S. A. 13:1B-27.

The council was empowered, by N. J. S. A. 13:1B-28, to formulate comprehensive policies and

"a. Consult with and advise the commissioner and director of the Division of Fish and Game with respect to the work of such division.

b. Study the activities of the Division of Fish and Game and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions."

The legislature further gave the Council power to adopt regulations to be known as the State Fish and Game Code, N. J. S. A. 13:1B-30. It was also empowered to publish and distribute summaries of the regulations, N. J. S. A. 13:1B-34.

Analysis of these statutory provisions indicates that the executive power of enforcement, appointment of wardens, administration and so forth resides in the Director subject to your direction and supervision. The quasi-legislative power of

studying, recommending and promulgating regulations resides in the Fish and Game Council. The action of the Council taken pursuant to N. J. S. A. 13:1B-28, in formulating comprehensive policies, is subject to your approval. You do not, however, have power to approve or disapprove the promulgation or amendment of the State Fish and Game Code. Again, no mention of minutes of the Council is made in the statutes. You may, therefore, indicate your approval or disapproval in any manner which you deem appropriate.

PLANNING AND DEVELOPMENT COUNCIL.

The Planning and Development Council was created by Section 10, Chapter 448, P. L. 1948, N. J. S. A. 13:1B-10. It is empowered, subject to approval by the commissioner, to formulate comprehensive policies

"for the development of the natural and economic resources of the State * * * for the preservation and use of all State forests and State Parks * * * and of all historic sites within the State * * * (and) for the prevention and control of beach erosion." N. J. S. A. 13:1B-11.

It is also empowered, without the necessity of approval by the commissioner, to:

"a. Consult with and advise the commissioner and the director of the Division of Planning and Development with respect to the work of such division.

b. Study the activities of the Division of Planning and Development and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions." N. J. S. A. 13:1B-12.

Riparian leases and grants are subject to approval of the Council concurrently with the Commissioner and the Governor, N. J. S. A. 13:1B-13.

Administration of the Division of Planning and Development is vested in a director, N. J. S. A. 13:1B-8.

With regard to actions of the Council, you are required to exercise the power of approval and disapproval only as to the formulation of comprehensive policies. No statutory requirement is found as to the manner in which your approval or disapproval should be indicated. You are free, therefore, to choose any appropriate method.

VETERANS' SERVICES COUNCIL

The Veterans' Services Council was created by Section 22, Chapter 448, P. L. 1948, N. J. S. A. 13:1B-20. Its powers are described in Section 23, N. J. S. A. 13:1B-21, as follows:

"The Veterans' Services Council shall, subject to the approval of the commissioner, formulate comprehensive policies for the co-ordination of all services for the benefit of war veterans and their dependents.

The council shall also:

a. Consult with and advise the commissioner and the director of the Division of Veterans' Services with respect to the work of the division.

b. Study the activities of the Division of Veterans' Services and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions."

Additionally, by Section 24, N. J. S. A. 13:1B-22, it succeeded to the powers of the Economic Council under Chapter 323, P. L. 1946, N. J. S. A. 55:14G-1 et seq., to approve rules and regulations and appointments of personnel of the Administrator of the Public Housing and Development Authority, N. J. S. A. 55:14G-3 and 4. See Memorandum Opinion dated January 19, 1955.

The Division of Veterans' Services is administered by a director under the supervision and direction of the commissioner, N. J. S. A. 13:1B-19.

The functions of the Veterans' Services Council are seen to be principally advisory, except as to those in relation to the Public Housing and Development Authority. Your power of approval or disapproval of their actions, however, exists only as to the formulation of policies. N. J. S. A. 13:1B-21, *supra*. Since no mention of minutes is found in the statutes you may indicate your approval or disapproval in any appropriate manner.

WATER POLICY AND SUPPLY COUNCIL

The Water Policy and Supply Council presently exists within the Division of Water Policy and Supply by virtue of the provisions of Section 100, Chapter 448, P. L. 1948, N. J. S. A. 13:1B-49. Its general powers are set forth in Section 102, N. J. S. A. 13:1B-51. It provides:

"The Water Policy and Supply Council, in addition to other powers and duties vested in it, shall, subject to the approval of the commissioner:

a. Formulate comprehensive policies for the preservation and improvement of the water supply facilities of the State.

b. Survey the needs of the State for additional water supply facilities and formulate plans for the development of such facilities.

The council shall also:

a. Consult with and advise the Commissioner and the director of the Division of Water Policy and Supply with respect to the work of the Division of Water Policy and Supply.

b. Study the activities of the Division of Water Policy Supply and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions."

Additional powers were conferred by Section 101. N. J. S. A. 13:1B-50. Its pertinent provisions are:

"Notwithstanding any of the provisions of this act to the contrary: the Water Policy and Supply Council shall succeed to, and shall exercise and perform, those functions, powers and duties of the Water Policy and Supply Council of the Division of Water Policy and Supply of the existing State Department of Conservation prescribed under and pursuant to the provisions of sections 58:1-8, 58:1-17 to 58:1-33, inclusive, 58:2-2, 58:4-9, 58:4-10, 58:6-1 to 58:6-5, inclusive, and 40:62-84, of the Revised Statutes, and under and pursuant to the provisions of 'An act conferring emergency powers on the State Water Policy Commission, creating an interconnection revolving fund and making an appropriation therefor,' approved March twenty-fifth, one thousand nine hundred and forty-two (P. L. 1942, c. 24), and under and pursuant to the provisions of 'An act concerning diversion of subsurface and percolating waters of the State for domestic, industrial and other uses, and supplementing chapter one of Title 58 of the Revised Statutes,' approved July first, one thousand nine hundred and forty-seven (P. L.

1947, c. 375); provided, however, that any action which may be taken by such council, in the exercise of such functions, powers and duties, shall be subject to the approval of the Commissioner of Conservation and Economic Development."

The powers referred to concern holding hearings, approval of plans for condemnation of land for water supply, fixing of charges by the State for diversion of surface water, prohibiting destruction of dams, approval of plans for diversion of water, approval of contracts by one municipality to sell water to another and related matters. It is noted that actions of the Council pursuant to the exercise of such powers is subject to the approval of the commissioner.

The Water Policy and Supply Council has, by virtue of the above-cited statutory provisions, many administrative functions partaking of executive, quasi-judicial and quasi-legislative characteristics. Its functions are much broader than those of a mere advisory agency. From the working of the statutes it appears that you are required to approve or disapprove all of its actions, except its consulting, studying and reporting functions under N. J. S. A. 13:1B-51, *supra*. Your indication of approval or disapproval may take any form you deem appropriate. No mention of approval of minutes is made in the statutes.

STATE HOUSING COUNCIL

The State Housing Council was established in the Department of Conservation and Economic Development by the State Housing Law of 1949, Chapter 303, P. L. 1949, N. J. S. A. 55:14H-4. The powers and duties of the Council are set forth in N. J. S. A. 55:14H-5. It provides,

"The Council shall have power to make, amend, modify and repeal, such reasonable rules and regulations as it may deem necessary: (a) to adequately effectuate the provisions of this act; (b) for the exercise by the Authority of the functions, powers and duties conferred upon the Authority hereunder; and (c) to safeguard in the public interest the fund or funds heretofore or hereafter appropriated for the purposes herein. Such rules and regulations shall govern the exercise by the Authority of any and all functions, powers and duties vested in or conferred upon it by this act.

The functions, powers and duties conferred upon the Authority by this act shall, subject to the rules and regulations of the Council, be exercised and performed by the Administrator."

The Administrator is by definition the Commissioner of Conservation and Economic Development, N. J. S. A. 55:14H-3. The broad powers given to the Authority by subsequent sections are, therefore, to be exercised by the Commissioner. The Council acts only in establishing policy through the promulgation of regulations and in dividing the state into areas as provided in N. J. S. A. 55:14H-6. No provision for approval or disapproval of the Council's actions by the Commissioner is contained in the statutes and no mention of minutes is made, therefore, there would be no need for you to sign the minutes of the Council.

As we have indicated the manner in which you indicate approval or disapproval of the actions of the various councils in your department is a matter of discretion. Signing the minutes is one way in which it could be done. If you choose to use this means of indicating whether or not you approve of the action taken, you should so indicate by appropriate words preceding your signature such as "The actions of the Fish and Game Council at its meeting of (date) are hereby approved." A signature without more would be ambiguous and require someone

examining the records to inquire further as to whether approval of the action taken was intended. Your signature, of course, does not indicate that the minutes accurately reflect what took place at the meeting. That function should be performed by the individual acting as secretary of the particular council.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General. L

b.

JANUARY 12, 1955.

MR. GEORGE BORDEN, *Secretary,*
State Employees' Retirement System of New Jersey,
State House Annex,
Trenton, New Jersey.

MEMORANDUM OPINION P-1.

DEAR MR. BORDEN:

This is in answer to your letter of December 23, 1954, in which you ask whether a person drawing a "free veteran's pension" is eligible to apply for an additional veteran's retirement under the new Public Employees' Retirement System.

The employee in question is apparently now drawing his pension pursuant to R. S. 43:4-1, 43:4-2 and 43:4-3. R. S. 43:4-2 provides as follows:

"When an honorably discharged soldier, sailor or marine has or shall have been for twenty years continuously or in the aggregate in office, position or employment of this State or of a county, municipality or school district or board of education, the body, board or officer having power to appoint his successor in case of vacancy may, with his assent, order his retirement from such service, or he may be retired on his own request . . ."
R. S. 43:4-3 provides as follows:

"A person so retired shall be entitled, for and during his natural life, to receive by way of pension, one half of the compensation then being received by him for his service . . ."

"*In case of retirement with pension from office or Position under any other law of this State, the person retiring shall waive either his pension under that law or his pension under this article.*" (Underscoring supplied)
R. S. 43:3-1, as amended, provides:

"Any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State, shall be ineligible to hold any public position or employment other than elective in the State or in any county, municipality or school district, unless he shall have previously notified and authorized the proper authorities of said State, county, municipality or school district, from which he is receiving or entitled to receive the pension that, for the duration of the term of office of his public position or employment he elects to receive (1) his pension or (2) the salary or com-