

FEBRUARY 24, 1955.

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

MEMORANDUM OPINION P-5.

Re: Public Lands
Agreements to Lease.

DEAR COMMISSIONER McLEAN:

You have submitted for our consideration two questions which have arisen in connection with the administration of the Department of Conservation and Economic Development.

Question No. 1 is:

"Does the Department of Conservation and Economic Development have the right to enter into an agreement with a private person to permit him to prospect for minerals in a State forest?"

We are of the opinion that the Department of Conservation and Economic Development does not have the authority to enter into such agreement.

By way of elucidating this answer, it may be helpful to review briefly the legislative history of laws enacted relating to forestry conservation.

The primary purpose of legislation creating the Department of Conservation and Development, (Now the Department of Conservation and Economic Development) was, among other things, for the "acquiring, holding, protecting, managing or developing lands or other properties for the use of the State of New Jersey, for a state park or a forest reserve or other state reservation, whether made for historic, for scenic, for watershed protection or for any other purpose * * *" L. 1929, c. 213, sec. 1, p. 399, suppl. to L. 1915, c. 241, p. 426 (R. S. 13:1-18). The Department was governed by a board which had "full control and direction of all state conservation and development projects" (R. S. 13:1-1; R. S. 13:1-11), and its administrative functions were entrusted to a director selected by the board. (R. S. 13:1-3).

Chapter 22 of the Laws of 1945 established in the Executive Branch of the State Government a State Department of Conservation and created the office of State Commissioner of Conservation with the authority to exercise the powers of the department and to administer its work. (N. J. S. A. 13:1A-5). This act also established the Division of Forestry, Geology, Parks and Historic Sites (N. J. S. A. 13:1A-4) and transferred to said division the "functions, powers, duties, records and property of the Department of Conservation and Development and the Board of Conservation and Development." (N. J. S. A. 13:1A-24). Thereafter the Legislature, by the Laws of 1948, Chapter 448, established in the executive branch of the State Government a principal department known as the Department of Conservation and Economic Development (N. J. S. A. 13:1B-1) and transferred the powers and duties of the Division of Forestry, Geology, Parks and Historic Sites to said principal department. (N. J. S. A. 13:1B-6). Among the powers granted to the Department by the Legislature was the power to use the forest lands for "any other purpose than the maintenance of forests" if the welfare of the state would be advanced.

(R. S. 13:8-10). However, the legislative history is clear that such use must be for the purpose of maintaining and conserving the forest lands of the State for the ultimate enjoyment and benefit of the people.

The State has, in general, "the same rights and powers in respect to property as an individual. It may acquire property, real and personal, by conveyance, will or otherwise and may hold or dispose of the same or apply it to any purpose, public or private, as it sees fit. The power of the State in respect of its property rights is vested in the Legislature, and the Legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose." 59 C. J. Sec. 276. See also *Wilson v. Gloucester County Bd. of Chosen Freeholders*, 83 N. J. Eq. 545, 90 A. 1021, (Ch. Ct. 1914).

The Department of Conservation and Economic Development cannot enter into an agreement with an individual, association or corporation permitting prospecting for minerals in a State forest because the Legislature has not given it the authority to exercise such power.

Question No. 2 is:

"Does this department have the right to lease mining rights at a rental on a royalty basis, and if so, must there first be advertising and award to the first bidder?"

We are of the opinion that the Department does not have the right to lease or contract for mining rights on any basis.

"A contract of the State must ordinarily rest upon some legislative enactment", (49 Am. Jur. Sec. 62, p. 275), and as we have indicated, no authority has been granted by the Legislature to the Department of Conservation and Economic Development to enter into an agreement with any individual, association or corporation for prospecting rights in State owned lands.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: ROGER M. YANCEY,
Deputy Attorney General.

RMY:BK

March 2, 1955.

HONORABLE WILLIAM F. KELLY, JR.,
President, Civil Service Commission,

State House,
Trenton 7, New Jersey.

MEMORANDUM OPINION P-6.

DEAR PRESIDENT KELLY:

You have requested advice as to the power of the Department of Civil Service to deal with a situation in which it is alleged that an applicant for a promotion in the service of a municipality has made a false response to a question contained in the application for promotion.

As we understand the facts the application asked the question "Have you ever been convicted of a crime?" to which response was given in the negative. The application was processed, the employee's name certified as eligible for promo-