(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 enoyment 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-

tion and the promotion was made by the appointing authority. It has now come to the attention of the Department that the employee was convicted of assault, battery and robbery in 1929. In justification of the negative response the employee maintains that he was pardoned for the offense and has submitted a County Clerk's certificate purportedly evidencing that fact. An examination of the certificate reveals that the former Court of Pardons remitted the forfeiture of the right of being an elector on December 1, 1938.

We shall first consider the effect of the action taken by the former Court of Pardons. It is our opinion that the specific action taken by the Court of Pardons does not have the effect of extinguishing the committed crime. The Court of Pardons, under the New Jersey 1844 Constitution, Article V, paragraph 10, was empowered to remit fines and forfeitures and to grant pardons after conviction in all cases except impeachment. This court has since been abolished. Under R. S. 2:197-2, repealed by P. L. 1948, c. 83, any person after conviction and service of sentence could apply to the Court of Pardons for a pardon and restoration of rights and privileges forfeited as a result of said conviction. The Court of Pardons existed as a creature of the Executive power and could grant full or limited pardons. A restoration of suffrage rights was considered as a limited pardon by *In Re New Jersey Court of Pardons,* 97 N.J. Eq. 555 (E. & A. 1925); and *Cook v. Board of Freeholders,* 26 N.J.L. 326 (Sup. Ct. 1847) aff'd. 27 N.J.L. 637 (E. & A. 1858). Under these cases any pardon, whether full or limited, operated prospectively and not retrospectively and, therefore, did not erase the fact that a crime was committed. See also *State v. Tansimore,* 3 N. J. 516 (1950).

Had these facts been known to the Department before its approval of the application and certificates of the individual as eligible for the promotion sought, the Chief Examiner and Secretary, in the proper exercise of his discretion, could have rejected the application and refused to certify the name of the individual as eligible. Rule 26 of the Civil Service Rules specifically grants such permissive discretionary power to the Chief Examiner and Secretary. It provides as follows

> "The chief examiner and secretary may reject the application of any person for admission to tests for a given position or refuse to test any applicant or to certify the name of an eligible from the employment list for any of the following or other good causes:
>
> * * * *
>
> (d) That the applicant has been guilty of a crime or of disgraceful conduct;
>
> * * * *
>
> (f) That the applicant has intentionally made a false statement in his application with regard to any material fact or has practiced or attempted to practice deception or fraud in connection with such application;
>
> * * * *
>
> The chief examiner and secretary shall notify in writing any person whose application is rejected under this rule specifying the cause for the rejection. Upon receiving a written request from any person whose application is rejected the president may give him an opportunity to show cause why such application should not be rejected, but announced tests shall not be postponed or delayed for this reason."
>
> See also: R. S. 11:9-10, Civil Service Rule 39.

Since the underlying facts were not known to the Chief Examiner and Secretary at the time the employee's name was certified we shall now consider what action can be taken.

We have noted that you have been previously advised by an opinion dated January 18, 1918 that the Civil Service Commission has no power to revoke or direct the revocation of an appointment. That opinion stated,

> "I am unable to find anything in the Civil Service Law authorizing The Commission to revoke the appointment of any officer or employee appointed to or to require the person having the power of appointment to revoke the appointment. The appointment having once been made in accordance with the provisions of the Civil Service Act and by the proper authority. I think it unquestionable that the Civil Service Commission has no further power in the matter."

While unquestionably a certification should not ordinarily be disturbed we cannot agree that the Commission is completely without power in the matter. The Commission is specifically empowered to enforce the provisions of the Civil Service Law and the rules and regulations promulgated thereunder, R. S. 11:1-7. If it is found that an applicant for a position has violated a provision of the statute by furnishing false information, see R. S. 11:23-1, R. S. 11:23-2, the Commission in the exercise of its enforcement powers could revoke the certification upon which the appointment or promotion was based. In keeping with the basic policy of the act to afford employees an opportunity to be heard before action affecting their position is taken we think a hearing should be held by the Commission with full opportunity being given to the employee to offer evidence in justification or mitigation. The power to reconsider action previously taken is one which should be exercised sparingly. Matters which have been closed should not be reopened for trivial reasons. The exercise of the power requires sound discretion, *Klauss v. Civil Service Commission,* 132 N. J. L. 434 (Sup. Ct. 1945).

If after a hearing it is found that the information upon which an appointment or promotion was based was fraudulently falsified it would have the power to take appropriate action. In this case appropriate action would take the form of revocation of the certification upon which the promotion was based. This could be enforced if necessary by withholding approval of the payroll under R. S. 11:22-20, as amended, or by an action for enforcement under the provisions of R. S. 11:1-7.

It should be remembered that even if the applicant had disclosed that he had been convicted of a crime, it does not necessarily follow that he should have been excluded from eligibility. Civil Service Rule 26 allows the Chief Examiner and Secretary to determine in his discretion whether the public interest would be endangered by appointment of an individual who had been convicted of a crime. The wording of the Rule is permissive and not mandatory; if the Chief Examiner and Secretary is of the opinion that the commission of the crime in 1929 does not indicate a present moral unfitness for the position the individual would not be disqualified for the position.

The alleged misrepresentation question is of a different nature. On this issue it should be determined factually whether the applicant intended to deceive the Department or whether he believed in good faith that the document obtained from the Board of Pardons vitiated the crime. Whether he intended to obtain the promotion by fraudulent means is a factual question which should be determined in a quasi-judicial manner with opportunity being extended to the employee to present evidence in his behalf.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By. DAVID M. SATZ, JR.,
Deputy Attorney General.

DMS:b