

## OPINIONS

In order to literally comply with R. S. 18:16-21, we recommend that the exchange professorship be authorized in the form of a regulation of the Commissioner of Education, with the approval of the State Board.

Yours very truly,  
 GROVER C. RICHMAN, JR.,  
*Attorney General.*  
 By: THOMAS P. COOK,  
*Deputy Attorney General.*

tpc:b

June 2nd, 1955.

HON. ROBERT B. MEYNER,  
*Governor of New Jersey,*  
 State House,  
 Trenton 7, New Jersey.

## MEMORANDUM OPINION P-14

DEAR GOVERNOR MEYNER:

You have requested our opinion concerning the effect of the State Constitution of 1947 on P. L. 1942, c. 167, which vests in the Legislature the power to elect members of the South Jersey Port Commission.

By Article IV, Section V, Paragraph 5 of the 1947 Constitution, the Legislature is barred from the election or appointment of any executive or administrative officer except the State Auditor. While the Legislature may appoint commissions or other bodies whose main purpose is to assist it (Article IV, Section V, Paragraph 2), the South Jersey Port Commission is an administrative agency performing governmental functions in the development of port and transportation facilities along the Delaware Bay and tidal portions of the Delaware River.

The Constitution of 1947 preserves the force and effect of all statutes not "superseded, altered or repealed by this Constitution or otherwise" (Article XI, Section I, Paragraph 3).

Since the election or appointment of executive or administrative officers is ultra vires the Legislature, there is a repugnancy between the Constitution and P. L. 1942, c. 167, amounting to a repeal of the provision of that statute empowering the Legislature to elect the members of the South Jersey Port Commission.

Unlike the Constitution of 1844 (see *Ross v. Freeholders of Essex*, 69 N. J. L. 291 (E. & A. 1903)), the Constitution of 1947 vests exclusive appointive authority in the Governor except in those instances where some other provision for appointment is fixed in the Constitution or by law. Article V, Section I, Paragraph 12. "By law" means by a valid law. A law in effect prior to the new Constitution but repugnant thereto is constitutionally invalid. The Legislature cannot exercise prerogatives vested by Constitution in the Governor. Thus, election or appointment of members of the South Jersey Port Commission by the Legislature would be a nullity. In the absence of a valid law vesting the appointive power elsewhere, the Governor should nominate and appoint the members of the South Jersey Port Commission.

We are advised that, subsequent to the Constitution of 1947, nine appointments were made to the South Jersey Port Commission, all by Governor Driscoll.

Very truly yours,  
 GROVER C. RICHMAN, JR.,  
*Attorney General.*  
 By: DAVID D. FURMAN,  
*Deputy Attorney General.*