

JULY 11, 1955.

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

MEMORANDUM OPINION P-19.

DEAR MR. McLEAN :

You have advised us that the Borough of Edgewater, which is not the upland owner, has applied for a grant of land now under water for use as a public park, and that the application was approved by the Planning and Development Council of the Department of Conservation and Economic Development. You have further advised that subsequent to the approval, several upland owners protested the grant, and as a result, six months notice was given by the applicant of the intention to take such grant; that although that period of time has expired, none of the upland owners applied for a riparian grant; but that those upland owners contend that before the State's grant may issue that the Planning and Development Council of the Department of Conservation and Economic Development must take steps, as provided in R. S. 12:3-9, as amended, to fix the amount to be paid to the upland owners, and that the municipality must make an appropriation of funds sufficient to pay the amount found to be due under R. S. 12:3-9.

Specifically, you have requested our opinion as to whether or not the State's grant may issue to the Borough of Edgewater before determination is made of the value of the upland owners' "rights and interest" pursuant to R. S. 12:3-9.

It is our opinion that R. S. 12:3-9 is not applicable to a grant to be made to a municipality of lands under water for use as a public park; that in such case there are no "rights and interest" of the riparian owners to be valued; and indeed that there is no requirement that six months notice be given to the upland owners, the provisions of R. S. 12:3-7 being inapplicable to the instant case.

The title which the state holds to tidelands is complete and unencumbered by any limitations except as provided by the legislature. In *Stevens v. Paterson and Newark R. R. Co.*, 34 N. J. L. 532 (E. & A.) 1870, the court said:

"The steps which I have thus far taken have led me to this position: That all navigable waters within the territorial limits of the state, and the soil under such waters, belong in actual propriety to the public; that the riparian owner, by the common law, has no peculiar rights in this public domain as incidents of his estate, and that the privileges he possesses * * * to acquire such rights, can, before possession has been taken, be regulated or revoked at the will of the legislature."

Riparian owners have no inherent right in lands under water in front of their uplands; nor any inherent right to damages or to notice. Such right as they may have with respect to lands under tidewater arises only by legislative grant under the provisions of the applicable statutes.

R. S. 12:3-33 provides.

"Whenever a public park, place, street or highway has been or shall hereafter be laid out or provided for, either by or on behalf of the state or any municipal or other subdivision thereof, along, over, including or fronting

upon any of the lands of the state now or formerly under tidewater, or whenever a public park, place, street or highway shall extend to such lands, the board of commerce and navigation, upon application of the proper authority of the state, or the municipal or other subdivision thereof, may grant to such proper authority the lands of the state now or formerly under tidewater, within the limits of or in front of said public park, place, street or highway."

Under this section, a municipality, which has laid out or provided for a public park, may obtain a grant of state's lands under tidewater. There is no requirement that notice be given to the upland or riparian owner (*Leonard v. State Highway Department*, 24 N. J. Super. 376 (Ch. Div. 1953), aff'd. 29 N. J. Super. 188 (App. Div. 1954).

Judge Goldmann writing for the Appellate Division in *Leonard v. State Highway Department*, *supra* said at 29 N. J. Super. 195:

"We agree with the conclusion reached by the Chancery Division that the State Highway Commissioner, as applicant, did not have to notify plaintiffs, as riparian proprietors, of his application for a riparian grant." * * *

"It may also be noted that R. S. 12:3-33, quoted in the opinion below, does not require notice to the riparian owner where a proper authority of the State makes application for a riparian grant for highway purposes, as here. That statute has its source in L. 1916, c. 98, adopted long after the statute from which R. S. 12:3-7 derives."

Although *Leonard v. State Highway Department*, *supra*, dealt with a grant made to the State Highway Department pursuant to R. S. 12:3-33, what was there said is also applicable to the proposed grant to the Borough of Edgewater for a public park which has been laid out or provided for, pursuant to R. S. 12:3-33.

It should also be noted that the Appellate Division, in *Leonard v. State Highway Department*, *supra*, further set forth the following additional reason as to why no notice had to be given to the upland owners, which appears equally applicable to the instant case. So, Judge Goldmann said at 29 N. J. Super. 196:

"In addition to the reasons given by the court below, 24 N. J. Super. 376, 383-384 (Ch. Div. 1953), there is the added reason that R. S. 12:3-7 does not, in our view, require the State or the State Highway Commissioner, its agent, to give notice to the riparian owner of an application for a riparian grant. That statute is applicable only to "any person or persons, corporation or corporations, or associations." The proviso refers to "any other than a riparian proprietor," and the words "any other" reasonably have reference only to any other "person or persons, corporation or corporations, or associations" at the beginning of the section. N. J. S. A. 1:1-2 defines "person," when used in the Revised Statutes, as including "corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals," adding that when the word is "used to designate the owner of property which may be the subject of an offense, (it) includes this State * * *." The words "municipality" and "State" are separately defined in the same section. Accordingly, we conclude that the State and the State Highway Commissioner are not included within the meaning of the word "person" or "corporation" in R. S. 12:3-7."

It is, therefore, our opinion that the grant may issue to the Borough of Edgewater for use of the lands for the public park which has been laid out or provided

for, and that the provisions of R. S. 12:3-9 relating to the procedure to be followed where there is a grant to a "person" other than the riparian owner, is not applicable to the instant case and need not be followed.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By. SIDNEY KAPLAN,
Deputy Attorney General.

sk;d

JULY 19, 1955.

MR. GEORGE A. LOUDEN, *Chief Clerk,*
Office of the Secretary of State,
Trenton, New Jersey.

MEMORANDUM OPINION P-20.

DEAR MR. LOUDEN:

This will confirm my oral advice to you in response to your inquiry as to whether or not you should accept for filing a proposed certificate of incorporation of "Carter Corporation", a corporation formed for the sole object of acting "as trustee or successor trustee under intervivos trusts."

As I advised you, the proposed corporation could not be incorporated under the General Corporation Law, since that law prohibits the formation thereunder of a bank or trust company (R. S. 14:2-1). The object for which the "Carter Corporation" is to be formed is within the prohibition as to trust companies (*McCarter v. Imperial Trustee Co.*, 72 N. J. L. 42, (Sup. Ct. 1905)).

The Banking Law of 1948, (R. S. 17:9A-1 et seq.) under which corporations exercising such banking or trust powers may be formed, provides in R. S. 17:9A-28 in part as follows:

"A bank which is a qualified bank shall have the following agency and fiduciary powers * * *

(9) to receive from any person and hold in trust and dispose of, by sale or otherwise, personal and real property, upon such terms as may be specified;

(10) to accept, administer, and execute all other trusts and to act in all other fiduciary capacities not herein specifically enumerated, not inconsistent with law."

R. S. 17:9A-338 provides:

"Except to the extent specifically made applicable by this act, the provisions of Title 14 of the Revised Statutes as enacted and as heretofore or hereafter amended or supplemented shall not apply to banks and savings banks."