

/ JULY 12, 1956

HON. PETER J. GANNON  
*Chief, Bureau of Navigation*  
*Department of Conservation and Economic Development*  
1060 Broad Street  
Newark, New Jersey

## FORMAL OPINION, 1956—No. 10

DEAR MR. GANNON:

You have requested our opinion as to whether regular police officers of municipalities or other political subdivisions are empowered to serve summons or make arrests under the provisions of the Power Vessel Act, L. 1954, c. 236, N.J.S.A. 12:7-34.1 to 34.35, as well as under the Statute regulating power vessels on tidal waters, L. 1952, c. 157, N.J.S.A. 12:7-44 to 53. We understand from Mr. Gianetti of your Bureau that you are primarily interested in the question of arrests without warrant.

Although neither statute has been construed by the courts, it is our opinion that such police officers have the power to serve and execute process upon and to arrest, with or without warrant, any person violating the provisions of the cited statutes, provided, however, that in the case of an arrest without warrant the offense for which the arrest is made must have been committed in the presence of the arresting officer.

By the terms of Section 33 of the Power Vessel Act, N.J.S.A. 12:7-34.33, the Commissioner of Conservation and Economic Development and other officers therein enumerated (not including, however, police officers) are empowered to arrest without warrant any person violating any provision of the Act. Under Section 28, any such violation of the Act or of any rule or regulation issued thereunder where the penalty therefor is not specifically prescribed constitutes the violator a disorderly person. In this connection, only Section 19, dealing with the operation of power vessels by persons under the influence of intoxicating liquor or drugs, prescribes specific penalties.

It is provided by N.J.S. 2A:169-3 that any constable or police officer shall apprehend without warrant or process any disorderly person committing an offense in his presence and take him before any magistrate of the county where apprehended. Therefore, as to all sections of the Act save Section 19, there is power, and indeed a duty, on the part of police officers to arrest violators without warrant. As to Section 19, however, while the offense there treated is obviously more serious than any other offense recognized by the Act, there is no specific statutory authority for arresting violators thereof without warrant since an offense under that section does not constitute the violator a disorderly person. Nevertheless, it is well recognized in New Jersey that under the common law constables and other peace officers have the right to arrest any person who, in their presence, is engaged in or who threatens to engage in an affray or other breach of peace. *Noback v. Town of Montclair*, 33 N.J. Super 420 (L.D. Super. Ct. 1954); *Wiegand v. Meade*, 108 N.J.L. 471 (Sup. Ct. 1932); and *Collins v. Cody*, 95 N.J.L. 65 (Sup. Ct. 1920).

Although there are no New Jersey cases directly on point, it is well established in other jurisdictions that the operation of a motor vehicle while intoxicated constitutes a breach of the peace which justifies the arrest of the violator without warrant. See, for example, *Commonwealth v. Gorman*, 288 Mass. 294, 192 N.E. 618 (1934). In this connection it is interesting to note that under L. 1913, c. 67, Sec. 1, later superseded by L. 1921, c. 208, from which a large part of the present motor vehicle title was derived, it is provided that a person who operates a motor vehicle while intoxicated

is a disorderly person. (Under the present law, of course, arrests without warrant may be made for any violation of the Motor Vehicle Code, R.S. 39:5-25).

In Alexander's *The Law of Arrest* (1949) the author, discussing the elements of breach of the peace, says in Section 656, "It is not the doctrine of the Law that there is no breach of the peace unless the public repose is disturbed." In the same section the word "peace" is defined as "the state of *safety* and tranquility or quietness ordinarily existing in a community necessary to the comfort and happiness of every citizen." (Emphasis supplied).

From the foregoing it appears clear and comports with reason that the offense of operating a power vessel while under the influence of liquor or drugs or of permitting another to do so constitutes a breach of the peace for the violation of which a police officer may arrest without warrant.

As to the issuance of summons and the execution of process, these powers are given generally to members of municipal police departments by R.S. 40:47-15.

County detectives (N.J.S. 2A:157-2) and State Police officers (R.S. 53:2-1) possess all of the aforementioned powers with respect to the issuance and execution of summons and other process as well as the power of arrest, including arrest without warrant.

Insofar as violations of L. 1952, c. 157 are concerned, Section 9 thereof (N.J.S.A. 12:7-52) provides that the procedure for enforcement "shall be the same as in the case of other violations under Title 12 of the Revised Statutes relating to power vessels and motors and certain boats and craft operating in other than tidal waters." L. 1952, c. 157 is, therefore, enforceable in the same manner as the Power Vessel Act.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: CHRISTIAN BOLLERMANN  
*Deputy Attorney General*

CB:jd

JULY 13, 1956

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

FORMAL OPINION, 1956—No. 11

DEAR COMMISSIONER MCLEAN:

You have transmitted to us a request for an opinion concerning the power of law enforcement officials of your department to deal with juvenile offenders of the laws regulating the operation of power vessels.

Regulation of the operation of power vessels on waters other than tidal is provided for by L. 1954, c. 236, N.J.S.A. 12:7-34.1 et seq. Operation of a vessel on waters other than tidal while under the influence of liquor or drugs subjects the operator to fine or imprisonment, N.J.S.A. 12:7-34.19; persons committing violations of other