

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

sections or regulations are declared to be disorderly persons and are subjected to fine or imprisonment, N.J.S.A. 12:7-34.28. Enforcement is by arrest and complaint, N.J.S.A. 12:7-34.33, jurisdiction being vested in the County Court, county district court, county criminal judicial court and municipal court to enforce the act, N.J.S.A. 12:7-34.31.

Operation of vessels on tidal waters is regulated by L. 1952, c. 157, N.J.S.A. 12:7-44 et seq. Persons violating the provisions of the act are made subject to fine or imprisonment, N.J.S.A. 12:7-51. The method of enforcing is the same as in the case of violations committed on waters other than tidal, N.J.S.A. 12:7-52.

As to violations occurring in waters other than tidal,

"The Commissioner of Conservation and Economic Development, the Director of the Division of Planning and Development in the Department of Conservation and Economic Development, the Chief of the Bureau of Navigation in said department, the chief inspector, the assistant inspectors and the special inspectors appointed under the provisions of this Act, shall each have the right to make complaints hereunder and to arrest without warrant any person violating any provision of this act in his presence and bring the offender before any judge or magistrate having jurisdiction hereunder to receive the complaint for such violation." N.J.S.A. 12:7-34.33.

Controlling jurisdiction to supervise the use of tidal waters is vested in the harbor masters, N.J.S.A. 12:7-50, who are granted power to arrest and generally to act as special officers for the enforcement of the laws relating to power vessels, R.S. 12:6-6. They are required to follow the same procedure as that established for non-tidal waters, N.J.S.A. 12:7-52.

Within their respective areas of jurisdiction the harbormaster, inspectors and other officers mentioned above thus have power to make complaints and arrests for violations of the statutes.

In our opinion violation of either statute by a person under the age of eighteen years would constitute juvenile delinquency as defined by N.J.S. 2A:4-14. Paragraphs (1)c. and d. define as juvenile delinquency

"c. Any act or offense for which he could be prosecuted in the method partaking of the nature of a criminal action or proceeding, or

d. Being a disorderly person".

The procedure applicable to juvenile offenders is outlined in the rules of court R.R. 6:8-1 et seq. R.R. 6:8-3 provides as follows:

"(a) Any duly appointed peace officer may take into custody without process any juvenile who in the opinion of the officer, is engaging in conduct defined by law as juvenile delinquency. Such action shall not be construed as an arrest but shall be deemed a measure to protect the health, morals, and well-being of the juvenile.

"(b) The officer taking the child into custody shall make immediate arrangements to have the juvenile taken to his home, where he shall be released in the custody of his parents, guardian, or custodian, upon the written promise of the parents, guardian, or custodian to assume responsibility for the presence

of the juvenile in court should a hearing be scheduled; or such child may be released in the custody of a probation officer or other person designated by the court.

“(c) If it be impracticable to proceed as in paragraph (b) above, or if the nature of the offense is such as to require the immediate detention of the juvenile, the officer taking the child into custody shall make immediate arrangements to have the juvenile placed in a detention facility approved by the court.

“(d) Whenever a juvenile has been taken into custody in accordance with this rule, the officer taking the child into custody or his duly constituted superior officer shall proceed to file a complaint or preliminary notice with the court in accordance with Rules 6:8-1 or 6:8-2.”

We are of the opinion that the officers to whom authority to enforce the laws relating to power vessels is given have authority to apprehend a juvenile and deal with him in the manner prescribed by the rules. For the purpose of enforcing the laws regulating power vessels they are peace officers within the meaning of the foregoing rules. Moreover, the rule does not purport to express a grant of authority to act but only spells out the procedure to be followed by one who is given authority by other law.

The issuance of summons is done by the judge or clerk of the court; service may be made by any peace officer or other person, R.R. 6:8-5. If it appears that immediate custody of the juvenile is in the public interest, the judge may issue a warrant which shall be executed by any peace officer or other person authorized by law, R.R. 6:8-6; R.R. 3:2-2(c).

Our advice in summarized form is as follows:

The Commissioner of Conservation and Economic Development, the Director of the Division of Planning and Development, the Chief of the Bureau of Navigation, the Chief Inspector, the Assistant Inspectors and the Special Inspectors on waters other than tidal and the Harbor Masters on tidal waters have the power to apprehend a juvenile who commits a violation of the laws or regulations governing the operation of power vessels in their presence.

After apprehending the juvenile the officer should make immediate arrangements to have the juvenile taken to his home. He should obtain a written promise of a parent to assume responsibility for the presence of the juvenile in court. When this has been done a complaint should be filed with the Juvenile and Domestic Relations Court charging a violation of one of the relevant statutes.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: JOHN F. CRANE
Deputy Attorney General