

AUGUST 31, 1956

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

FORMAL OPINION, 1956—No. 13

DEAR MR. McLEAN:

Our opinion has been requested as to whether the revenue from licenses issued by the Division of Navigation for submerged lands under tidewaters of the State should be applied to the school fund investment account or to the school fund income account.

We are advised that the licenses issued are either (1) one fee revocable licenses (2) yearly renewal licenses for structures outshore or inshore of established exterior lines or (3) one fee licenses for dredging. It is further indicated that in the license category there are instruments termed "agreements" which permit the party thereto to dig, dredge or remove any deposits of sand or other material from lands of the State under tidewaters.

Our present New Jersey Constitution, as did its predecessor, contains a provision with respect to the funds for the support of free public schools. It reads as follows:

"The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever." (*N.J. Const., Art. 8, Sec. 4, Par. 2*)

By *R.S. 18:10-5*, all State owned lands now or formerly flowed by tidewater "are appropriated for the support of public schools". In *Henderson v. Atlantic City*, 64 *N.J. Eq.* 583, (*Ch.* 1903) where a predecessor statute (*L. 1894, c. 71*) was being construed in the light of the 1844 constitutional provision (*Art. 4, Sec. 7, Par. 6*), the court said:

"It seems also manifest that the appropriation of these lands as property under the constitutional provision had in view the conversion of this property into money which was to be securely invested." (*at p. 587*).

Thus there is an equating under the constitutional provision of the lands and the proceeds from the sales of such lands. These items are held upon a public trust and make up the perpetual school fund. See *State v. Owen*, 23 *N. J. Misc.* 123 (*Sup. Ct.* 1945); *In re Camden*, 1 *N.J. Misc.* 623 (*Sup. Ct.* 1923). Any doubts as to the irrevocable devotion of the proceeds from sale to the support of public schools and their application to the permanent school account are dispelled by the provision of *R.S. 18:10-5* that moneys received from the sales of these submerged lands shall constitute a part of the permanent school fund.

It was stated in *State v. Rutherford*, 98 N.J.L. 465, 466 (E. & A. 1923) with respect to the constitutional provision here involved that "the language of the constitution seems to us too plain to call for interpretation or construction", and that clearness of expression, here as there, dictates the answer to the problem posed. Perforce the constitutional provision, coupled with the pertinent statutes, submerged lands or the moneys derived from the sale of such lands are dedicated to the permanent school fund. But, the income arising from such lands, while limited to being expended for the annual support of the free public schools or if deemed expedient for an increase of the capital of the fund, is not so dedicated. Thus in terms of accounting our fundamental law envisions two accounts—a school fund investment account (perpetual fund) and a school fund income account (income from perpetual fund). As revenue from the licenses here is neither submerged land nor proceeds from the sales thereof, it must be applied to the latter account.

Our position with respect to the proper application of the license revenue is buttressed by R.S. 18:10-6 which provides that income from the leases of submerged lands shall be a part of the income of the school fund. License revenue and lease income are both gains derived from the lands here held and for present purposes seem equivalent. These incomes are allied by nature and may be said to be of the same kind. On principle they should be afforded like treatment.

It is our opinion that revenue from license agreements permitting the party thereto to maintain any structure or to dig, dredge or remove any deposits of sand or other material upon or from the submerged lands of the State should be applied to the school fund income account.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD ASHBY
Legal Assistant

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SEPTEMBER 4, 1956

MR. JOSEPH E. CLAYTON
Assistant Commissioner of Education
Department of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION, 1956—No. 14

DEAR COMMISSIONER CLAYTON:

You have requested our opinion as to whether a teacher who was 65 years of age or older when she retired on March 31, 1956, and who then did not have sufficient quarters of coverage by virtue of public employment to qualify her for Social Security benefits, and who has since qualified for such benefits through private employment, may be employed as a substitute teacher earning not more than \$1,200.00 annually without any offset being applied against her retirement allowance.

In our opinion, such a person may be employed as a substitute teacher without