

the sea the boundary between Delaware and New Jersey is the "thalweg" or "main sailing channel" and New Jersey owns the soil under the river and bay from its shore to said boundary.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: SIDNEY KAPLAN
Deputy Attorney General

SK:mp

DECEMBER 11, 1956

HONORABLE FREDERICK J. GASSERT, JR.
Director of the Division of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION, 1956—No. 23

DEAR DIRECTOR GASSERT:

You have requested our opinion concerning the applicability of R.S. 39:3-40 to a nonresident motor vehicle operator whose driver's license has been suspended or revoked or who has been prohibited from obtaining or has been refused a driver's license in his own State. For the reasons hereinafter stated, it is our opinion that R.S. 39:3-40 applies in such circumstances.

By R.S. 39:3-10 it is provided in part as follows:

"No person shall drive a motor vehicle on a public highway in this State unless licensed to do so in accordance with this article. No person under 17 years of age shall be licensed to drive motor vehicles, nor shall a person be licensed until he has passed a satisfactory examination as to his ability as an operator. . . ."

The penalties for violating this section are a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days.

By R.S. 39:3-17 this jurisdiction has extended the so-called "reciprocity privilege" to drive a New Jersey registered vehicle as well as one registered outside of New Jersey to any nonresident driver "who has complied with the law of his resident State, or country, with respect to the licensing of drivers. . ."

R.S. 39:3-17 also provides in pertinent part as follows:

"A nonresident shall, at all times while operating a motor vehicle in this State under his reciprocity provision, have in his possession the registration certificate of the car which he shall be then operating and his driver's license, and shall exhibit them to any motor vehicle inspector, police officer or magistrate who, in the performance of the duties of his office, shall request the same. Any person violating the provisions of this section shall be subject to a fine not exceeding five hundred dollars, or to imprisonment in the county jail for not more than sixty days."

R.S. 39:3-40, to which the present inquiry is directed, reads as follows :

"No person to whom a driver's license has been refused or whose driver's license or reciprocity privilege has been suspended or revoked, or who has been prohibited from obtaining a driver's license, shall personally operate a motor vehicle during the period of refusal, suspension, revocation or prohibition.

No person whose motor vehicle registration has been revoked shall operate or permit the operation of such motor vehicle during the period of such revocation.

A person violating any provision of this section shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail for not more than ninety days or both."

The Legislature imposed stronger sanctions for the violation of R.S. 39:3-40, i.e., a mandatory minimum fine of \$100 as well as a longer maximum imprisonment, than those imposed for a violation of either R.S. 39:3-10 or 17. The reason for the stronger penalty may be found in the fact that R.S. 39:3-40 involves driving after suspension, revocation, prohibition or refusal of a driver's license, while the other cited sections concern themselves only with driving without a license. An operator who violates R.S. 39:3-40 would of course also violate either R.S. 39:3-10 or 17, and it has been held that a conviction may be had under both R.S. 39:3-40 and R.S. 30:3-10, although the same act is involved. *State v. Williams*, 21 N.J. Misc. 329 (Recorder's Ct. 1943).

In our opinion R.S. 39:3-40 may operate against nonresident drivers in two circumstances: (1) when such drivers operate a motor vehicle upon New Jersey highways after having had their driving privileges suspended, revoked, prohibited or refused in their home State, and (2) in cases where New Jersey has revoked or suspended their reciprocity privilege. The statute of course also operates against resident drivers whose New Jersey driver's license has been suspended, revoked, prohibited or refused.

Nonresidents who are properly licensed in their home State are by R.S. 39:3-17, *supra*, given a reciprocity privilege to operate motor vehicles upon the highways of this State. By R.S. 39:5-30 New Jersey driver's licenses as well as reciprocity privileges of nonresidents may be revoked or suspended for a violation of the motor vehicle code "or on any other reasonable grounds." See also R.S. 39:4-50, applicable to both residents and nonresidents, whereby, upon a conviction for driving while under the influence of liquor or drugs, a forfeiture of the "right to operate a motor vehicle over the highways of this State" results.

If a nonresident is not properly licensed in his home State he has no reciprocity privilege in New Jersey and upon his operation of a vehicle in New Jersey a violation of R.S. 39:3-17 results. If he not only is unlicensed in his home State but such license was there suspended, revoked, prohibited or refused his operation of a motor vehicle upon the highways of this State violates R.S. 39:3-40 as well, regardless of whether action against his reciprocity privilege under R.S. 39:5-30 or against his "right to operate a motor vehicle" under R.S. 39:4-50 has been taken, in the same manner as the operation of a motor vehicle by a resident under similar circumstances would violate R.S. 39:3-40. Absent the broad application of R.S. 39:3-40 to all drivers,

whether resident or non resident, the latter class would escape the more severe sanctions of this statute although resident drivers would be clearly subjected to such penalties.

In summary, it is clear from both the plain meaning of R. S. 39:3-40 and the context in which this statute must be considered—particularly R.S. 39:3-10 and R.S. 39:3-17—that it was the legislative intent to apply the sanctions of R.S. 39:3-40 to a nonresident whose driver's license has been suspended, revoked, prohibited or refused in his home state and who thereafter operates a motor vehicle upon the highways of this State.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

CB:MG

JANUARY 4, 1957

HONORABLE MERRITT LANE, JR., *Secretary*
Legalized Games of Chance Control Commission
1100 Raymond Boulevard
Newark 5, New Jersey

MEMORANDUM OPINION—P-1

DEAR MR. LANE:

You have requested our opinion as to whether organizations not qualified under the Bingo Licensing Law or the Raffles Licensing Law may conduct games of chance on United States Government military reservations within the State of New Jersey. For the reasons hereinafter stated it is our opinion that such persons would violate federal but not New Jersey law.

Persons conducting or participating in the games of chance commonly known as bingo or raffles in this jurisdiction would, absent compliance with the Bingo Licensing Law, *L. 1954, c. 6*, N.J.S.A. 5:8-24 et seq., or the Raffles Licensing Law, *L. 1954, c. 5*, N.J.S.A. 5:8-50 et seq., as the case may be, violate N.J.S. 2A:112 (gaming), N.J.S. 2A:121 (lotteries) and N.J.S. 2A:170-18 (possession of lottery or numbers slips). By N.J.S.A. 5:8-40 and 67 compliance with the Bingo Licensing Law and the Raffles Licensing Law confers immunity for what would otherwise constitute a violation of the cited sections of N.J.S. 2A. Compliance with the Acts involves, *inter alia*, licensing by municipality in which such game of chance is to be held. By N.J.S.A. 5:8-42 and 69 no municipality may issue licenses unless the provisions of the Acts have been adopted by the legal voters of such municipality pursuant to N.J.S.A. 5:8-43 to 49 and N.J.S.A. 5:8-70 to 76. As is apparent from N.J.S.A. 5:8-43 and N.J.S.A. 5:8-70, the earliest date on which the Acts could have been adopted in any New Jersey municipality is April 20, 1954.

It is provided by Article 1, sec. 8, clause 17 of the United States Constitution that:

"The Congress shall have power . . . to exercise exclusive legislation in