

sion & Annuity Fund are not entitled to receive, as part of their refunds, amounts paid as contributions in their behalf by their public employers pursuant to N.J.S.A. 38:23-6.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

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AUGUST 30, 1956

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

MEMORANDUM OPINION—P-27

DEAR COMMISSIONER MCLEAN:

You have requested our opinion on the status of Fish and Game Wardens as peace officers. We understand that you are concerned with the powers of arrest of Fish and Game Wardens both under the fish and game laws and under the criminal laws generally.

Fish and Game Wardens are statutory officers with limited powers as peace officers to enforce the provisions of the fish and game laws. The appointment is by the Division of Fish and Game in the Department of Conservation and Economic Development pursuant to R.S. 23:2-4. The principal powers and duties of the Fish and Game Wardens are set forth as follows:

R.S. 23:2-6. Powers and duties of protector and wardens.

"The wardens shall enforce all the laws of this state for the protection of fish, birds and game animals, and may execute all processes issued for the violation of these laws and serve subpoenas issued for the examination, investigation or trial of all offenses against these laws."

R.S. 23:2-8. Summary arrest; aid by peace officers.

"The council, the wardens, the deputy wardens and the protector shall have the power of summary arrest in cases of flagrant violation of this Title, or of the provisions of the State Fish and Game Code, and may, in the discharge of their duties, call in the aid of a constable, sheriff, or other peace officer when deemed necessary."

R.S. 23:10-5. Arrest on view without warrant; interference with or resisting officer.

"Any constable, police officer, fish and game warden, protector, or deputy warden, or any officer or member of any incorporated game protective society

may, for a violation of any provision of this Title, or any provision of any law supplementary thereto, or of any provision of the State Fish and Game Code committed within the view of any such officer or person, arrest, without warrant, the offender and carry him before a court in the county wherein such arrest is made."

R.S. 23:10-17. Powers and fees for service of process of certain officers.

"The fish and game protector, fish and game wardens and deputy wardens shall have the same power as constables and be entitled to the same fees for the service of process in proceedings under this chapter as are provided by law for constables in the court in which the proceedings are had."

R.S. 23:10-20. Searches and seizures; immunity from civil suit.

"A member of the Fish and Game Council, the fish and game protector or a warden may, without warrant, search and examine any boat, conveyance, vehicle, fish box, fish basket, game bag, game coat or other receptacle for game and fish, when he has reason to believe that a provision of this Title, or any law supplementary thereto, or the State Fish and Game Code has been violated, and shall seize and take possession of any bird, animal or fish unlawfully caught, taken, killed, had in possession or under control, shipped or about to be shipped."

None of the foregoing statutes grant the Fish and Game Wardens any policing authority outside the enforcement of the fish and game laws. The reference in R.S. 23:2-8 to resort to the aid of constables, sheriffs or other "peace officers" is significant of the legislative intent that Fish and Game Wardens are not vested with the status of peace officers in the enforcement of the criminal laws in general. R.S. 23:10-17 specifically limits the power of the Fish and Game Wardens and deputy wardens as constables, to proceedings under the fish and game act.

The courts of Michigan in *People v. Bissonette*, 327 Mich. 377, 42 N.W. 2d, 113 (1950) and of New York in *City of Rochester v. Lindner*, 167 Misc. 790, 4 N.Y.S. 2d 4 (City Ct. 1938) have held under comparable statutes that Fish and Game Wardens may not exercise and are not vested with any of the powers or functions of peace officers under the Constitution, statutes or general law, other than in the enforcement of the fish and game laws.

Fish and Game Wardens, established under Title 23 of the Revised Statutes, are empowered to act as peace officers in strict accordance with the legislative grants of authority there set forth. As peace officers, Fish and Game Wardens may carry out searches and seizures and make arrests without warrant, as well as serve process under the provisions of that title. Enforcement functions outside the fish and game laws are barred to Fish and Game Wardens, except insofar as exercisable by private persons.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General