

OCTOBER 9, 1956

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

MEMORANDUM OPINION—P-31

DEAR COMMISSIONER McLEAN :

Our opinion has been requested as to the authority in the Department of Conservation and Economic Development to allocate the sum of \$7,500.00 for the construction of new bulkheads to replace the deteriorated bulkheads at the municipal wharf, owned by the City of Salem and fronting on the Salem River. Because the proposed construction will be located approximately $1\frac{1}{4}$ miles upstream from the Delaware River on a body of water flowing into the Delaware River and therefore, not in the Delaware River itself, you have raised the question whether the proposed construction comes within the geographical area in which funds may be appropriated under Chapter 100 of the Laws of 1956.

Chapter 100 provides that the Department of Conservation and Economic Development may spend \$1,000,000.00 for any construction or maintenance of beach protection projects, bulkheads, backfills, groins, jetties, seawalls, breakwaters, beach fills or dunes, pumping of sand, advertising and inspection costs within the projects outlined in R.S. 12:6A-1. R.S. 12:6A-1 empowers the Department to repair, reconstruct or construct bulkheads within the following geographical area :

“ * * along the Atlantic Ocean in the State of New Jersey, or any beach front along the Delaware Bay or Delaware River, Raritan Bay, Barnegat Bay and Sandy Hook Bay, or any inlet or estuary or any inland waters adjacent to any inlet or estuary along the shores of the State of New Jersey, * * *”*

The Appropriations Act (L. 1956, c. 100) requires matching expenditures by the county or municipality participating in the beach project. We assume that the City of Salem has furnished evidence of its commitment to expend the matching amount of \$7,500.00 for the construction of the proposed bulkheads.

Since the construction is not to be built on any of the named body of waters such as the Atlantic Ocean, Delaware Bay or Delaware River, it becomes necessary to consider whether the location of this project is within the geographical area set forth in the last part of the above quoted statute :

“ * * any inlet or estuary or any inland waters adjacent to any inlet or estuary along the shores of the State of New Jersey, * * *”*

The words “any inlet or estuary” refers to the phrase “along the shores of the State of New Jersey”. Your department, therefore, has authority to allocate money for this bulkheading if it is upon “* * * any inlet or estuary * * * along the shores of the State of New Jersey, * * *”.

According to your department, the water in the vicinity of this project is saline and ebbs and flows with the tide in the Delaware River. Further information from the recent coast and geodetic survey, United State Dept. of Commerce (1955) *Tide Tables—East Coast—North and South America Including Greenland*, page 208, Table 2, shows that the daily rise and fall of the tide for Salem Cove, which is where the Salem

River empties into the Delaware River, is approximately 5.3 feet. The same table indicates that the daily range of tide at the location of the proposed construction is also 5.3 feet. The tidal pull at the mouth of the river and at the place of the proposed bulkheading is of exactly the same force.

An estuary is defined by Black Law Dictionary, (4th Ed. 1951) in the following manner:

"That part of the mouth or lower course of the river flowing into the sea which is subject to the tides; enlargement of a river channel towards its mouth in which the movement of the tide is very prominent."

In *Vail v. McGuire*, 50 Wash. 187, 96 Pac. 1042 (1908), the Supreme Court of Washington held that an estuary of Puget Sound included that part of the Snohomish River, a tributary of Puget Sound which was affected by the ebb and flow of the tide from Puget Sound.

The phrase contained in the statute which refers to the "shores of the State of New Jersey" should be considered as having a fixed and definite meaning. In its ordinary sense "shore" signifies the land that is periodically covered and uncovered by the tide. All between ordinary high and low-water mark is within that denomination. The term "shore" is inapplicable to non-tidal rivers. *Gough v. Bell*, 21 N.J.L. 156, 162 (Sup. Ct. 1847); *Attorney General v. Central Railroad Company*, 68 N.J. Eq. 198, 210 (Ch. 1904); *Morrison v. First National Bank of Skowhegan*, 88 Me. 155, 33 Atl. 782, 783 (1895); see *Child v. Starr*, 4 Hill, 369, 375 (N. Y. Ct. of Errors, 1843).

We advise you therefore that you have authority to approve the expenditure for the construction of new bulkheads fronting on the Salem River and owned by the City of Salem, as a project within the authorization for appropriations for matching sums for beach protection, bulkheading and related projects in the Appropriations Act (L. 1956, c. 100).

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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OCTOBER 10, 1956

HON. ABRAM M. VERMEULEN
Budget Director
Division of Budget and Accounting
Department of the Treasury
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-32

DEAR MR. VERMEULEN:

You have forwarded to us a copy of Assemblyman Mosch's letter to you dated August 24, 1956 relating to Chapter 46 of the Laws of 1955, and have asked our opinion with respect to the question raised therein.