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

f;p

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.

In his letter, Assemblyman Mosch says in part:

> "A reading of the provisions of the act indicate that the said commission is empowered to make a study of smoke and air pollution in the areas of New York and New Jersey specified in Section 32:19-3 of the Revised Statutes. Reference to the statutory provisions indicate that the areas referred to are bodies of water.
>
> "Since the jurisdiction of the Interstate Sanitation Commission is limited to the said areas this body would have no authority to proceed elsewhere. If the commission should proceed beyond the areas indicated it would have no lawful right to any sums of money for such purposes."

We cannot agree with this analysis of the scope and effect of the amendment of the Interstate Sanitation Commission Compact accomplished by the adoption of Chapter 46 of the Laws of 1955, the enactment of similar legislation by the States of New York and Connecticut and the enactment of Public Law 946 of the 84th Congress which gave Congressional assent to that amendment of the Compact.

The Compact creating the Interstate Sanitation Commission was authorized, with the consent of Congress, by legislation adopted by the States of New Jersey, New York and Connecticut. The Commission was established to deal with the control and abatement of pollution in tidal and coastal waters contiguous to the three States. By R.S. 32:19-3, the Commission was given power to make rules, regulations and orders with regard to the pollution of all the coastal, estuarial and tidal waters within or covering portions of the three States referred to in the statute. In carrying out its duties under the Compact, the Commission has taken steps to abate existing sources of pollution in the portions of the three States served by the Commission. Among other things, it has issued and had enforced orders requiring municipalities and other bodies involved to construct sewerage treatment works. (See e. g. *Interstate Sanitation Commission* v. *Township of Weehawken,* 1 N.J. 330 (1949)).

The problem of air pollution has been of increasing concern to various State and local governments during recent years. In 1954, by Chapter 212 of the Laws of 1954, New Jersey established an Air Pollution Control Commission in the Department of Health. The functioning of the Commission was necessarily limited to the geographical boundaries of this State.

However, it was recognized that, particularly in the heavily industrial metropolitan areas of northern New Jersey and New York City, the problem transcended state boundaries. Smoke and other polluting materials originating in one state crossed the state line and affected the lives and property of people of the other state. As was stated in the memorandum accompanying the New York legislation (Chapter 422 of the Laws of 1955) which is a counterpart to Chapter 46 of the Laws of 1955 "it is a recognized fact that air pollution does not stop at a state boundary, that it certainly is an interstate problem and can only be controlled by interstate cooperation".

Chosen to make the study of interstate smoke and air pollution was the Interstate Sanitation Commission. To provide it with authority to act, the original Compact was amended by the enactment of Chapter 46 of the Laws of 1955 and complementary legislation of New York and Connecticut, followed by a grant of Congressional consent to the amendment.

Chapter 46 of the Laws of 1955 and the similar statutes enacted by New York and Connecticut authorized and empowered the Interstate Sanitation Commission "to make a comprehensive study of smoke and air pollution in the areas of New York

and New Jersey specified in section 32:19-3 of the Revised Statutes and the problems caused thereby", the study to include a survey of the sources and extent of the pollution, property damage caused thereby, its effect upon public health and comfort, and relevant meteorological, climatological and topographical factors.

The Commission was ordered to make a report to the Governors and the Legislatures on or before February 1, 1956; this was later extended to February 1, 1957. The act further provided:

> *"The report shall set forth the findings of the commission, its recommendations for a smoke and air pollution control program and a plan for the administration of such a program by an appropriate agency.* It shall also include a study and evaluation of existing laws in the States of New York, New Jersey, Connecticut and in other jurisdictions relating to smoke and air pollution and drafts of proposed legislation to carry out the recommendations of the commission." (Italics added)

Public Law 946 of the 84th Congress which gave Congressional consent to the amendment of the Interstate Sanitation Act provided in part as follows:

> "The further consent of Congress is given to the States of New York, New Jersey, and Connecticut to confer upon the Interstate Sanitation Commission, in accordance with chapter 286 of the laws of the State of New York (1956), chapter 46 of the laws of New Jersey (1955) (as amended by chapter 23 (1956), and public act 27 of the laws of Connecticut (1955), *the power to make studies of smoke and air pollution within any and all of the territory served by the Commission.* Such studies shall include surveys of the sources and extent of the pollution, property damage caused thereby, the effect upon public health and comfort, and relevant meteorological, climatological, and topographical factors." (Italic added)

In considering the powers granted to the Interstate Sanitation Commission by the amendatory legislation just outlined, it is well to bear in mind the settled rules of law applicable to statutory construction. As Mr. Justice Heher said recently in *Alexander* v. *N. J. Power & Light Co.,* 21 N.J. 373, at p. 378:

> "* * * The statute is to receive a reasonable construction, to serve the apparent legislative purpose. The inquiry in the final analysis is the true intention of the law; and, in the quest for the intention, the letter gives way to the rationale of the expression. The words used may be expanded or limited according to the manifest reason and obvious purpose of the law. The spirit of the legislative direction prevails over the literal sense of the terms. The particular words are to be made responsive to the essential principle of the law. When the reason of the regulation is general, though the provision is special, it has a general acceptation. The language is not to be given a rigid interpretation when it is apparent that such meaning was not intended. The rule of strict construction cannot be allowed to defeat the evident legislative design. The will of the lawgiver is to be found, not by a mechanical use of particular words and phrases, according to their actual denotation, but by the exercise of reason and judgment in assessing the expression of a composite whole. The indubitable reason of the legislative terms in the aggregate is not to be sacrificed to scholastic strictness of definition or

concept. *Wright* v. *Vogt,* 7 N.J. 1 (1951). It is not the meaning of isolated words, but the internal sense of the law, the spirit of the correlated symbols of expression, that we seek in the exposition of a statute. The intention emerges from the principle and policy of the act rather than the literal sense of particular terms, standing alone. *Caputo* v. *Best Foods, Inc.,* 17 N.J. 259 (1955). * * *"

Further, it should be noted that the powers conferred upon an agency or commission include not only those expressly granted but also those which, by necessary or fair implication, are incidental to a full effectuation of the legislative intent in the light of the purposes for which the agency or commission was created. *Rosenthal* v. *State Employees' Retirement System of New Jersey,* 30 N.J. Super. 136, 142 (App. Div. 1954); *Application of Waterfront Commission of New York Harbor,* 39 N.J. Super 33, 39 (Law Div. 1956)

Keeping in mind these settled rules of statutory construction, it is our opinion that the actvities of the Interstate Sanitation Commission, in its study of smoke and air pollution, are not to be limited to the physical areas of the waters of the Interstate Sanitation district. The evident legislative intent is to require studies of smoke and air pollution which affect the territory served by the Commission. By the express language of Chapter 46 of the Laws of 1955, "the study shall include a survey of the sources and extent of such pollution". Obviously the Commmission is not to be limited to the physical areas of the waters of the district.

The problems with which the Interstate Sanitation Commission is to be concerned in its study are those existing in the areas of the States of New Jersey and New York which it serves. How far the Commission will have to go to properly evaluate the sources and causes of interstate smoke and air pollution is a matter for the expert decision of the Commission itself, to be made in the course of its study. It clearly has the implied power to make that determination as well as the power and duty to recommend to the Governors and Legislatures of the states the boundaries of the area to which any proposed interstate control of smoke or air pollution should be limited.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD KOLOVSKY
Assistant Attorney General

HK:rk

OCTOBER 17, 1956

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

MEMORANDUM OPINION—P-33

DEAR MR. GASSERT:

This will acknowledge receipt of your recent communication in which you request our opinion on the following question: