

over to its Shade Tree Commission the funds which have been appropriated for its use, so that said funds may be held by the Commission in its own bank account and disbursed by it.

In our opinion the answer is in the negative. The statute governing Shade Tree Commissions (R.S. 40:64-1, et seq.) contains no authority for the transfer of such funds to the Commission or for their disbursement by that body, and makes no provision for the appointment of a treasurer by the Commission. R.S. 40:64-3 authorizes a three-member Commission to organize annually by the election of one of its members as president, and the appointment of a secretary; no mention is made of a treasurer. R.S. 40:64-11 provides for the appropriation of funds for the use of the Commission, and declares that all sums so appropriated by the governing body shall be "placed to the credit of, and subject to be drawn upon by the Shade Tree Commission for the purposes of its work." Likewise, under R.S. 40:64-13 all monies collected by the Commission either as penalties or as charges against real estate "shall be forthwith paid over to the municipal officer empowered to be custodian of the funds of the municipality, shall be placed to the credit of the Shade Tree Commission of such municipality and be subject to be drawn upon by the Commission for its work".

These provisions clearly indicate, in our opinion, that funds for shade tree purposes are, like most other municipal funds, to be kept in the custody of the municipal treasurer, to be disbursed by him upon warrant or certification by the Commission. We find no reason to read into the foregoing statutes any power in a Shade Tree Commission to hold and disburse funds, or to appoint a treasurer for that purpose.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

TPC:tb.

DECEMBER 5, 1956

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

MEMORANDUM OPINION—P-35

DEAR COMMISSIONER MCLEAN:

You have requested our advice as to what State officer or agency now is vested with the power formerly vested in the Board of Commerce and Navigation by R.S. 12:3-17, to survey tidewaters of the State and to prepare maps of the surveys showing what lines have been fixed and established as exterior lines for solid filling and pier lines to be filed in the office of the Secretary of State.

By Chapter 22, P.L. 1945, the authority of the Board of Commerce and Navigation was transferred to and vested in the Division of Navigation of the State Department of Conservation. Section 29 of Chapter 22 of the Laws of 1945 provided:

"The functions, powers and duties, records and property . . . of the Board of Commerce and Navigation are hereby transferred to and vested in the Division of Navigation established under this act, to be exercised by the council thereof, in accordance with the provisions of this act. No action shall be taken by said council except upon approval of the Commissioner of Conservation."

The council referred to in Section 29, *supra*, which could exercise the authority of the former Board of Commerce and Navigation was known as the Navigation Council. It was created by Section 28 of Chapter 22 of the Laws of 1945 and consisted of nine members appointed by the Governor with the consent of the Senate.

The Legislature, in creating the Navigation Council, made all its actions, including the making of surveys and the fixing of bulkhead and pierhead lines under R.S. 12:3-17, subject to the approval or disapproval of the Commissioner of Conservation. This power was conferred on the Commissioner by Section 28, Chapter 22 of the Laws of 1945.

In 1948, Chapter 448, P. L. 1948, N.J.S.A. 13:1B-1 et seq., created the Department of Conservation and Economic Development and all of the powers and functions of the various divisions and councils of the former State Department of Conservation, including the authority of the Commissioner of Conservation, were transferred to this department. N.J.S.A. 13:1B-7 further provided that the powers, functions and duties transferred to the Department of Conservation and Economic Development were to be exercised through the Division of Planning and Development, exclusive of powers, functions and duties which were specifically transferred to other divisions or agencies within the Department.

By N.J.S.A. 13:1B-8, the authority vested in the Division of Planning and Development is administered by the Director. N.J.S.A. 13:1B-8 provides:

"The Division of Planning and Development shall be under the immediate supervision of a director, who shall be a person qualified by training and experience to direct the work of such division. The Director of such division shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the term of office of the Governor appointing him and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

"The director shall administer the work of such division under the direction and supervision of the commissioner, and shall perform such other functions of the department as the commissioner may prescribe."

We refer generally to Formal Opinion (1955) No. 45 on the powers granted by the Legislature to the Planning and Development Council of the Division of Planning and Development. The power to make surveys and to establish bulkhead and pierhead lines pursuant to R.S. 12:3-17, is not set forth as a specific power of the Council. The Council is vested, however, by N.J.S.A. 13:1B-13, with the authority to execute riparian leases or grants for the State, subject to the approval of the Governor and the Commissioner of Conservation and Economic Development. The regular administrative practice, we are informed, is to establish bulkhead and pierhead lines in riparian grants or leases at the outer limits of the grant (see *Bailey v. Driscoll*, 19 N.J. 363 (1955)) but without the endorsement or other approval of the Director of the Division of Planning and Development.

In summary, the Director of the Division of Planning and Development administers the powers, functions and duties of the Division under the direction and supervision of the Commissioner of Conservation and Economic Development, including the function of conducting surveys and of establishing bulkhead and pierhead lines pursuant to R.S. 12:3-17. In those instances, when a riparian grant or lease fixes a bulkhead or pierhead line, the concurring approval of the Director of the Division of Planning and Development, as the successor to the powers of the former Board of Commerce and Navigation, is requisite and should be endorsed on the riparian instrument.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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DECEMBER 19, 1956

HONORABLE CARL HOLDERMAN
Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

MEMORANDUM OPINION—P-36

DEAR COMMISSIONER HOLDERMAN:

You have inquired whether the "Rules and Regulations for Storing, Handling, Transportation and Utilization of Liquefied Petroleum Gases," adopted by the Division of State Police on January 2, 1951, are applicable to refineries.

These regulations were promulgated pursuant to the New Jersey liquefied petroleum gas law, L. 1950, c. 139; N.J.S.A. 21:1B-1 et seq.

Section 2 of that law (N.J.S.A. 21:1B-2) provides in part as follows:

"The Division of State Police shall make, promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by motor vehicle, tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof."

The State Police regulations referred to above, state (Section 1.2):

"*New and existing installations.* These regulations apply to all new liquefied petroleum gas equipment, systems and installations; existing installations may be required to comply with these regulations if satisfactory evidence is reported that any existing liquefied petroleum gas equipment system or installation is unsafe, provided however, that all existing equipment shall be maintained in conformity with these regulations."

The regulations further provide (Section 3.0):

"All liquefied petroleum gas equipment shall be installed and maintained