

in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments, shall, from and after July 1, 1953, be consolidated." Section A of this particular section of the statute provides that there shall be deducted from every payment of salary to each member, as defined in the supplement to this chapter, five per cent of the amount thereof if he entered the service on or before attaining the age of thirty-five years, and if he entered the service after attaining the age of thirty-five years, the percentage shall be increased to such an amount as to correspond to the risk arising by his additional age.

It must be stated that members of the Consolidated Police and Firemen Pension Fund may, if they desire, retire under the provisions of the free Veterans' Act.

Our courts have held that compulsory contributions by members of the City Police Department paid into the Police & Firemen's Pension Fund of the City, were, in effect, but a reduction of salary, and contributions did not become the property of the member but remained the property of the City. In the absence of statutory provisions for return of deductions, members of the City Police Department from whose salary semi-monthly installments were deducted and paid into city police and firemen's pension fund was not entitled on resignation to return of contributions. *McFeely v. Pension Commission of City of Hoboken*, 8 N.J. Super. 575, 73 A. 2d 757. There is no provision in the statute for a return of contributions in the event of resignation from the System.

We are of the opinion that members of the Consolidated Police and Firemen's Pension Fund may, upon attaining the age of 62 and having 20 years of service, retire under the provisions of the free Veterans' Act rather than the provisions of the Consolidated Police and Firemen's Pension Fund. However, upon so retiring, they must waive their pension under the Consolidated Police and Firemen's Pension Fund and cannot receive their return of the contributions made by them to the Pension Fund.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: FRANK A. VERGA  
*Deputy Attorney General*

FAV:ccm

AUGUST 14, 1957

HONORABLE CHARLES F. SULLIVAN, *Director*  
*Division of Purchase and Property*  
State House  
Trenton, New Jersey

FORMAL OPINION, 1957—No. 13

DEAR DIRECTOR SULLIVAN:

Our opinion has been requested as to the authority of the Division of Purchase and Property in the Department of the Treasury to purchase automobiles for the New

Jersey Agricultural Experiment Station, the Delaware River Joint Toll Bridge Commission and the Palisades Interstate Park Commission. We shall consider each entity under its appropriate heading.

*New Jersey Agricultural Experiment Station*

By the Laws of 1880, Chapter 106, there was established the New Jersey Agricultural Experiment Station. The direction of the institution was committed to a board of directors consisting of the Governor, the Board of Visitors of the State Agricultural College and the President and Professor of Agriculture of that institution. By a later act the Board of Directors was designated the Board of Managers. *L. 1881, c. 81*. Thereafter the Laws of 1945, Chapter 49 (*N.J.S.A. 18:22-15.1*) designated certain units maintained by the Trustees of Rutgers College in New Jersey and other organizations as the "State University of New Jersey". Among the enumerated organizations was the New Jersey Agricultural Experiment Station managed and directed by the Board of Managers. A subsequent provision of the Act transferred the functions, powers and duties of the Board of Managers of the New Jersey Agricultural Experiment Station to the Trustees of Rutgers College in New Jersey. *N.J.S.A. 18:22-15.5*. There that power vested until Chapter 61 of the Laws of 1956. Though that legislation did not effect any change in the units comprising the educational entity, *N.J.S.A. 18:22-15.28*, it did provide that the "government, control, conduct, management and administration of the Corporation [designated under the new legislation as Rutgers, the State University] and the University shall be respectively vested in and allocated between the Board of Governors and the Board of Trustees." *N.J.S.A. 18:22-15.41*.

Additionally the 1956 legislation provided, among other things, that the Board of Governors created thereby should have authority to purchase all lands, buildings, equipment, materials and supplies, *N.J.S.A. 18:22-15.42(6)*. The extent of this power and its relation to the Division of Purchase and Property was set forth by this office in *Formal Opinion No. 9* dated July 2, 1956. There we stated that:

"... the functions exercised in the past by the Division of Purchase and Property with respect to purchases and construction for Rutgers, have now been expressly reserved as functions of the new Board of Governors."

Summarizing, we take the view that the New Jersey Agricultural Experiment Station is now a part of Rutgers, the State University, and that the authority to effect purchases for that entity is vested in the Board of Governors of that institution. Accordingly you are advised that the Division of Purchase and Property is not authorized to purchase automobiles for the New Jersey Agricultural Experiment Station.

*The Delaware River Joint Toll Bridge Commission*

By Compact between the State of New Jersey and the Commonwealth of Pennsylvania, the Delaware River Joint Toll Bridge Commission was created in 1934. The Compact created the Commission as a "public corporate instrumentality" of the two States to perform State functions, among others, the location, construction, operation and maintenance of bridges extending between the two States and across a specified section of the Delaware River. As to New Jersey the original Compact was embodied in the Laws of 1934, Chapter 215. Supplemental agreements are set forth in *L. 1947, c. 283*; *L. 1951, c. 284*; and *L. 1952, c. 333*. See also *L. 1957, c. 147*.

It is apparent that the States of New Jersey and Pennsylvania created the Com-

mission as a body distinct from its parent States. It is not an agency of either State, but is Pennsylvania and New Jersey acting conjointly. See *Formal Opinion* No. 14, June 23, 1952. It is a bi-state agency, existing by virtue of the laws of two States, as consented to by the Congress.

Ordinarily where the contract price is paid out of "State funds" *N.J.S.A. 52:34-6, et seq.*, as previously construed by this office, provide that such contracts are to be executed on behalf of the State by the Division of Purchase and Property. But the broad language of said statutes is subject to limitations, and certainly excepted therefrom should be, and is, a bi-State body which is not a State agency and whose funds are derived for the most part from its own revenues.

The Commission operates upon two separate and distinct budgets, one as to its toll bridges and the other as to its free bridges. See *N.J.S.A. 32:9-17* appropriating to the Commission all moneys received from any source whatsoever. As to its free bridges the Commission operates upon an appropriation made by the State of New Jersey and the latter is reimbursed in turn by the Commonwealth of Pennsylvania in an amount equal to one-half of the New Jersey appropriation. Therefore, funds of the Commission are derived either from its revenues (and used for operation of toll bridges) or from the joint contribution of New Jersey and Pennsylvania (and used for the operation of free bridges). As such, neither moneys can be considered "State funds" as that term is used in *N.J.S.A. 52:34-6*. Thus, the Commission not being a State agency and not making its expenditures out of "State funds" is without the general contracting power vested in the Division of Purchase and Property.

It is plain that under the Compact, without reference to *N.J.S.A. 52:34-6, et seq.*, the Commission can purchase automobiles. The Compact is explicit in its specification of what powers are vested in the Commission. Among them in *N.J.S.A. 32:8-3* we find authority:

- "(h) To enter into contracts.
- (i) To acquire, own, hire, use, operate and dispose of personal property.
- (j) To acquire, own, use, lease, operate and dispose of real property and interest in real property, and to make improvements thereon."

Any construction of the above statute which would subject the Commission to the general contracting power of the Division of Purchase and Property would defeat the intention of the Agreement of the States. As is evident from a reading of the Compact of 1934 and its supplements, the contracting States set forth their independence of such limiting authority under the law of each State as is represented by *N.J.S.A. 52:34-6, et seq.*

Moreover, to vest authority here in the Division of Purchase and Property would constitute a unilateral amendment of the Compact, because such authority is in direct conflict with express powers contained in the Compact. This would represent an invalid infringement of the agreement. As Justice Jones stated in *Henderson v. Delaware River Joint Toll Bridge Commission*, 362 Pa. 475, 66 A. 2d 843 (*Sup. Ct.* 1949):

"It is within the competency of a State, which is a party to a compact with another State, to legislate in respect of matters covered by the compact

so long as such legislative action is in approbation and not in reprobation of the compact." (at pp. 849, 850).

A State statute which is in conflict with an interstate compact approved by the Congress is an invalid impairment of contract in violation of the contract clause of the United States Constitution, Article I, Section X, par. 1. *Green v. Biddle*, 23 U.S. 1 (1823); *Cf. Olin v. Kitzmiller*, 259 U.S. 260 (1922); *P. J. McGowan & Sons, Inc. v. Van Winkle*, 21 F. 2d 76 (D.C. Oreg. 1927) affirmed 277 U.S. 574 (1928). Accordingly, the general contracting power vested in the Division of Purchase and Property cannot constitutionally apply to the Commission.

We are, therefore, of the opinion that the Division of Purchase and Property is not authorized to purchase automobiles for the Delaware River Joint Toll Bridge Commission.

#### *The Palisades Interstate Park Commission*

The Palisades Interstate Park Commission was created by an interstate compact between New York and New Jersey. This compact was authorized by L. 1937, c. 148 of the Laws of New Jersey and L. 1937, c. 170 of the Laws of New York, and was approved by the Congress of the United States. There was thereby created "a body corporate and politic" and the Commission is described as a "joint corporate municipal instrumentality" of the States of New York and New Jersey which is "deemed to be performing governmental functions of the two states."

As was stated with respect to the Delaware River Joint Toll Bridge Commission, the Palisades Interstate Park Commission is a bi-state agency, existing by virtue of the laws of the two States, as consented to by the Congress, and as such cannot be considered an agency solely of the State of New Jersey.

Too, we note that there has been conferred on the Commission by *N.J.S.A. 32:14-7* the power to:

"... purchase or otherwise acquire personal property and to hold the same. . ."

And as to its financial operations it was provided that the Commission should annually report to the Legislature all receipts or expenditures. *N.J.S.A. 32:14-28*. Further, the Legislature provided that the Commission should have authority to "expend such sum or sums as may be included in the annual appropriation bill for necessary expenses of the Commission, and for carrying out the provisions of this chapter." *N.J.S.A. 32:14-29*. And quite significant is the further provision of the latter section which provides that "such expenditures shall be approved by the Governor and Comptroller before payment thereof." *N.J.S.A. 32:14-29*.

The statutory references referred to above clearly evince a legislative intent that there should be vested in the Commission the authority to purchase, and this authority, we feel, is independent of any similar authority vested in the Division of Purchase and Property. That obtaining in the Division of Purchase and Property is a general authority and like most general authorizations is subject to exceptions, expressed or implied.

Aside from express power to execute purchases such as are here contemplated, it is to be noted that the expenditures of the Palisades Interstate Park Commission must have the approval of the Governor and Comptroller before they are paid. This is significant and important. No such requirement exists with respect to purchases

made by the Division of Purchase and Property. Therefore, if the general statutes be held applicable, there would be withdrawn from the Governor's and Comptroller's surveillance, the expenditures of this Commission. Such a withdrawal should not rest in implication, and that would be the result if we were to find that there had been an implied repeal of the purchasing authority conferred upon the Commission by *N.J.S.A.* 32:14-7 and 32:14-29. In the prior section of this opinion dealing with the Delaware River Joint Toll Bridge Commission we set forth our position with respect to the impairment of interstate contracts, and those comments are equally applicable here.

Accordingly, you are advised that the Division of Purchase and Property is not authorized to purchase automobiles for the Palisades Interstate Park Commission, and in summary neither is it empowered to make such purchases for the New Jersey Agricultural Experiment Station or the Delaware River Joint Toll Bridge Commission.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: HAROLD J. ASHBY  
*Legal Assistant*

HJA:tb

AUGUST 30, 1957

MAJOR WILLIAM O. NICOL  
*Bureau of Tenement House Supervision*  
1100 Raymond Boulevard  
Newark, New Jersey

FORMAL OPINION, 1957—No. 14

DEAR MAJOR NICOL:

You have requested our opinion concerning the definition of a tenement house as contained in R.S. 55:1-24. Specifically, you have requested an interpretation as to what constitutes "cooking upon the premises" within the meaning of the statute. The problem, as presented by you, is concerned with the use of "one burner" cooking apparatus in houses occupied by three or more families. R.S. 55:1-24 states:

"A 'tenement house' is any house or building or portion thereof which is rented, leased, let, or hired out to be occupied or is occupied as the home or residence of three families or more living independently of each other and doing their cooking upon the premises."

There are no cases found in New Jersey which specifically define cooking on the premises. However, an opinion of the Attorney General dated May 1, 1922 in volume 16, *Attorney General Opinions*, at page 517 decided that cooking on the premises meant general cooking. Previously, in volume 16, *Attorney General Opinions*, at page 279 in an Opinion dated December 7, 1921, which involved the question whether a three story building in which separate families occupied the first and second floors and a single person rented the third floor was a tenement house, the Attorney General said "I think it makes little difference whether a family or group