

it as either substantive or procedural since R.R. 1:9-2 specifically refers to "such costs as are recoverable by law." Cf. 4:55-6(a), in which reference is made to the taxation of costs in favor of the prevailing party "except when express provision therefor is made either in a statute or in these rules".

The aforesaid interpretation of R.S. 43:21-15(b) is further supported by the fact that the Unemployment Compensation Law is remedial and should be liberally construed. See R.S. 43:21-2, *Bergen Point Iron Works v. Board of Review*, 137 N.J.L. 685 (E. & A. 1948) and *Ford Motor Co. v. New Jersey Department of Labor and Industry*, 7 N.J. Super. 30 (App. Div. 1950), aff'd 5 N.J. 494 (1950). To give the term "fees of any kind" as used in R.S. 43:21-15(b) a narrower meaning than the word "costs" as used in N.J.S. 22A:2-2 and R.R. 1:9-2 would, we believe, run counter to legislative intent.

Finally, the fact that both you and the Clerk of the Supreme Court have for many years construed the word "fees" as synonymous with "costs" is illuminative of the proper meaning to be given that term. See *Lane v. Holderman*, 23 N.J. 304, 322 (1957), and the cases therein cited; *Sutherland, Statutory Construction* (3rd Edit.), Section 5107.

In summary, it is our opinion and you are advised that R.S. 43:21-15(b) precludes you from charging costs against an employee who fails to prevail on an appeal to the Superior Court, Appellate Division.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: CHRISTIAN BOLLERMANN  
*Deputy Attorney General*

CB:MG

APRIL 17, 1957

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

MEMORANDUM OPINION—P-11

DEAR COMMISSIONER McLEAN:

You have requested our opinion whether the State can lease mineral rights for the mining or extraction of certain minerals from the sands of the Colliers Mills Public Shooting and Fishing Grounds. This tract is administered by the Division of Fish and Game in your department (R.S. 13:1B-23, 27; R.S. 23:3-11), and it is our understanding that the ore in question can be extracted from the surface without permanently damaging the property for a fish and game preserve.

The acquisition of the Colliers Mills tract was pursuant to the authority contained in R.S. 13:1-18 and R.S. 23:3-11. The tract as it now stands consists of certain property known as the Emson Estate which was purchased by the State from the First National Bank of Hightstown, New Jersey; lands acquired by virtue of

the exchange authorized by Chapter 263 of the Laws of 1948; certain acreage comprising Success Lake and adjoining lands which were acquired by gift in 1949; and certain other acreage which was purchased by the State in 1952.

By the Laws of 1915, Chapter 241, there was established a Department of Conservation which was to be governed by a board to be known as the Board of Conservation and Development. That legislation was supplemented in 1929 and the Board was given, *inter alia*, this additional power:

"The board, when, in its judgment, it deems that the best interests of the state will be served thereby, shall have power to lease, sell or exchange for other lands or property, any portion of the lands or properties acquired for the purposes indicated in or under the provisions of this article, or to sell or exchange any products of such lands. No such sale or exchange shall be made without the approval of the governor. Such leases, sales or exchanges shall be made in the name of the State of New Jersey, by the board under its seal, signed by the president and secretary thereof." (R.S. 13:1-23).

With a view to consolidating and coordinating State conservation activities, the Legislature in 1945 established the State Department of Conservation with five divisions: (a) Division of Water Policy and Supply, (b) Division of Fish and Game, (c) Division of Shell Fisheries, (d) Division of Forestry, Geology, Parks and Historic Sites, and (e) Division of Navigation. (R.S. 13:1A-1, *et seq*). Also, as part of that enactment, it was provided that:

"The functions, powers and duties, records and property of the Department of Conservation and Development and of the Board of Conservation and Development, except as otherwise provided by this act \* \* \* are hereby transferred to and vested in the Division of Forestry, Geology, Parks and Historic Sites, to be exercised and used by the council thereof, in accordance with the provisions of this act. No action shall be taken by said council except upon approval by the Commissioner of Conservation." (R.S. 13:1A-24).

Some three years later the Department was reorganized as it now stands with the following divisions being authorized: (a) Division of Planning and Development, (b) Division of Veterans' Services, (c) Division of Fish and Game, (d) Division of Shell Fisheries, (e) Division of Water Policy and Supply, and (f) Administrative Division, (R.S. 13:1B-1 *et seq*). As will be noted, the Division of Forestry, Geology, Parks and Historic Sites was not continued.

The functions, powers and duties of the former State Department of Conservation and of each of the divisions therein and of each of the councils of the respective divisions were vested by the 1948 legislation in the present Department of Conservation and Economic Development. The duty of administering the work of the department was assigned to the Commissioner, R.S. 13:1B-3, and it was provided that he should "perform, exercise and discharge the functions, powers and duties of the department through such divisions as may be established by this act or otherwise by law." (R.S. 13:1B-3c).

With respect to the assignment of the various functions and powers of the Department, we note that the power to sell, lease or exchange lands which the Legislature had by virtue of the Laws of 1929, Chapter 213 (R.S. 13:1-23) conferred on the former Board of Conservation and Development, was not in express language

vested in any particular division. However, not having been repealed, it was one of the powers of the former Department which carried over and could be exercised by one of the divisions. Both the Division of Planning and Development and the Division of Fish and Game are under the supervision of a Director who is given the power to "administer the work of such division under the direction and supervision of the Commissioner." *R.S. 13:1B-8 and 27*. The authority vested in these divisions is spelled out in part as follows:

"\* \* \* all of the functions, powers and duties of the State Commissioner of Conservation, of the existing State Department of Conservation and of the respective divisions and councils therein, herein transferred to the Department of Conservation and Economic Development, exclusive of those of, or relating to, or administered through, the Division of Fish and Game, the Division of Shell Fisheries, and the Division of Water Policy and Supply; \* \* \* are hereby assigned to, and shall be exercised and performed through, the Division of Planning and Development in the department." (*R.S. 13:1B-7*).

\* \* \*

"All of the functions, powers and duties of the Division of Fish and Game of the existing State Department of Conservation, of the Fish and Game Council therein, and of the State Commissioner of Conservation relating to or administered through said division, herein transferred to the Department of Conservation and Economic Development, are hereby assigned to, and shall be exercised and performed through, the Division of Fish and Game in the department." (*R.S. 13:1B-23*).

It is our opinion that it was the intent of the Legislature that the power to lease, sell or exchange lands, (where such lands were, as here, acquired under the authority of *R.S. 13:1-18* and *R.S. 23:3-11*), was to be exercised through the Division of Fish and Game. The power of disposal which was formerly vested in the Board of Conservation and Development and later in the State Department of Conservation and now in the Department of Conservation and Economic Development is, we submit, in the instant case one of the functions or powers assigned to the Division of Fish and Game by *R.S. 13:1B-23*, and which is to be exercised by the Director thereof. *R.S. 13:1B-27*.

We find support for our conclusion by reading together *R.S. 13:1-18* to *22* (which are the general land acquisition provisions in Title 13) and *R.S. 23:3-11*. When this is done there seems little doubt that the power to acquire lands such as are involved in our present inquiry is vested in the Division of Fish and Game. This being so, the disposition of the lands so acquired is likewise the responsibility of the Division of Fish and Game, subject to the provisions of Article IV of Title 13 of the Revised Statutes. Chapter 448 of the Laws of 1948 in Section 29 (*R.S. 13:1B-27*) provides as follows:

"The Division of Fish and Game shall be under the immediate supervision of a director, who shall be a person with special training and experience in wild life management and otherwise qualified to direct the work of such division. The director of such division shall be appointed by the Fish and Game Council, subject to the approval of the Governor, and shall, unless sooner removed by the Governor as hereinafter provided, serve at the

pleasure of such council 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."

Accordingly, you are advised that a lease of mineral rights for the mining or extraction of certain minerals from the sands of the Colliers Mills Public Shooting and Fishing Grounds may be executed by the State of New Jersey acting through the Division of Fish and Game upon a determination by yourself in the exercise of your direction and supervision of the Division of Fish and Game that such lease is for the best interests of the State, subject to the approval of such lease by the Governor.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: HAROLD J. ASHBY  
*Legal Assistant*

HJA :tb

APRIL 24, 1957

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

MEMORANDUM OPINION—P-12

DEAR DIRECTOR GASSERT:

You have requested our opinion concerning the application of Section 3 of the Unsatisfied Claim and Judgment Fund Law, *L. 1952, c. 174, sec. 3, N.J.S.A. 39:6-63*, to certain charitable and eleemosynary organizations. More specifically, you wish to be advised whether such organizations are required to make payments to the Fund in view of the fact that they are exempted from paying motor vehicle registration fees by *R.S. 39:3-27*. For the reasons hereinafter stated it is our opinion that these organizations are required to contribute to the Fund in the same manner and to the same extent as other persons registering motor vehicles.

*N.J.S.A. 39:6-63*, dealing with the creation of the Fund, provides in part as follows:

"For the purpose of creating the fund

(a) *Every person registering an uninsured motor vehicle in this State for the yearly period commencing April 1, 1954, shall pay at the time of registering the same, in addition to any other fee prescribed by any other law, a fee of \$3.00;*

(b) *Every person registering any other motor vehicle in this State for the yearly period commencing April 1, 1954, shall pay at the time of register-*