

JUNE 27, 1957

HONORABLE FREDERICK M. RAUBINGER
Commissioner of Education
 175 West State Street
 Trenton, New Jersey

MEMORANDUM OPINION—P-24

DEAR COMMISSIONER:

You have requested our opinion as to whether it is lawful for a Board of Education to sanction the oral and collective saying of Grace by the school children before lunch. You have appended several forms of table Grace which have been used in a particular school district within the State.

We view R.S. 18:14-78 as decisive. That section of the School Law prohibits religious services or exercises in public schools except the reading of the Bible and the repeating of the Lord's Prayer. *Doremus v. Board of Education of Hawthorne*, 5 N.J. 435 (1950), upheld the constitutionality of R.S. 18:14-78, as well as the constitutionality of R.S. 18:14-77 which requires the reading of at least five verses of the Old Testament, without comment, in each public school classroom at the opening of the school day. According to the Supreme Court in the *Doremus* case, the Old Testament and the Lord's Prayer are not sectarian or religiously controversial.

Grace invokes the Divine Blessing before a meal. As a religious exercise, it is barred in the public schools of this State under R.S. 18:14-78. There can be no legal or constitutional objection, however, to the reading of passages from the Old Testament or the repeating of the Lord's Prayer immediately prior to the noon meal. We point out that the sample Graces which you have supplied are not drawn from the Bible.

Our further opinion is that an interval of silence understood by the school children to be set aside for the saying of Grace to themselves, if they choose, would constitute a religious exercise subject to the prohibition of R.S. 18:14-78. An interval of silence at lunchtime without any understanding that the school children are to repeat Grace to themselves, if they choose, meets no constitutional or statutory prohibition.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

JULY 10, 1957

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

MEMORANDUM OPINION—P-25

DEAR COMMISSIONER McLEAN:

You have asked our opinion as to whether the State of New Jersey has title to submerged lands, formerly islands, situated in the tidewaters of the State.

We advised Mr. James F. Finn, Senior Engineer, Bureau of Navigation, on October 27, 1954 that islands formerly flowed by tidewaters are owned in the proprietary right of the State of New Jersey as sovereign. While your immediate opinion request raises the antithetical issue, the principles set forth in the Memorandum Opinion of October 27, 1954 are governing. The State of New Jersey has title derived from the English crown to the lands which are flowed or have been flowed by tidewaters at any time since the Revolutionary War.

Leonard v. State Highway Dept., 29 N.J. Super. 188, (App. Div. 1954), is a recent decision of the Superior Court, Appellate Division, affirming the established law that upon erosion of fast lands, the owner loses his title to the State of New Jersey. In the riparian law, erosion is distinguished from avulsion. Avulsion or temporary flooding by the tides through a storm does not shift the ownership of the lands from the private owner. In the *Leonard* case the Court ruled that the natural tide-flooding of lands formerly banked against a tidal creek resulted in a divestment in favor of the State of New Jersey. We understand that the former islands referred to in your opinion request became tide flowed through erosion, not through avulsion. Other parallel authorities are *Seacoast Real Estate Co. v. American Timber Co.*, 92 N.J. Eq. 219 (E. & A. 1920) and *Dewey Land Co. v. Stevens*, 83 N.J. Eq. 314 (E. & A. 1914).

We further point out that under the Submerged Lands Act, 67 Stat. 29 (1953), 43 U.S.C., Sec. 1301 et seq. (Supp. 1954), 43 U.S.C.A., the title of the State of New Jersey was recognized to a boundary of three geographical miles extending seaward from the coastline, except as granted out or acquired through wharfing. The sovereign title of the State of New Jersey to former islands now submerged under the tidewaters of the Atlantic Ocean to a seaward limit of three miles is thus established by the judicial authorities and by the Federal legislation.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

DDF :kma

JULY 12, 1957

HONORABLE WILLIAM F. KELLY, JR.
President, Civil Service Commission
State House
Trenton 7, New Jersey

MEMORANDUM OPINION—P-26

Re: Classification of Police of Raritan Township

DEAR MR. KELLY:

You have inquired as to the Civil Service status of the police of Raritan Township. The facts, we understand, are as follows:

1. Raritan Township adopted Civil Service on November 2, 1954.