

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 *Dervey 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*

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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.

2. On that date and prior to that date and until October 8, 1955, policemen of the Township of Raritan were appointed each year for the term of one year. During such times, there was no regular police department in the Township.

3. On October 8, 1955, an ordinance establishing a regular police department was adopted by the Township of Raritan in accordance with the provisions of R.S. 40:19-1, which provides for the establishment of regular township police departments.

4. Shortly after the ordinance was passed, a classification survey was made and adopted by ordinance for the Township of Raritan. In this survey, the Raritan Township Police were placed within the classified service, apparently on the assumption that they were members of a regular police department on the date Civil Service was adopted.

5. On March 2, 1956, the Township, by ordinance, repealed the ordinance establishing the regular police department, and by resolution on the same day appointed the same personnel as special police officers "in accordance with the provisions of R.S. 40:149-2".

Under Civil Service law, jobs in existence at a specified time before adoption of Civil Service by a municipality, of a character justifying their being placed in the classified service, are considered to be in the classified service when Civil Service is adopted by the Township. Persons holding such jobs are given Civil Service protection. R.S. 11:21-6. It is also very clear that once Civil Service has been adopted, jobs which thereafter become classified must be filled in compliance with Civil Service recruitment procedure. R.S. 11:21-1. Because such procedures were not followed, the action by the classification specialists in classifying the police jobs as being within the classified service, and the action of the Township of Raritan in approving and adopting this classification survey by ordinance cannot, in themselves, place the individual members of the police department within the classified Civil Service. We must determine, therefore, whether the classification survey was correct in placing the Raritan Township policemen in the classified service.

It is well established that where appointments are validly made for a fixed term, and not for an indefinite term, such positions may not be included in the classified Civil Service. *Connors v. Bayonne*, 36 N.J. Super. 390, 395, 396 (App. Div. 1955); *Township of Woodbridge v. Civil Service Commission*, 4 N.J. Super. 111 (App. Div. 1949); *Davaillon v. Elizabeth*, 121 N.J.L. 380, 386, 387 (Sup. Ct. 1938); Civil Service Rule 7-2(t).

It is also established by Civil Service Rule 7-2(t) that where a statute provides that an appointee shall serve only at the pleasure of the appointing authority, such office or position is in the unclassified service. Until the short-lived ordinance of October 8, 1955, there was no regular police department in Raritan Township. Accordingly, the appointments of Raritan Township Police must have been pursuant to R.S. 40:149-2, which provides for appointment of special police by township committees and gives such committees the power to dismiss at will. The only other colorable authority for appointment would be R.S. 40:47-19, a general statute applying to all municipalities, which refers to municipalities having regular police departments and was accordingly inapplicable in Raritan Township.

The police of the Township of Raritan were in fact appointed for one year terms.

Whether such one year appointments were authorized under R.S. 40:149-2 or not, is not material to the issue as to whether the individuals concerned should have been placed in the classified service at the time of adoption of Civil Service. For at that time, whether their appointments were "at will" or valid term appointments, they were properly in the unclassified service under Civil Service Rule 7-2(t).

Since adoption of Civil Service, an ordinance creating a regular police department was passed. A classification survey based thereon was adopted, placing the police in the classified service, as are all police departments in municipalities covered by Civil Service. However, since this was done, subsequent to adoption of Civil Service, appointments to such positions would have to conform to Civil Service recruitment provisions. This was not done, and so individuals employed during this period acquired no Civil Service rights. The question is now moot in that the ordinance establishing a regular police department has been repealed. We offer no opinion as to the validity of making one year appointments under R.S. 40:149-2, although the cases of *Uffert v. Vogt*, 65 N.J.L. 621 (E. & A. 1901) affirming 65 N.J.L. 377 (Sup. Ct. 1900) and *Mathis v. Rose*, 64 N.J.L. 726 (E. & A. 1900) affirming 64 N.J.L. 45 (Sup. Ct. 1899) cast serious doubt on this point.

You are advised, however, that whether the Raritan Police are properly appointed for a term or to serve at the pleasure of the Township Committee, Civil Service Rule 7-2(t) provides that the positions be placed in the unclassified service.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: DAVID LANDAU  
*Deputy Attorney General*

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AUGUST 28, 1957

HONORABLE AARON K. NEELD  
*State Treasurer*  
State House  
Trenton, New Jersey

MEMORANDUM OPINION—P-27

*Re: Motor Fuels Tax Refund*

DEAR MR. NEELD:

You have requested our opinion as to the eligibility of the Parking Authority of the City of Elizabeth, New Jersey, to obtain refund of the New Jersey motor fuels tax pursuant to R.S. 54:39-66(a). This section provides in part:

"Any person who shall use any fuels as herein defined for any of the following purposes:

- (a) operating or propelling motor vehicles, motor boats or other implements owned or leased by the State and all the political subdivisions thereof, . . . and who shall have paid the tax for such fuels hereby required to be paid,