

court of this State, or for any lawful purpose whatever, may be made and taken before any one of the following officers: The Chief Justice of the Supreme Court or any of the justices or judges of courts of record of this State; Masters of the Superior Court; Municipal magistrates; Mayors or aldermen of cities, towns or boroughs or commissioners of commission governed municipalities; Surrogates, registers of deeds and mortgages, county clerks and their deputies; City clerks; Clerks of all courts; Notaries public; Commissioners of deeds; Attorneys-at-law of this State.

"This section shall not apply to official oaths required to be made or taken by any of the officers of this State, nor to oaths or affidavits required to be made and taken in open court."

The general authority of a notary public to administer oaths does not affect the requirement of other statutes that oaths in particular cases be administered by other specified officers. See 66 C.J.S. 615.

It is our opinion that a complaint for a traffic violation cannot be properly made under oath before a notary public and must be made under oath before the persons specifically designated in R.R. 8:3-1(a), N.J.S.A. 39:5-6 and N.J.S. 2A:8-27, *supra*.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: SAUL N. SCHECHTER  
*Deputy Attorney General*

SNS/LL

OCTOBER 9, 1957

HONORABLE T. J. LANGAN  
*Director, Division of Planning and Development*  
*Department of Conservation and Economic Development*  
520 East State Street  
Trenton, New Jersey

MEMORANDUM OPINION—P-32

DEAR DIRECTOR LANGAN:

You have asked us to advise you as to whether or not the Division of Planning and Development may establish non-ski areas on the inland waterways and other waterways under the jurisdiction of the State. We interpret your question to mean that you may wish to prohibit water skiing in designated localities, should an investigation and study on our part disclose that such action is necessary, and that you now inquire concerning your authority to do so.

Water skiing has become a popular sport and the manner in which it is engaged in has become familiar to most people. It is sufficient to say that one person, or more, is towed over water at a good rate of speed by means of a long line with distinctive attachments, one end of which is fastened to a power boat and the other end of which is held by the person being towed who is able to maintain his upright balance by the use of water skis attached to parts of his body.

Correspondence attached to your request letter indicates that the matter of regulation of the sport in one particular area has been studied and discussed among members of two ski clubs, a harbor master and an expert on boating who writes articles for a leading newspaper in New Jersey, and that as a result it has been agreed that as to that area, regulation is desirable.

Waters in New Jersey are classified as being tidal or non-tidal. The state is the owner of the subaqueous soil under tidal waters and as such proprietor may control the use of these waters for the common benefit of its people. As a sovereign state, and in order to promote the public welfare and safety, it may regulate the use of both tidal and non-tidal streams. In the exercise of its police power with reference to non-tidal waters see Attorney General's Formal Opinion—1954 No. 25.

The legislature has delegated to your department the authority to regulate navigation on the waters within the state, and particularly with reference to the use of power vessels by Chapter 7 of Title 12 of the Revised Statutes of New Jersey.

In *State Board of Milk Control v. Newark Milk Co.*, 118 N.J. Eq. 504, the court said:

"The legislature indubitably has power to vest a large measure of discretionary authority in the agency charged with the administration of a law, enacted in pursuance of the police power, to secure the health and the safety of the people. \* \* \* It is only necessary that the statute establish a sufficient basic standard—a definite and certain policy and rule of action for the guidance of the agency created to administer the law."

The latest definition of power vessels is supplied in N.J.S.A. 12:7-34.1(d):

"The term 'power vessel' shall mean a vessel temporarily or permanently equipped with a motor, and shall not be deemed to include a vessel propelled wholly by sails or by muscular power."

The authority for the power to regulate the operation of power vessels on all waters of the state is contained in the following sections of our statutes, the first applying to tidal and the second to non-tidal waters.

N.J.S.A. 12:7-44:

"In addition to the powers conferred upon the Department of Conservation and Economic Development by the provisions of Title 12 of the Revised Statutes, the said Department of Conservation and Economic Development is hereby authorized and empowered to regulate the operation, docking, mooring and anchoring of power vessels operating on the tidal waters within the confines of the State of New Jersey."

N.J.S.A. 12:7-34.2:

"The department is hereby authorized and empowered to prescribe rules and regulations, not inconsistent with this act, governing the registration, licensing, inspection, operation, equipping, anchoring and racing of power vessels upon the waters other than tidal waters of this State. Said rules or regulations shall be such as are reasonably necessary for the protection of the health, safety and welfare of the public and for the free and proper use of said waters by any persons or vessels in, on or about such waters. Said regulations shall, insofar as practicable, be in substantial conformity with

regulations issued by the agency or agencies of the United States having jurisdiction with respect to power vessels upon the tidal waters of this State.”

In addition to the power given to regulate the use of power vessels, the legislature has fixed additional standards by which you may be guided in promulgating rules and regulations governing their operation on both classes of waters.

As to tidal waters :

N.J.S.A. 12:7-47:

“No power vessel shall be operated in a reckless manner. Reckless operation shall include operating such a vessel in a manner which unnecessarily interferes with the free and proper use of any waters, or which unnecessarily endangers other craft therein, or the life or limb of any person upon such other craft or in the water.”

As to non-tidal waters :

N.J.S.A. 12:7-34.22:

“No power vessel or motor shall be operated in a reckless or careless manner. Reckless or careless operation shall include operating a power vessel or motor in a manner which unnecessarily interferes with the free and proper use of any waters, or unnecessarily endangers other craft therein, or the life or limb of any person upon any craft or in the water.”

It is our opinion that by reason of the authority so vested in the Department of Conservation and Economic Development by the foregoing statutory enactments to be exercised and performed through the Division of Planning and Development of which you are the Director, you may prohibit or ban water skiing on any waters in New Jersey by promulgating rules or regulations prohibiting operation of a power vessel in connection with water skiing on any of the waters of this state, tidal or non-tidal. You may limit the prohibition to a designated area. What would constitute reckless operation, as defined above, on waters in certain localities would not necessarily be dangerous at other places.

Before taking any administrative action you are urged to be certain that your findings and conclusions are reasonable, and that there is a supporting basis for the agency determination, rule or regulation in accordance with the legislative standards. See *McKenna v. N.J. Highway Authority*, 19 N.J. 270, 283; *Bailey v. Council of the Division of Planning, etc. State of New Jersey*, 22 N.J. 366, 374; *Burnett v. Abbott*, 14 N.J. 291, 294. You are reminded that any rules and regulations promulgated should be filed with the Secretary of State as provided for in the 1947 Constitution, Art. V, Sec. IV, Par. 6.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: SIDNEY KAPLAN  
*Deputy Attorney General*