

OCTOBER 31, 1957

HON. FLOYD R. HOFFMAN, *Director*  
*Office of Milk Industry*  
1 West State Street  
Trenton, New Jersey

## MEMORANDUM OPINION—P-33

DEAR DIRECTOR:

We have been asked whether a division of a corporation may be licensed as a milk dealer.

N.J.S.A. 4:12A-28 requires a milk dealer to be licensed. N.J.S.A. 4:12A-1 defines a milk dealer as "any person who sells or distributes milk \* \* \*". R.S. 1:1-2 defines "person" to include corporations but makes no reference to divisions of a corporation. The divisions of a corporation are not separate entities within the statutory definition of "person".

The Milk Control Act, N.J.S.A. 4:12A-33, requiring an application for a license, contemplates that the applicant may be "a firm or association", both within the statutory definition of "person". Again, divisions of a corporation are not specifically listed and are not within the category intended to be covered by the statute.

N.J.S.A. 4:12A-39 imposes a fine on any person who violates the act and N.J.S.A. 4:12A-41 provides for collection of this fine by judicial proceeding. The General Corporation Act gives a corporation the power to be sued only in its own name. N.J.S.A. 14:3-1(b); *Markey v. Robert Hall Clothes of Paterson, Inc.*, 27 N. J. Super. 417, 420 (Co. Ct. 1953). It does not give divisions the power to be sued. R.R. 4:4-4 provides no method for service of process on a division of a corporation. Therefore, ordinary sanctions could not be brought to bear against divisions of corporations as such.

We hereby advise that the definition of "person" contained in N.J.S.A. 1:1-2 is to be applied in the definition of "milk dealer" in N.J.S.A. 4:12A-1 and 28. Licenses as "milk dealers" may not be issued to divisions of corporations.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: WILLIAM L. BOYAN  
*Legal Assistant*

NOVEMBER 7, 1957

SOMERSET COUNTY BOARD OF ELECTIONS  
Administrative Building  
Somerville, New Jersey

## MEMORANDUM OPINION—P-34

GENTLEMEN:

You have sought our advice as to whether the Somerst County Board of Elections has the power to establish salaries paid to its employees. According to the informa-

tion you have supplied us, the county board of freeholders has refused to recognize the salary recommendations submitted to it by the county board of elections.

Our opinion is that the county board of elections is vested with the statutory power to fix the compensation of its employees. The county treasurer must pay such salaries as necessary expenses, when certified and approved by the county board of elections. The provisions of R.S. 19:31-2 are governing.

"In all counties having a superintendent of elections, the superintendent of elections is hereby constituted the commissioner of registration and in all other counties the secretary of the county board is hereby constituted the commissioner of registration.

"The commissioner of registration in all counties having a superintendent of elections, and the county board in all other counties, shall have complete charge of the permanent registration of all eligible voters within their respective counties.

"The commissioner of registration in counties of the first class having less than eight hundred thousand inhabitants, and the county board in all other counties, shall have power to appoint temporarily, and the commissioner of registration in counties of the first class having more than eight hundred thousand inhabitants shall have power to appoint on a permanent, or temporary basis, such number of persons, as in his or its judgment may be necessary in order to carry out the provisions of this title.

\* \* \*

"All necessary expenses incurred, as and when certified and approved by the commissioner of registration in counties having a superintendent of elections, and by the county board in all other counties, shall be paid by the county treasurer of the county; provided, however, that all expenses of every nature in the office of the commissioner of registration in counties of the first class, exclusive of county board expenses, shall not exceed the sum of two hundred ninety-five thousand dollars (\$295,000.00) per annum commencing with the year one thousand nine hundred and fifty-three and annually thereafter."

Somerset County, a county of the third class, has no office of superintendent of elections. According to the specific terms of R.S. 19:31-2, the county board of elections in counties without a superintendent of elections is empowered to appoint temporary employees. The salaries of such temporary employees must be paid by the county treasurer as one of the necessary expenses of the county board of elections in carrying out its statutory functions and meeting its statutory obligations under Title 19.

The courts of New Jersey have consistently viewed the several county boards of election as State agencies, vested with authority independent of the county government.

In *McDonald v. Hudson County Freeholders*, 98 N.J.L. 386 (Sup. Ct. 1923), plaintiff, the Superintendent of Elections, made a demand upon the Board of Freeholders for the payment of his salary and the salaries of those appointed by him. Demand was refused. The Court, in reversing the action of the Board of Freeholders, characterized the election laws as being of state-wide significance, and the salaries of

the employees of the election board to be of legislative concern, properly above the local interest of the Board of Freeholders. In this connection, the Court said at page 394:

"It must be conceded that honest elections are the vital machinery of good and free government. It is a matter of the gravest importance to the state that elections should be fairly and honestly conducted. The entire state has a vital interest in protecting elections against fraud, corruption and illegal voting."

Another analogous case is *Nolan v. Fitzpatrick*, 9 N.J. 477 (1952). In the *Nolan* case the legislature created the boulevard commissioners of Hudson County. The boulevard commissioners, in accordance with their statutory authority, made written requisition to the defendant board of freeholders for \$1,175,534.00, the amount the commissioners deemed necessary to carry out their statutory responsibilities. The freeholders denied this full amount and attempted to make a substantial reduction. The statute in question was N.J.S.A. 27:17-7 which reads:

"On or before January first, in each year, the commissioners shall make a requisition in writing on the board of chosen freeholders of the county, for the moneys necessary to enable the commissioners to carry out the purpose of this chapter.

"The board of chosen freeholders shall cause the amount to be raised and collected in the same manner as money for other county purposes and the moneys thus raised shall remain a fund in the hands of the county treasurer to be used for such purposes only, and to be drawn, on warrants signed by the president and secretary of the commission, and the board of chosen freeholders shall have no control over the fund."

The question presented was whether the commissioners' requisition was mandatory upon the freeholders or whether the freeholders could within their discretion reduce the amount requested. Chief Justice Vanderbilt considered the entire body of law on similar requisitions and said, in approving *McDonald v. Hudson County Freeholders*:

"Statutes imposing mandatory obligations on the county are thus no novelties in our law. The Legislature where it desires to confide discretion to a board of chosen freeholders has experienced no difficulty in finding apt language to do so. Where, as here, it has not only employed mandatory language with respect to appropriations but by the entire statutory scheme of relations between the boulevard commissioners and the board of chosen freeholders has indicated an intent \* \* \* either as to the method of appropriating funds to the boulevard commissioners or the very existence of the boulevard commissioners as an independent political corporation."

The Court suggested that the freeholders, as private citizens and with the same right as other private citizens, could attack the requisitions as excessive or unnecessary but, in an official capacity, lacked the power to take the law into their own hands and thus defeat the clear legislative intent.

As an elementary principle, the underlying motive of the Legislature should be

the determining factor in interpreting statutes. *Lynch v. Borough of Edgewater*, 14 N.J. Super. 329 (1951). The Legislature apparently intended to free the county board of elections from control of the freeholders with respect to the fixing of salaries. We conclude therefore that the power to fix the salaries of the employees of the board of elections is vested by legislative mandate in the board of elections and is not subject to revision or control by the board of freeholders.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: DAVID D. FURMAN  
*Deputy Attorney General*

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NOVEMBER 7, 1957

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

MEMORANDUM OPINION—P-35

DEAR COMMISSIONER McLEAN:

You have sought our advice as to the construction of the 1918 grant of water rights in the Raritan and Millstone Rivers to Elizabethtown Water Company and other water companies now merged in Elizabethtown Water Company. The grant was made by the former Board of Conservation and Development pursuant to P.L. 1907, c. 252, p. 634.

You raise the following particular questions:

- (1) What is the total amount of water which may be obtained by Elizabethtown Water Company from the Raritan and Millstone Rivers:
- (2) What is the rate of charge by the State for such water supply;
- (3) May the State charge Elizabethtown Water Company for a part of the cost of construction and maintenance of storage facilities upstream from the point of diversion?

The grant is specific as to the amount of water which may be obtained by Elizabethtown Water Company and the companies merged with it. The maximum diversion from the Raritan and Millstone Rivers is 20 million gallons per day. This legislative allowance is independent of Elizabethtown Water Company's rights to divert water from other sources of surface or subsurface water.

Elizabethtown Water Company is obligated to pay to the State pursuant to paragraph 5 of the 1918 grant, "Such annual charge for the diversion of water as is now lawfully made or may hereafter be lawfully required." R.S. 58:2-1 et seq. is the governing statute on the fixing of charges for surface water diverted by authority