

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*

DDF:gd

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

of the Board of Conservation and Development or successor agencies. Private water companies supplying water to the public are charged only for diversions in excess of a total amount equal to 100 gallons daily for each inhabitant of the municipality or municipalities supplied, in accordance with the census of 1905, or in excess of such greater amount as such company may have been legally diverting on June 17, 1907. You have informed us as a fact that Elizabethtown Water Company and the other companies now merged in it were not diverting water in excess of 100 gallons daily for each inhabitant of the municipality or municipalities supplied on June 17, 1907. The application by Elizabethtown Water Company and other companies now merged in the Elizabethtown Water Company, prior to the 1918 grant, sets forth the total population of the municipalities furnished with the public water supply as approximately 200,000. We have no definite information as to the population of the municipalities in the 1905 census, but presume that the population in 1905 was less than that in 1918. Elizabethtown Water Company is chargeable with the excess amount diverted over 100 gallons per day for each inhabitant of the municipality supplied, as of 1905, at a rate of not less than \$1.00 nor more than \$10.00 per million gallons (R.S. 58:2-2).

Your final question concerning Elizabethtown Water Company's liability under the legislative grant for the construction of up-river water storage facilities is governed by paragraph 6 as follows:

"The Board hereby expressly reserves the right, in case it shall be necessary in the future to provide storage of storm waters along the Raritan and Millstone rivers or their tributaries for the purpose of supplying municipalities or water companies that may lawfully take water from the said rivers and their tributaries, to apportion the expense of providing the necessary storage among the petitioners and such other companies or municipalities as may at the time have a right to take water from said rivers, their tributaries, or either of them, for public or domestic use, as may be equitable."

The Supreme Court in *City of New Brunswick v. Board of Conservation and Development*, 94 N.J.L. 46 (Sup. Ct. 1918), affirmed on opinion below 94 N.J.L. 558 (E. & A. 1920) commented on the important condition wherein the board reserved to itself full authority relating to the future storage of storm waters and the apportionment of its cost between the parties entitled to participate in its use, at p. 51:

"In other words the state board apprehended a future demand for water in excess of the ordinary flow of the two rivers, and the requirement of storage of storm water, which the statute permits, exacted from the petitioners a promise to pay their share of such expense because manifestly it might become very essential to the petitioners to have storm water stored if it should happen that the present flow was not sufficient to supply the demands of municipalities entitled to a supply of water. And while the condition does not impose terms on any subsequent applicant for the use of water which it might become necessary to store, we think the board exercised a wise precaution in making it a condition of this consent that if the public interest required the impounding of the storm water of these two rivers these applicants should bear their share of the expense."

We, therefore, advise you that pursuant to legislative grant Elizabethtown Water Company may draw up to a maximum of 20 million gallons per day from the Raritan

and Millstone Rivers, that the rate of charge is for excess water diverted, under the statutory formula in R.S. 58:2-1 et seq. and that Elizabethtown Water Company is obligated to assume its apportioned share of the cost of any future storage of storm waters along the Raritan and Millstone Rivers or their tributaries for the purpose of supplying industrial or potable water to municipalities or water companies.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: DAVID D. FURMAN  
*Deputy Attorney General*

DDF:gd

DECEMBER 17, 1957

OCEAN COUNTY BOARD OF TAXATION  
Toms River, New Jersey  
Attention: J. CHESTER HOLMAN, *Secretary*

MEMORANDUM OPINION—P-36

DEAR SIRs:

You have requested our opinion concerning an application of the so-called Veterans' Exemption Act, N.J.S.A. 54:4-3.12i et seq.

The facts are stated to be as follows. A taxpayer has made application in a certain municipality for a veteran's exemption commencing with the tax year 1958. The applicant has lived in Ocean County with his wife and two children since March 1957. In April 1957 he purchased a home, taking title and recording the deed in August 1957. The applicant is still in service and is presently stationed at the Naval Air Station, Lakehurst. Previously, he had been stationed at Seattle, Washington where he lived with his family before moving to Ocean County, New Jersey. The applicant possesses more than one honorable discharge.

You further inform us that the exemption is being denied by the municipality on the ground that the applicant "has not lived in the State of New Jersey a year in order to establish a residence in this State."

In effect, your inquiry is whether a person must establish the fact that he has lived in New Jersey one year in order that he may be considered a resident under the provisions of the Veterans' Exemption Act.

The answer is no.

The term "resident" is defined in the Act as follows (N.J.S.A. 54:4-3.12i):

"'Resident' means one legally domiciled within the State of New Jersey. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this act. Absence from this State for a period of twelve months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing legal domicile within the State shall be upon the claimant."

Neither the statute as set forth above nor Article VIII, paragraph 3, of our New