

supplied) Deduction from wages of an amount to be used as a deposit for security that the employees will not terminate their employment before a given date is prohibited by the "Wage Payment Law", Attorney General's Opinion to Commissioner Blunt, August 30, 1929; nor can there be a withholding of a bonus to insure service where the bonus is a part of the wage itself, Attorney General's Opinion to Commissioner Bryant, December 8, 1919; deficiencies in the payment of rent upon the lease of an employer-owned home cannot be withheld, any agreement between the employee and employer notwithstanding, Attorney General's Opinion to Commissioner Bryant, April 25, 1916.

Payroll deductions from compensation of officials and employees of the State of New Jersey have been authorized by the Legislature, with respect to the purchase of war bonds (R.S. 52:14-15.5), and group insurance premiums (R.S. 52:14-15.9a). Payroll deductions were, in these cases, the subject of legislative action despite the voluntary authorization by State employees and officials. Memorandum Opinion to Henry W. Peterson, April 7, 1955.

Since our Legislature has not authorized payroll deductions from the wages of non-public employees, and since the *full* amount of the wages earned and unpaid must be paid at least every two weeks to the employee or his authorized representative, it is our opinion, and you are accordingly advised, that a deduction or withholding of any portion of such wages of a New Jersey employee for the purpose of satisfaction of the wage tax of the City of Philadelphia would be contrary to the provisions of our "Wage Payment Act" and would constitute a violation thereof.

Very truly yours,

DAVID D. FURMAN  
*Acting Attorney General*

By: MARTIN L. GREENBERG,  
*Deputy Attorney General*

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JULY 24, 1958

HONORABLE DWIGHT R. G. PALMER, *Commissioner*  
*State Highway Department*  
1035 Parkway Avenue  
Trenton, New Jersey

FORMAL OPINION 1958—No. 9

DEAR COMMISSIONER:

We have been asked whether an agreement among the Highway Department, the Commonwealth of Pennsylvania, and certain political subdivisions of New Jersey and Pennsylvania providing for a joint "survey and study of transportation facts in the Philadelphia-Camden Metropolitan Area" can become effective without action by the Congress of the United States. This study, you have advised, is to be undertaken in conjunction with the federal interstate highway construction program.

This question is prompted by Art. I, Sec. 10 of the United States Constitution, which provides:

\* \* \*

*"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."* (Emphasis added)

A literal application of this broad language was perhaps the early view of the law. See *Holmes v. Jennison*, 39 U.S. (14 Pet.) 540 (1840); *United States v. Rauscher*, 119 U.S. 407, 414 (1886); *People v. Curtis*, 50 N.Y. 321, 325 (1872). But the rule today is that only those compacts and agreements which would aggrandize the political or sovereign power of a State or impede the realization of a national interest or responsibility need the consent of Congress for validity. This view was expressed in *Virginia v. Tennessee*, 148 U.S. 503, 518 (1893):

"There are many matters upon which different States may agree that can in no respect concern the United States. If, for instance, Virginia should come into possession and ownership of a small parcel of land in New York, which the latter State might desire to acquire as a site for a public building, it would hardly be deemed essential for the latter State to obtain the consent of Congress before it could make a valid agreement with Virginia for the purchase of the land. If Massachusetts, in forwarding its exhibits to the World's Fair in Chicago, should desire to transport them a part of the distance over the Erie canal, it would hardly be deemed essential for that State to obtain the consent of Congress before it could contract with New York for the transportation of the exhibits through that State in that way. If the bordering line of two States should cross some malarious and disease-producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering States to agree to unite in draining the district, and thus removing the cause of disease. So, in case of threatened invasion of cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened States could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of Congress, which might not be at the time in session. If, then, the terms 'compact' or 'agreement' in the Constitution do not apply to every possible compact or agreement between one State and another, for the validity of which the consent of Congress must be obtained, to what compacts or agreements does the Constitution apply?"

\* \* \*

"Looking at the clause in which the terms, 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States. \* \* \* [T]he consent of Congress may be properly required, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter into any compact or agreement might be attended with permanent inconvenience or public mischief."

See also *Wharton v. Wise*, 153 U.S. 155, 170 (1894).

This view is in accord with both prior and subsequent decisions of State courts. *Dover v. Portsmouth Bridge*, 17 N.H. 200 (1845); *Union Branch Ry. v. East T. & G. Ry.*, 14 Ga. 327 (1853); *Fisher v. Steele*, 39 La. Ann. 447, 1 So. 882 (1887); *Mackay v. New York, N.H. & H. RR.*, 82 Conn. 73, 72 Atl. 583 (1909); *McHenry County v. Brady*, 37 N.D. 59, 163 N.W. 540 (1917); *Roberts Tobacco Co. v. Michigan Dept. of Revenue*, 322 Mich. 519, 34 N.W. 2d 54 (1948); *Bode v. Barrett*, 412 Ill. 204, 106 N.E. 2d 521 (1952); *Duncan v. Smith*, 262 S.W. 2d 373 (Ky. 1953); *Landes v. Landes*, 1 N.Y. 2d 358, 135 N.E. 2d 562 (1956); *Ivey v. Ayers*, 301 S.W. 2d 790 (Mo. 1957).

The Supreme Court of the United States has not had the necessity to face the issue squarely. But in *Dixie Wholesale Grocery, Inc. v. Martin*, 308 U.S. 609 (1939), the court denied certiorari after a State court, relying on *Virginia v. Tennessee*, had held that an agreement to exchange data in sales tax reports was valid although not submitted to Congress for consent, 278 Ky. 705, 129 S.W. 2d 181 (1939). See *Zimmerman and Wendell, The Interstate Compact Since 1925*, at 34-42 (1951); *National Conference of Commissioners on Uniform State Laws, Proceedings of the Thirty-First Annual Meeting*, 330 (1921).

The need for cooperation between States to exchange views and information has led to the establishment of a very large number of associations of State officials, including the American Association of State Highway Officials, without seeking the consent of Congress. *Frankfurter and Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685, 689 (1925). Agreements between administrative officials of several States not implemented by action of the Legislatures "never have been brought before Congress because consent to them never has been thought necessary." *Zimmerman and Wendell, op. cit., supra*, 42.

The present proposal calls only for a survey and study. New Jersey has repeatedly undertaken interstate planning without obtaining Congressional consent. This is so even where, ultimately, the construction of joint facilities was intended and it was clear that construction could be undertaken only with consent. In the case of the Holland Tunnel, a New York Commission was created in 1906. N.Y.L. 1906, c. 260. A New Jersey Commission was given authority to plan on February 14, 1918. L. 1918, cc. 49, 50. On April 8, 1919 the New Jersey Commission was specifically authorized to enter into a contract to provide for construction with the corresponding New York Commission. L. 1919, c. 70, effective April 8, 1919. Only on July 11, 1919 was Congressional consent obtained. 41 Stat. 158. In the case of the Port of New York Authority, New Jersey authorized joint study in 1917. L. 1917, c. 130. The study recommended a compact to provide for the construction and operation of facilities. In 1921 the New Jersey Legislature authorized our Commission to negotiate such a compact, L. 1921, c. 151, which was executed on April 30, 1921, 42 Stat. 174, 180. Only after this was the consent of Congress obtained on August 23, 1921. 42 Stat. 174. In the case of the Metropolitan Rapid Transit Commission, which was authorized to make a joint study, L. 1952, c. 194, as amended by L. 1954, c. 44, N.J.S.A. 32:22-1 to 19, no Congressional consent was sought.

Thus, both case law and practice make it clear that the undertaking of joint studies and planning by neighboring States for regional transportation needs is not such activity that can be done only with Congressional consent. New Jersey and Pennsylvania need not obtain Congressional consent to the proposed agreement.

It might be noted in passing that the proposed study is compatible with the will of Congress as expressed in numerous provisions of federal statutes. "The Federal Highway Administrator, in cooperation with the State highway departments of the respective States, is \* \* \* directed to investigate the service afforded to traffic, population, and lands by all highways of each State, as determined by State-wide surveys adequate for the purpose. \* \* \*" 23 U.S.C.A. sec. 20a. "The Secretary of Commerce is authorized \* \* \* to engage in research on all phases of highway \* \* \* development [and] design \* \* \* and traffic conditions \* \* \*. The Secretary may carry out the authority granted \* \* \* in connection with any \* \* \* State agency \* \* \*." 23 U.S.C.A. sec. 21-1(a). "The Secretary of Commerce is directed to \* \* \* expedite \* \* \* tests \* \* \* by the Highway Research Board \* \* \* in cooperation with the Bureau of Public Roads, [and] the several States \* \* \* for the purpose of determining the maximum desirable dimensions and weights for vehicles operated on the Federal-aid highway systems \* \* \*." 23 U.S.C.A. sec. 158 (k). The Secretary of Commerce is authorized in cooperation with State highway departments to make a study of the whole question of the sharing of highway costs by vehicles in relation to their dimensions and weight. 23 U.S.C.A. sec. 174(b). The Secretary of Commerce is directed to make available to State and local governments scientific and technical information of every sort. 15 U.S.C.A. sec. 1152.

The proposed agreement, while vesting "administrative responsibility" for the study in the highway departments of Pennsylvania and New Jersey, nevertheless, provides for one representative of the Federal Bureau of Public Roads on the Policy Committee and two representatives of the Bureau of Public Roads on the six-member Executive Committee. Sec. 3.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: WILLIAM L. BOYAN  
*Deputy Attorney General*

JULY 31, 1958

HONORABLE PHILLIP ALAMPI  
*Secretary, Department of Agriculture*  
One West State Street  
Trenton, New Jersey

FORMAL OPINION 1958—No. 10

DEAR SECRETARY ALAMPI:

The poultry industry of New Jersey through the State Poultry Association and various marketing groups has recommended that specifications for the purchase of eggs for State institutions be changed to limit purchases to those produced within the State. You inquire as to the propriety of such action.

The Director of the Division of Purchase and Property in the Department of the Treasury is vested with the powers, duties and responsibilities involved in the efficient operation of a centralized State purchasing service. *N.J.S.A.* 52:27B-56. Among those powers is the authority, in consultation with heads of departments, to