stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent, *except as hereinafter provided,* for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever. *The bonds of any school district of this State, issued according to law, shall be proper and secure investments for the said fund and, in addition, said fund, including the income therefrom and any other moneys duly appropriated to the support of free public schools may be used in such manner as the Legislature may provide by law to secure the payment of the principal of or interest on bonds or notes issued for school purposes by counties, municipalities or school districts or for the payment or purchase of any such bonds or notes or any claims for interest thereon.'* be approved? (The italicized words are the new matter that would be added to the Constitution by this proposed amendment.)"

This material, while technically required to be mailed to the voter "with" the sample ballot, R.S. 19:14-27, may be printed on the sample ballot to avoid the needless expense which would result from printing it on a separate sheet.

Very truly yours,

DAVID D. FURMAN
Attorney General

SEPTEMBER 25, 1958

MR. SALVATORE A. BONTEMPO, *Commissioner*
Department of Conservation and
Economic Development
State House Annex
Trenton, New Jersey

FORMAL OPINION 1958—No. 12

DEAR COMMISSIONER:

We have been asked the following questions to define the obligation of the State toward Hunterdon County arising out of the fact that the Lebanon-Stanton Road, a county road, must be relocated because the site of its present bed will be inundated by the Round Valley Reservoir, land for which has been acquired pursuant to Laws of 1956, c. 60, sec. 5 and Laws of 1957, c. 215, sec. 5; N.J.S.A. 58:20-5:

1) Would an apparently circuitous relocated route be lawful?
2) Must the relocated route terminate at the same points as the former road?
3) Must the relocated route have a 60 foot wide right-of-way in contrast to the 33 foot wide right-of-way of the former route?
4) May the State provide a 60 foot wide right-of-way for the new route even though not required to do so by law?

5) Does the Department of Conservation and Economic Development have authority to acquire land outside the reservoir taking line as may be necessary to relocate the road?

In the statutes providing for the acquisition of land for the Round Valley Reservoir, the Legislature has provided that the county is to be paid the cost of relocating any county roads displaced. L. 1956, c. 60, sec. 5; N.J.S.A. 58:20-5. The State may not expropriate county property which is needed for State projects. *State* v. *Cooper,* 24 N.J. 261, 269 (1957). In this instance, instead of providing for compensation commensurate with the "sale price" of the property, see *State* v. *Cooper, supra,* at 270, the Legislature has provided that the county is to be paid the cost of construction of an equivalent replacement road.

An equivalent road is one not necessarily of identical dimensions as the original road but one with the present and future facility to handle an equal volume of traffic. The paved width of the present road is a substantial factor in determining its present traffic capacity. The total width of the right-of-way is a substantial factor in determining its potential for traffic.

The replacement road should also meet all minimum standards for county roads imposed by law even if the current minimum standards would give the replacement road a greater traffic capacity or potential than the original road. When the Legislature provided for a relocated road in the Round Valley Acts, it intended a lawful road. However, there is no requirement of law of a minimum width in feet for county roads. In the absence of such authority, the answer to whether the relocated road must be 60 feet wide, see question 3 above, depends solely on what width is needed to afford a facility for traffic equal to that of the taken road.

In answer to question 1, the mere fact that a plan view of a proposed new route may appear circuitous does not *ipso facto* make it unreasonable and unlawful. An apparently circuitous route may be chosen where there is a reasonable basis for it, such as to minimize grades, to avoid excessive excavation or filling, or because it is otherwise necessary to service the same needs as the taken road did. Cf. *Tennessee Gas Transmission Co.* v. *Hirschfield,* 38 N.J. Super. 132 (App. Div. 1955) and 39 N.J. Super. 286 (App. Div. 1956).

In answer to question 2, the prime consideration in the location of the termini, as well as the other physical characteristics of the new road, must be to minimize dislocation to communities and individuals despite the construction of the reservoir. To this end, the new road ought to service as near as may be the needs which the taken road served. In *State* v. *Cooper, supra,* where the State took by eminent domain land designated for a municipal park, the Supreme Court held that the compensation paid to the municipality should be used to "approximate fulfillment of [the park's donor's] general benevolent intent." 24 N.J. at 276.

Thus the choice of a route is a highly factual matter. No answer can be given by us to the question whether a particular route may be selected without a familiarity with all the facts. However, we can advise you that there is no absolute requirement that the termini of the replacement road correspond with those of the taken road.

In answer to question 4, the State has no duty or power to provide a road wider than is necessary either to afford an equivalent traffic capacity or to meet current minimum standards imposed by law.

By providing that payment for the relocation is to be made by the State Treasurer to the county, L. 1956, c. 60, sec. 5; N.J.S.A. 58:20-5, the Legislature has

implied that the county, and not the State, is to arrange for the construction of the replacement road. The county has adequate power to do so. N.J.S.A. 27:16-1, 2, 42; N.J.S.A. 27:20. Therefore, it is unnecessary to answer the fifth question, whether the Department of Conservation and Economic Development has authority to acquire land outside the reservoir taking line.

As noted above, payment for the reasonable cost of relocation is to be made by the State Treasurer to the county. Since the reasonableness of the amount requested by the county cannot be determined until the route has been selected, and all the facts concerning the proposed new route are available, the Treasurer may withhold payment of any excess over what will clearly be a reasonable amount in any case until he can determine that the full amount requested is reasonable. Since the State Treasurer does not have technical competence to determine the reasonableness of cost of the proposed relocation, he may call on the Department of Conservation and Economic Development for advice. N.J.S.A. 52:27C-7; cf. N.J.S.A. 52:27C-18.

Any payment to the county is held in trust by it for the relocation costs. Cf. *State* v. *Cooper, supra,* at 276.

To the extent that amounts are unexpended, an appropriation is available to cover the cost of relocation of the road involved here. L. 1958, c. 64, sec. 1, account N-12 appropriated the balance of the funds originally appropriated for the acquisition of the Round Valley site, see L. 1956, c. 60, sec. 7; N.J.S.A. 58:20-7, (with the exception of that part of the balance previously appropriated by L. 1957, c. 113 at 475) to carry out the purposes of L. 1957, c. 215, sec. 5, which include *inter alia* the reenacted provision in L. 1956, c. 60, sec. 5 for reimbursement to counties for the cost of relocating roads.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

SEPTEMBER 25, 1958

HONORABLE CARL HOLERMAN
Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION 1958—No. 13

DEAR COMMISSIONER HOLDERMAN:

You have requested our opinion as to whether certain industrial research establishments not physically integrated with production establishments come within the purview of the sections of statutes enforced by the Bureau of Engineering and Safety of the Department of Labor and Industry relating to requirements for plan filing and other conditions affecting safe employment.