

NOVEMBER 20, 1958

HON. FREDERICK J. GSSERT, JR., *Director*
Division of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 17

DEAR DIRECTOR:

We have been asked whether a person operating a motor vehicle on the New Jersey Turnpike recklessly, carelessly or while under the influence of intoxicating liquor may be charged with violation of N.J.S.A. 39:4-96, 39:4-97 or 39:4-50, respectively, and if convicted, penalized under N.J.S.A. 39:4-96, 39:4-104 or 39:4-50, respectively.

N.J.S.A. 39:4-96 forbids reckless driving and subjects a violator to a fine of up to \$200 or imprisonment for not more than 60 days or both for a first offense and a fine of not more than \$500.00 or imprisonment for not more than 3 months or both for a subsequent offense.

N.J.S.A. 39:4-97 prohibits careless driving. N.J.S.A. 39:4-104 subjects a person convicted of violation of 39:4-97 to a fine of not more than \$200 or imprisonment for not more than 10 days or both.

N.J.S.A. 39:4-50 forbids driving while under the influence of intoxicating liquor and provides a \$200 to \$500 fine or a 30-day to 3-month imprisonment or both and the forfeiture of one's driver's license for a 2-year period for a first offense and a 3-month imprisonment and loss of one's driver's license for a 10-year period for a subsequent offense.

N.J.S.A. 39:4-1 makes Chapter 4 of Title 39 applicable to "the owners and drivers of vehicles on the highways, including roadways or driveways, upon grounds owned and maintained by the State of New Jersey, or any State department or agency, the counties, the municipalities and the school district boards of education of this State." This section subjects operation of vehicles on projects of the New Jersey Turnpike Authority to Chapter 4 of Title 39. See *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235 (1949; Attorney General's Formal Opinion 1951—No. 20). Therefore, the above sections of Title 39 dealing with reckless, careless and drunken driving apply to conduct on the turnpike in the absence of any provision of law to the contrary. Recognizing this, section 15 of Chapter 264 of the Laws of 1951 (N.J.S.A. 27:23-39)¹ states:

"Except as otherwise provided by this act or by any regulation of the New Jersey Turnpike Authority made in accordance with the provisions hereof, the requirements of Title 39 of the Revised Statutes applicable to persons using, driving or operating vehicles on the public highways of this State * * * shall be applicable * * * on any turnpike project * * *."

¹ Chapter 264 of the Laws of 1951, N.J.S.A. 27:23-25 to 39, hereinafter referred to for convenience as the "Turnpike Act", provides generally for the regulation of traffic. It is not to be confused with the New Jersey Turnpike Authority Act of 1948, as amended, N.J.S.A. 27:23-1 to 22, creating the New Jersey Turnpike Authority and authorizing it to construct projects.

It has been urged that section 2 of the Turnpike Act, which forbids reckless, careless or drunken driving on the turnpike, supersedes all of the above statutes in the case of persons operating motor vehicles on the turnpike. It provides:

"No vehicle shall be operated on any such turnpike project carelessly or recklessly, or in disregard of the rights or safety of others, or without due caution or prudence, or in a manner so as to endanger unreasonably or to be likely to endanger unreasonably persons or property, or while the operator thereof is under the influence of intoxicating liquors or any narcotic or habit-forming drug, nor shall any vehicle be so constructed, equipped, lacking in equipment, loaded or operated in such a condition of disrepair as to endanger unreasonably or to be likely to endanger unreasonably persons or property."

Section 2 defines the substantive offenses of careless, reckless and drunken driving in substantially the same terms as the general prohibition on these types of conduct in N.J.S.A. 39:4-96, 97 and 50. N.J.S.A. 27:23-26.

Section 2 does not contain a penalty provision. But section 8 provides that any conduct which violates the Turnpike Act should be punished pursuant to general law as if the turnpike were "any public road." N.J.S.A. 27:23-32. This section reads as follows:

"If the violation of any provision of this act, or the violation of any regulation adopted by the Authority under the provisions of this act, would have been a violation of law or ordinance if committed on any public road, street or highway in the municipality in which such violation occurred, it shall be tried and punished in the same manner as if it had been committed in such municipality."

Although section 10 provides a general penalty of not more than \$200 or imprisonment for not more than 30 days or both for violation of the Turnpike Act, by its own terms it embraces only those violations which are not punishable under general law pursuant to section 8, as if committed on any public road, street or highway. N.J.S.A. 27:23-34. Thus, section 2, either alone or in concert with section 10, is not in any way contrary to the provisions of Title 39 and is therefore not a provision "otherwise" within the meaning of the exception clause in section 15. As a result, the provisions of Title 39 defining reckless, careless or drunken driving and providing for their punishment remain in effect on the turnpike. See N.J.S.A. 39:4-1, *supra*.

This construction and application of the Turnpike Act does not render section 2 ineffectual. Section 5 grants the Turnpike Authority the power to modify by regulation the provisions of Title 39. N.J.S.A. 27:23-29. Section 15, providing for the non-repeal of Title 39, makes an exception for regulations modifying the effect of Title 39 adopted pursuant to section 5. N.J.S.A. 27:23-39. Section 5 contains standards to govern the exercise of this regulatory power, including: "the need for and desirability of such regulation for the safety of persons and property * * * and the contribution which any such regulation would make toward the efficient and safe handling of traffic * * *." In addition to these general limitations on the regulatory power, section 5 expressly requires that the regulations be not inconsistent with the other sections of the Turnpike Act. Section 2 thus still stands as a limitation on the

Turnpike Authority's power to modify the application of Title 39 by regulations. Section 5, N.J.S.A. 27:23-29.

Therefore, it is our opinion that persons driving on the New Jersey Turnpike recklessly, carelessly or while under the influence of intoxicating liquor may be charged with violations of N.J.S.A. 39:4-96 or 97 or 50, respectively, and if convicted, punished pursuant to N.J.S.A. 39:4-96, 104 or 50, respectively.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

DECEMBER 8, 1958

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

FORMAL OPINION 1958—No. 18

DEAR COMMISSIONER BONTEMPO:

We have been asked whether the State as owner of the Delaware and Raritan Canal may charge a water utility company a fee for the privilege of laying a 60" transmission main on canal property. Our opinion is that it may.

The suggestion has been made that since R.S. 48:19-17¹ gives water companies the right to "lay its pipes beneath such public roads, streets and alleys as it may deem necessary" without payment of any fee, and R.S. 48:19-19² gives them the right to "lay such supply mains and pipes as may be thought necessary * * * under the surface of any streets, roads, highways or public places, provided that the companies first obtain the consent by ordinance of the municipalities through which the mains and pipes are to be laid," the statute under which the State took possession of the canal by declaring that it "shall continue to be a public highway," L. 1934, c. 139, §2; see L. 1934, c. 238, §1; R.S. 13:13-3, gives water companies the right to lay mains on the canal property. The short answer to this contention is that the

¹ R.S. 48:19-17: "Each such company may lay its pipes beneath such public roads, streets and alleys as it may deem necessary for its corporate purposes, free from all charge to be made by any person or body politic whatsoever for such privilege, and may also construct and maintain hydrants on and along such streets and alleys, provided that the consent shall be obtained of the corporate authorities of the municipality through which the pipes may be laid.

"The pipes shall be laid at least three feet below the surface and shall not in anywise unnecessarily obstruct or interfere with the public travel or damage public or private property."

² R.S. 48:19-19: "Every company organized under this chapter may contract with any company organized under any law of the State for a supply of water upon such terms and for such times as may be mutually agreed upon. Such companies may lay such supply mains and pipes as may be thought necessary to furnish such supply through any property upon obtaining the consent in writing of the owner thereof, or under the surface of any streets, roads, highways or public places, provided that the companies first obtain the consent by ordinance of the municipalities through which the mains and pipes are to be laid.

"The municipal body having control of such streets, roads, highways or public places shall designate the place therein where and the manner in which the pipes or mains shall be laid."