

in the preceding fiscal year. That is the plain import of N.J.S.A. 18:13-112.35. The Governor's Budget and the Appropriations Act should include the amounts to be appropriated by the State to provide for the payment in full of the obligations of the State to the Fund which the actuary estimates will accrue during the ensuing fiscal year. Specifically, we advise you our opinion that the Governor's Budget and the Appropriations Act for the fiscal year 1958-59 should include an appropriation of the amount payable by the State under the Teachers' Pension and Annuity Fund-Social Security Integration Act during the fiscal year commencing July 1, 1958.

Yours very truly,

HAROLD KOLOVSKY
Acting Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

JANUARY 30, 1958

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

MEMORANDUM OPINION—P-8

DEAR COMMISSIONER HOLDERMAN:

You have requested an opinion involving the interrelation between the Mine Safety Act (L. 1954, c. 197; N.J.S.A. 34:6-98.1 et seq.) and a local ordinance designed to regulate the use of explosives for blasting purposes. You state that there appear to be conflicts between the ordinance and the act, and indicate a desire to know whether a quarry operator in such case would be required to comply with the State statute or the conflicting provision of the municipal regulation.

In your letter you refer to section 10 of the Mine Safety Act which provides as follows (N.J.S.A. 34:6-98.10):

"No municipality or other governmental subdivision shall have the power to make any ordinance, by-law or resolution providing for safety to workers in the mining industry or providing for protection of property that does not comply with the standards herein established by this act, and the rules and regulations promulgated by the commissioner hereunder. Nothing in this act shall, however, limit the right of any municipality or other governmental subdivision to make inspections of mining operations."

With respect to standards for the use of explosives in quarries, we are specifically referred by the Mine Safety Act to the 1941 explosives law (L. 1941, c. 27; N.J.S.A. 21:1A-1 et seq.) Section 8 of the Mine Safety Act (N.J.S.A. 34:6-98.8) states:

"a. When explosives are used in a mine or quarry, the manner of storing, keeping, handling, moving, charging and firing, or in any manner using such explosives, shall be in accordance with the requirements of chapter 27 of the

laws of 1941 [the 1941 explosives act, *supra*] as amended and supplemented, and the rules and regulations now in effect or hereafter issued thereunder, except for the following limitations.

"b. All explosives in excess of the amount required for the work of 1-day underground operations may be stored underground in a safely located secondary storage magazine. The maximum amount of explosives to be stored in such magazine shall not exceed the requirements for a 48 hours' supply.

"c. The commissioner may regulate and limit the amount of explosives stored in a primary magazine in any underground portion of a mine with due regard for the safety of miners.

"d. Any temporary supply for the work of a shift shall be kept in such a place that its accidental discharge will not endanger the miners." (Emphasis ours)

The 1941 explosives law in turn makes it clear that municipalities may impose stricter regulations on the use of explosives than those imposed by the State. It provides (N.J.S.A. 21:1A-124) :

"Nothing contained in this act shall affect any existing ordinance, rule or regulation of any city or municipality not less restrictive than this act governing the manufacture, storage, sale, use or transportation of explosives, or affect, modify or limit the power of cities or municipalities in this State to make ordinances, rules or regulations not less restrictive than this act governing the manufacture, storage, sale, use or transportation of explosives within their respective corporate limits."

From the foregoing we conclude that with respect to any so-called conflict arising because the municipal ordinance as applied to the use of explosives in a quarry is more strict than the State statute, the quarry operator would be required to comply with the local regulation; but as to any other conflict, the State enactments would prevail in accordance with the general rule that "municipal ordinances regulating subjects, matters and things upon which there is a general law of the State must be in harmony with that State law, and in any conflict between an ordinance and a statute the latter must prevail" (McQuillan, *Municipal Corporations*, Sec. 15.20). See *Auto-Rite Supply Co. v. Woodbridge Twp.*, 25, N.J. 188 (1957).

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: THOMAS L. FRANKLIN
Deputy Attorney General