

No person can lawfully do that which has a tendency to be injurious to the public or against the public good. *Driver v. Smith*, 89 N.J. Eq. 339 (Ch. 1918); *Brooks v. Cooper*, 50 N.J. Eq. 761 (E. & A. 1893). The service as outlined by Accident Index Bureau, Inc. is designed to discourage the employment of the handicapped and would frustrate the efforts of the Department of Labor and Industry to effectuate the policy of this State concerning industrial injuries and employment of the handicapped.

Consequently, it is our opinion, and you are accordingly advised, that the Division of Workmen's Compensation can refuse to permit the search of its records by Accident Index Bureau, Inc. where the purpose of the search is to provide employers with information concerning prospective employees.

Verly truly yours,

DAVID D. FURMAN  
*Acting Attorney General*

By: MARTIN L. GREENBERG  
*Legal Assistant*

APRIL 9, 1958

HONORABLE JOSEPH E. McLEAN  
*Commissioner of Conservation and  
Economic Development*  
State House Annex  
Trenton, New Jersey

MEMORANDUM OPINION—P-14

DEAR COMMISSIONER McLEAN:

You have requested our opinion as to whether or not you may designate a representative to serve in your place on the Board of Review established by N.J.S.A. 18:5-1.6. That section is part of the statute governing the creation of new school districts, and the function of the board in question is to review the petition for the creation of a new school district and to grant or deny the same after considering the effect of the proposed separation upon the educational and financial situations of both the new and the remaining districts. Section 18:5-1.6 provides that the Board of Review shall "consist of the Commissioner of Education as Chairman, the Commissioner of the Department of Conservation and Economic Development, and the Director of the Division of Local Government in the Department of the Treasury."

It is our opinion that your function as a member of such Board of Review involves the exercise of discretion and judgment and therefore cannot be delegated except as specifically allowed by statute. 43 Am. Jur. "Public Officers" §461; 67 C.J.S. "Officers," § 104; see also cases cited in Attorney General's Memorandum Opinion P-2, rendered to the State Treasurer March 26, 1954. We find no statute authorizing you to make such delegation.

N.J.S.A. 13:1B-4, defining your powers of delegation, provides:

"The commissioner may delegate to subordinate officers or employees in the department such of his powers as he may deem desirable, to be exercised under his supervision and direction. He shall, by order, rule or regulation filed with the Secretary of State, designate one or more of the officers or employees in the department who may act for him and on his behalf in the event of his absence or disability."

We advise you that the general power of delegation set forth in N.J.S.A. 13:1B-4 does not extend to the delegation of your statutory function of deciding matters according to your judgment as a member of the Board of Review, except in the instances of your absence from the State or disability. N.J.S.A. 18:5-1.6 entrusts this responsibility exclusively to the Commissioner of Conservation and Economic Development, without any authority, express or necessarily implied, for its delegation to a subordinate. Your inquiry, therefore, must be answered in the negative.

Very truly yours,

DAVID D. FURMAN  
*Acting Attorney General*

By: THOMAS P. COOK  
*Deputy Attorney General*

APRIL 16, 1958

HON. JOSEPH E. McLEAN, *Commissioner*  
*Department of Conservation and*  
*Economic Development*  
State House Annex  
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR COMMISSIONER:

You have requested our opinion as to whether your department is authorized to participate financially in a program of beach protection where the municipality proceeded with the work in question without first complying with the procedure ordinarily required in connection with such State aid projects.

The Appropriations Act under which the State proposes to make its contribution to the project is Chapter 100 of the Laws of 1956, which contains the usual appropriation for beach protection. The pertinent portion of the Appropriations Act provides, among other things, as follows:

"All projects shall be constructed under contract with and under supervision of the Department of Conservation and Economic Development."

Other parts of the section provide for the participating municipality to match the State's contribution, and to deposit its 50% share with the State Treasurer through the Department of Conservation and Economic Development. The Appropriations Act for the fiscal year 1957-58 (Chapter 113 of the Laws of 1957) contains an identical provision.