

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.

## OPINIONS

In the particular case referred to us by you, the Borough of Beach Haven took emergency action to place approximately 700 tons of stone at the outshore end of a jetty which was constructed in 1953, to overcome a scouring condition induced by another jetty to the south. The borough entered into an emergency agreement with a contractor, who completed the work successfully and in good order. The resolution of the borough authorizing the work indicated that the timber section of the jetty in question was in imminent danger of overturning and destruction, and that the great financial loss which would ensue if the jetty were so destroyed created an emergency requiring immediate reconstruction through the removal of sand from one side of the jetty to the other and the placing of stone along its south side. The borough evidently decided that because of the urgency of the situation, it should not run the risk inherent in delaying the repairs in order to go through the prior procedure regularly required for State participation in the project.

It is our opinion that under the special circumstances here presented, your department has the authority to contribute toward the cost of the project a sum not exceeding 50% thereof. The condition in the Appropriations Act that all projects should be constructed under contract with and under supervision of your department was imposed for the benefit of the State, and accordingly it can be waived by the State in a proper case, in the exercise of sound discretion. No abuse of discretion would be involved here, since, according to our information, the work was necessitated by an emergency condition, the plans were such as would have been approved if they had been timely submitted, and the work was properly accomplished in accordance with those plans and at reasonable cost.

You have also advised us of three other similar instances in the last few years where your department paid State aid to the local municipality. You have thus made a practical construction of the Appropriations Acts and have established precedents which are entitled to considerable weight. *Burlington County v. Martin*, 129 N.J.L. 92 (E. & A. 1942). Presumably the Legislature knew of this practical construction of the prior Appropriations Acts when it re-enacted substantially the same provisions in the subsequent legislation. In so doing, the Legislature may be deemed to have approved your prior construction of the law as applied to emergency situations of the type here involved.

Very truly yours,

DAVID D. FURMAN  
*Acting Attorney General*

By: THOMAS P. COOK  
*Deputy Attorney General*