

This is the only section which specifies the interest rate with reference to this act.

We construe this section as an expression of the Legislature not only to determine the condition for restoral of license privileges, but also to determine the rate of interest on the obligations to repay moneys paid out of the fund. By this provision the Legislature has expressed its intention to limit the interest rate to 4% per annum on all obligations for reimbursement of moneys paid out of the fund.

While N.J.S.A. 39:6-87 refers to interest at 4% per annum on moneys paid from the fund " \* \* \* in settlement of a claim or towards satisfaction of a judgment \* \* \*," there is no provision in this act which alters the interest rate on the balance of moneys due on said judgment in excess of the amount paid from the fund. We conclude that the usual interest rate of 6% per annum shall apply to such portion of judgments, the right to which remains in the judgment creditor. N.J.S.A. 39:6-77; N.J.S.A. 39:6-85. To apply a different interest rate would be in derogation of the common law of New Jersey; it is a construction not favored and not compelled by any express or implied provision of the act. We must enforce the legislative will as written and not according to some unexpressed intention. *Hoffman v. Hock*, 8 N.J. 397, 409 (1952); *Dacunso v. Edgve*, 19 N.J. 443, 451 (1955). "If a change in the common law is to be effectuated, the legislative intent to do so must be clearly and plainly expressed." *DeFazio v. Haven Savings and Loan Ass'n.*, 22 N.J. 511, 519 (1956).

For the above reasons, you are advised that interest at 4% per annum is payable on obligations to repay the State Treasurer for moneys paid from the fund towards satisfaction of judgments and under settlement agreements. However, interest at 6% per annum is payable on that portion of judgments not paid by the fund and to which moneys the original judgment creditor is entitled if and when collected.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: THEODORE I. BOTTER  
*Deputy Attorney General*

JULY 24, 1958

MR. THOMAS E. HEATHCOTE  
*Secretary-Director*  
*State Board of Professional Engineers*  
*and Land Surveyors*  
1100 Raymond Boulevard  
Newark 2, New Jersey

MEMORANDUM OPINION—P-22

DEAR MR. HEATHCOTE:

You have asked for a clarification of several sections of the statute governing the State Board of Professional Engineers and Land Surveyors. In particular, you are concerned with the proper construction of the saving clauses in Chapter 342 of the Laws of 1938 (N.J.S.A. 45:8-36 and N.J.S.A. 45:8-42).

Chapter 342 of the Laws of 1938 accomplished a fundamental revision in the licensing of Professional Engineers. Prior to its effective date, under P.L. 1921, c. 224 as amended, the State Board had granted licenses in special classifications, as follows: Civil Engineer; Mechanical Engineer; Electrical Engineer; Chemical Engineer; Mining Engineer; Metallurgical Engineer; Highway Engineer; Sanitary Engineer; Structural Engineer; Hydraulic Engineer; Railroad Engineer; Valuation Engineer; Construction Engineer; Heating and Ventilating Engineer; Industrial Engineer; Architectural Engineer; Traffic Engineer.

The 1938 statute established a single category for licensing, that of Professional Engineer, with a separate licensing category for persons without the educational qualifications of Professional Engineer as Land Surveyor. All Professional Engineers licensed in the various classifications under the previous statutes were specifically empowered to continue to practice in their specialty or specialties by Section 10 of the 1938 statute, now N.J.S.A. 45:8-36, as follows:

"All professional engineers licensed by this board prior to the passage of this chapter, shall continue to practice under the various classifications heretofore granted and within the branches of engineering indicated or may, upon application therefor, and the payment of a fee of five dollars (\$5.00) receive a new certificate under the title 'professional engineer'; provided, said professional engineer presents evidence satisfactory to the board of his qualifications to practice in the field of general engineering comprehended in the title 'professional engineer'."

An additional saving clause is set forth in Section 16 of the 1938 statute now N.J.S.A. 45:8-42 as follows:

"Notwithstanding anything in this chapter to the contrary no professional engineer licensed in this State prior to the passage of this chapter and holding an appointment by the State or by any department, institution, commission, board or body of the State Government, or any political subdivision thereof, shall be deprived of the right of reappointment to the same office or position or appointment to any other office or position requiring similar qualifications."

The import of these sections of the 1938 statute is plain. Persons licensed in special categories prior to the effective date of the act may continue to practice only the separate branch of professional engineering for which they are licensed. They are prohibited from practicing professional engineering generally, except upon payment of an additional fee of \$5.00 and upon presenting evidence satisfactory to the State Board of qualifications to practice in the field of general engineering. Any attempt on the part of a licensed Electrical Engineer, for example to practice metallurgical engineering would constitute an illegal practice in violation of Chapter 8 of Title 45 of the Revised Statutes.

N.J.S.A. 45:8-42 similarly safeguards the right of any Professional Engineer licensed in one of the separate categories prior to the passage of the 1938 statute to receive reappointment as a municipal engineer or engineer assigned to any governmental subdivision within the State, or to receive a new appointment to any other public office or position for which his special license is a qualification. We do not construe this statute to mean that a municipal engineer loses its benefits upon the denial of reappointment by the municipality in which he served prior to 1938. He

continues to be qualified to receive appointment as municipal engineer of such municipality or in a similar governmental office or position. Neither N.J.S.A. 45:8-36 nor N.J.S.A. 45:8-42 sets up a rigid requirement that persons holding engineering licenses antedating the 1938 statute must serve continuously in their special category or categories of professional engineering in order to hold the benefits of the saving clauses.

We trust that this opinion sufficiently answers the queries raised by your letter concerning N.J.S.A. 45:8-36 and N.J.S.A. 45:8-42.

Yours very truly,

DAVID D. FURMAN  
*Attorney General*

SEPTEMBER 25, 1958

HONORABLE JOHN A. KERVICK  
*State Treasurer*  
State House  
Trenton, New Jersey

MEMORANDUM OPINION—P-23

*Re: Motor Fuels Tax Refund—New Jersey Highway Authority*

DEAR MR. KERVICK:

You have requested our opinion as to whether the New Jersey Highway Authority is entitled to a refund of the New Jersey motor fuels tax pursuant to R.S. 54:39-66(a) which provides in part:

"Any person who shall use any fuels as herein defined for any of the following purposes:

(a) operating or propelling motor vehicles, motor boats or other implements owned by the State and all the political subdivisions thereof, \* \* \* and who shall have paid the tax for such fuels hereby required to be paid, shall be reimbursed and repaid the amount of tax so paid upon presenting to the commissioner an application for such reimbursement or repayment, in form prescribed by the commissioner, \* \* \*."

The New Jersey Highway Authority was created pursuant to chapter 16 of the Laws of 1952 (N.J.S.A. 27:12B-1, et seq.). Section 16 of P.L. 1952, c. 16 (N.J.S.A. 27:12B-16) provides that the Highway Authority "shall not be required to pay any taxes or assessments upon *any* project or *property* acquired or used by the Authority under the provisions of [the New Jersey Highway Authority Act] or upon the income therefrom, and every project and *any property* acquired or used by the Authority under the provisions of this act and the income therefrom and the bonds or notes issued under the provisions of this act, their transfer and the income therefrom \* \* \* shall be exempt from taxation." (Emphasis added) This same section recites that the justification for the exemptions provided is that the activities of the Authority are "essential governmental functions" and that the exercise of the powers granted by the act are "in all respects for the benefit of the people of the State."