

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."

Legislative rules of construction as specifically defined by R.S. 1:1-2 dictate that the term "property" unless restricted or limited by context to either real or personal property, which is not the case here, includes both types of property.

We are not unmindful of the rule that statutes granting exemptions from taxation are to be strictly construed against the claimant and a claimant for tax exemption has the duty and burden of proving its entitlement to the exemption. *Julius Roehrs Co. v. Division of Tax Appeals*, 16 N.J. 493 (1954). However, we are of the opinion that the exemption of the Highway Authority from liability for the motor fuels tax is clear.

Moreover, for administrative purposes, we are of the opinion that N.J.S.A. 27:12B-16, which exempts the Highway Authority from the payment of the motor fuels tax, should be construed harmoniously with R.S. 54:39-66(a) which provides for refunds of such payments. Accordingly, for the purposes of carrying out the legislative intent enunciated in N.J.S.A. 27:12B-16, the Highway Authority may be considered to be a "political subdivision" of the State and entitled to refunds of the amount of taxes that are paid. See *Behnke v. N. J. Highway Authority*, 13 N.J. 14, 29 (1953).

Insofar as the views expressed herein are inconsistent with those expressed in Memorandum Opinion to Armand J. Salmon, Jr., State Supervisor, Motor Fuels Tax Bureau, dated January 18, 1954, that opinion is expressly overruled.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DONALD M. ALTMAN
Deputy Attorney General

SEPTEMBER 25, 1958

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

MEMORANDUM OPINION—P-24

DEAR MR. KERVICK:

We have been asked concerning the propriety of the extension of the 3% discount on cigarette tax stamps generally (see L. 1956, c. 10, sec. 2; N.J.S.A. 54:40A-11) to two cent meter tax sales in respect of cigarette packages held in inventory and already metered at the former 3 cents per pack rate (see L. 1948, c. 65, sec. 301) on the effective date of the present 5 cents a pack rate (see L. 1956, c. 10, sec. 1; N.J.S.A. 54:40A-8).

Some discussion of the mechanics of cigarette tax collection is necessary. By L. 1948, c. 65, sec. 301, a tax of 3 cents per package was imposed on the use of cigarettes. The tax was collected by either of two procedures: one depended upon the sale of tangible stamps to wholesale distributors who have the responsibility to affix them to the cigarette packages. N.J.S.A. 54:40A-15. The tangible stamps bore on their face the amount of the tax, just as postage stamps indicate on their face an