that there is a liaison between the State Board and the Commission is indicative of a legislative intent to place the Commission within the Department and subject to its supervisory control. Equally significant is the fact that the 1959 Appropriation Act, L. 1959, c. 106 apportions to and authorizes the expenditures of funds out of the general treasury by the Department of Education (Account P 75, page 120) "For the purpose of providing a State-wide scholarship program * * *." It is concluded from this language that the over-all responsibility for the fiscal affairs of the Commission is placed in the State Board. The power expressed in L. 1959, c. 1, as amended by L. 1959, c. 150, section 14 which authorizes the expenditure of appropriations by the Commission is therefore subject to State Board supervision. State Board control should extend to a review and approval of budget requests, transfers of funds, and vouchers submitted by the Commission for payment.

The State Board also possesses the power to approve rules and regulations adopted by the Commission in their function of administering the Scholarship Program. A degree of control of this kind is necessary and proper in view of the interrelationship that has been outlined and because of the fiscal delegation that has been made by the Legislature to the Department of Education and, in turn, the State Board in the Appropriation Act. Such a conclusion is not designed to imply that the State Board has the right to award scholarships or, subject to the terms of the Scholarship Act, to determine who should receive the awards. The degree of control is general and supervisory in nature in order to permit the State Board to fulfill its statutory responsibilities and to insure that the Commission is administering the act according to law.

It is our opinion, therefore, that the State Scholarship Commission is within the Department of Education and, to the extent outlined above, under the supervision of the State Board of Education.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID M. SATZ, JR.
Deputy Attorney General in Charge

SEPTEMBER 3, 1959

HON. GUY W. CALISSI
Prosecutor, Bergen County
Court House
Hackensack, New Jersey

FORMAL OPINION 1959—No. 21

DEAR PROSECUTOR CALISSI:

You have requested an opinion dealing with the scope of authority and functions of the Bergen County Police. Specifically, as chief law enforcement officer of Bergen County, N.J.S. 2A:158-1 et seq.; *State* v. *Winne*, 12 N.J. 152 (1953), you wish to have clarified the powers and duties of the county police as they relate to your responsibilities.

The Bergen County Police derives its existence by virtue of L. 1929, c. 205, now R. S. 40:22-1 et seq. That law authorized the board of chosen freeholders to

establish a county police department and to appoint such persons as it deemed necessary "* * * for the supervision and regulation of traffic upon county roads." R.S. 40:22-1. The powers and duties conferred upon police officers appointed by the freeholders were "* * * to enforce the provisions of law and the resolutions or ordinances adopted by the board of chosen freeholders in relation to the supervision and regulation of traffic on such roads, and to arrest for the commission of any crime in any part of the county." R.S. 40:22-2.

The board was authorized to fix the pay, prescribe the duties, and provide quarters and equipment for the proper operation of the department. R.S. 40:22-3.

The background of this legislation is traced to 1911 when "An act to provide for the protection of county public roads in counties of the first class and to authorize the regulation of traffic thereon" was enacted, L. 1911, c. 272. This law, enacted before the advent of any State-wide motor vehicle regulation (see L. 1921, c. 208, providing for registration, licensing and regulation of motor vehicles) was designed to authorize complete control by county officers of traffic on the county's own roads in first class counties. Regulations were authorized to cover rules for driving, sizes of vehicles and similar conditions. Violations of such regulations were subject to penalties enforceable in local courts. A county police force was authorized to be appointed by the freeholders (one man per each mile of county road) to enforce the county regulations. Such persons possessed "* * * all the powers, with regard to the enforcement of such rules and the supervision of traffic upon such roads, as are now possessed by constables, or deputy sheriffs in counties, or police officers in cities."

In 1920, L. 1920, c. 98 removed the pre-existing numerical restriction upon the personnel complement. Then, in 1923, c. 57 of the laws of 1923 among other things amended the 1911 act to empower county police to enforce "An act for suppressing vice and immorality" (the Sunday Closing Law; formerly R.S. 2:207-1, now N.J.S. 2A:171-1), in addition to the provisions of what was to become part of Title 39, Revised Statutes (Motor Vehicles and Traffic Regulation), and, "* * * to arrest for the commission of any crime in any part of the county in which said officers are appointed."

The statement appended to the bill (A205) provided:

> "The purpose of this act is to give to the county police full authority to enforce the laws."

The 1911 law dealing with first class county police, as amended, became R.S. 40:22-4, 5 and 6 in the 1937 revision. L. 1929, c. 205 (R.S. 40:22-1, 2 and 3) was intended to give similar powers to counties of all classes. As was indicated in the statement to that bill (S85):

> "The above bill substantially re-enacts the provisions of Chapter 272 of the Laws of 1911, except that the limitation to first class counties is omitted. By Chapter 57 of the Laws of 1923 the title of the 1911 act was changed so that the authority is not now vested in counties of the first class to establish a police department, and the purpose of this act is to again vest such authority in boards of first class counties and to extend the same authority to all counties."

It is our opinion that the statutory history dealing with authority of county police indicates that the statutory reference to the power "* * * to arrest for the commission

of any crime in any part of the county in which said officers are appointed * * *" (R.S. 40:22-1 and 5) is limited in scope. As is evidenced by the title L. 1911, c. 272, the body of that act, the amended title of L. 1923, c. 57 and the substance contained therein, together with the 1929 law (directly applicable here) which should be read *in pari materia* with R.S. 40:22-4, 5 and 6 (the 1911 law, as amended), the primary function of county police is to assist the board of chosen freeholders in regulating traffic on county roads. This is why the county police department was established. The power to arrest for the commission of crime should be viewed as authority to arrest criminals if such is incidental to the traffic duties being performed. Such power should not permit the formation of a complete police department that is designed to detect crime throughout the county under any circumstances.

An intensive search of case law throughout the country has been conducted on this subject for controlling authorities. One case is directly in point in our opinion. In *State* v. *Necaise*, 228 Miss. 542, 87 So. 2d 922 (Sup. Ct. 1956) a person was charged with unlawful possession of a whiskey still. Search warrants had been executed by county patrol officers acting pursuant to a statute which stated that:

> "Said patrol officers are hereby authorized to do and perform all acts authorized to be done by the sheriff, constable or any other peace officer."

The State contended that road patrolmen were given the same authority for the serving of search warrants or other process of any kind, as was vested in the sheriff, constable or other peace officer of the county. The Supreme Court of Mississippi held that the power of the county patrol officers to serve search warrants under any circumstances was prohibited. At p. 925 of 87 So. 2d, the court stated that:

> "But we think that the provision of the statute which authorizes the patrol officers 'to do and perform all acts authorized to be done by the sheriff, constable or any peace officer,' is intended to vest in the patrol officers only such police powers as may be necessary to enable them to perform properly the duties imposed upon them by the statute as county road patrolmen. We do not think that it was the intention of the Legislature to authorize the patrol officers who were employed 'to patrol the roads of the county and to enforce the road and motor vehicle laws' to take over the duties or exercise the powers of the sheriff, or constable or other peace officer, in the enforcement of the general criminal laws of the State or in the service of criminal or civil process in cases which do not arise out of and have no relation to the performance of their duties as county road patrolmen.
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> * * * *
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> "We think that the first sentence of Code Section 8062 means that, the patrol officers, in the performance of their duties in patrolling the roads of the county and enforcing the road and motor vehicle laws, are authorized to do and perform all acts authorized to be done by the sheriff, constable, or any other peace officer in the performance of his duties as such peace officer. The patrol officers are authorized as an incident to the performance of their duties as county road patrolmen, to arrest without warrant any person or persons committing or attempting to commit any misdemeanor, felony or breach of the peace within their presence or view on any road of the county, or the road right of way, and to pursue any person committing such offense to any place in the county where he may go, or to arrest fleeing

> felons using the county roads to effect their escape; and, if authorized and empowered to do so by the commissioner of public safety, the patrol officers may enforce or aid in the enforcement of the traffic laws upon any highway of the State highway system. The patrolmen may be authorized to serve search warrants where such action is necessary as an incident to the performance of their duties as county road patrolmen. But their powers as police officers are limited to the performance of their duties as county road patrolmen. We find nothing in the statute to warrant the conclusion that the Legislature intended to make the county road patrolmen general police officers for the enforcement of the general criminal laws of the State and the service of criminal and civil process in cases which do not arise out of and have no relation to the performance of their duties as county road patrolmen."

Cf. Vickers v. *State*, 176 Tenn. 415, 142 S.W. 2d 188 (Sup. Ct. 1940); *Mullins* v. *State*, 304 S.W. 2d 333 (Tenn. Sup. Ct. 1957); *Mitchell* v. *State*, 74 Okl. Cr. 416, 127 P. 2d 211 (Cr. Ct. App. 1942) where officers with primarily limited duties are specifically authorized to assist other agencies in making arrests or serving warrants.

This result is reinforced by an application of the well established principle that the substantative provisions of an act must be embraced within the subject expressed in its title. *Art.* IV, *Sec.* VII, *par.* 4, *N.J. Const.* (1947). An examination of the titles of all the acts leading up to the 1929 act authorizing the Bergen County Police shows that they are limited to the protection of the county public roads and the regulation of traffic thereon. The title of the 1911 act (L. 1911, c. 272) reads as follows:

> "An act to provide for the protection of county public roads in counties of the first class and to authorize the regulation of traffic thereon."

The title of the 1920 act (L. 1920, c. 98) was simply an act to amend the 1911 act [reciting the title of the 1911 act]. The title of the 1923 act (L. 1923, c. 57) was as follows:

> An act to amend the title and body of an act entitled "An act to amend an act entitled 'An act to provide for the protection of county public roads in counties of the first class, and to authorize the regulation of traffic thereon,' approved April twenty-seventh, one thousand nine hundred and eleven," which amendatory act was approved April sixth, one thousand nine hundred and twenty.

This act amended the title of the 1920 act to read as follows:

> "'An act to amend an act entitled "An act to provide for the protection of county public roads in counties where a county police department now exists, and to authorize the regulation of traffic thereon," approved April twenty-seventh, one thousand nine hundred and eleven,' * * *."

The title of the 1929 act (L. 1929, c. 205) itself reads as follows:

> "An act to provide for the control and use of county roads in this State."

The grant of power "to arrest for the commission of any crime in any part of the county," R.S. 40:22-2, cannot be given a broader sweep than the titles of the acts in question would permit. A similar situation was presented in *Martin* v. *Follis*,

133 Okla. 162, 271 Pac. 672 (Sup. Ct. 1928). There the question of the scope of the power to arrest vested in special highway patrolmen by a statute whose grant of power and whose title were both similar to those involved here was considered. The grant of power in that act read as follows:

> "For the purpose of enforcing the provisions of this act, any peace officer or specially commissioned officer shall have authority to make arrests for the violations of any of the provisions of this act, and the board of county commissioners of any county is hereby given authority to commission special officers or patrolmen as peace officers to patrol public highways and they shall have authority to make arrests for the violations of any of the provisions of this act or any other act regarding motor vehicles or the usage of public highways or for other violations of law. * * *"

The title of the act involved there reads as follows:

> "* * * An act regulating the gross weight of vehicles or other objects; regulating the distribution of loads and speeds; providing for other restrictions of the usage of public highways; providing for enforcement and providing penalty, declaring the existence of an emergency."

The Oklahoma Constitution had a requirement that the subject of every act be clearly expressed in its title, similar to the provision in *Art.* IV, *Sec.* VII, *par.* 4, *N.J. Const.* (1947). The argument was made that if the power to arrest were construed as a general power to arrest, the scope of the act would be broader than the title, and therefore, the act would be unconstitutional. The court upheld the act by giving it a narrower scope. It stated at p. 674 of 271 Pac. that the intention of the Legislature must have been:

> "* * * not only to regulate traffic upon the highways of the State, but to protect the traveling public from reckless drivers, robberies, and other unlawful acts committed *upon or near the highways*, and to clothe the special officers with full authority to make arrests for any and all of these offenses." (Emphasis added.)

In defining the grant of power the court said:

> "With the many crimes that have in recent years been committed *upon our highways*, the Legislature would naturally authorize the peace officers to make arrests for these crimes." (Emphasis added.)

The purported effect of the legislative grant in R.S. 40:22-2 "* * * to arrest for the commission of any crime in any part of the county * * *" must be similarly limited in scope to traffic control and protection on county highways.

Neither the county police nor the board of chosen freeholders have any common law or statutory powers to act throughout the county detecting crime or keeping the peace, similar to the authority possessed by the county prosecutor or municipalities. Other than those powers specified in R.S. 40:22-1 et seq., the board of chosen freeholders in the law enforcement field possesses no other statutory or common law authority. County prosecutors, however, by virtue of N.J.S. 2A:158-4 are vested with the exclusive authority to conduct the criminal business in the county (except under conditions not present here) and additionally, pursuant to N.J.S. 2A:158-5,

are empowered to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws. Municipal police possess authority to act on behalf of the municipality in which they serve as peace officers in protecting the health, safety and welfare of the community. See R.S. 40:48-1, 2 and other related statutes dealing with different types of local government in establishing the several kinds of police forces. Ancillary to this power is the obvious need to afford authority to arrest when crimes are committed in the presence of such officers. But there is no broad authority present in the board of chosen freeholders to create a complete law enforcement agency to exercise a full police jurisdiction in the county. Not only is there no statutory power to do so, overlapping law enforcement of this character would tend to be inefficient, expensive and confusing.

Thus, it is apparent that county policemen who engage in detecting crime away from their normal duties of patrolling county roads lack the power of arrest for any crime; they would have only the citizen's powers of arrest. 4 *Am. Jur., Arrest,* §§ 2, 24, 28, 35, 36 (1936).

As prosecutor you are primarily responsible for the administration and enforcement of the criminal laws in your county. N.J.S. 2A:158-4. There can be no question but that your constitutionally created office, *N.J. Constitution, Art.* VII, *Sec.* II, *par.* 1, has been legislatively implemented pursuant to N.J.S. 2A:158-1 et seq. to afford to you complete command of law enforcement. *State* v. *Winne,* 12 N.J. 152 (1953). This case carefully and clearly enunciated your powers and responsibilities for ensuring effective enforcement in your jurisdiction. Resolutions of a board of chosen freeholders that would conflict with such statutory and judicially recognized and imposed duties would be invalid. Any law enforcement activity on behalf of county government should be subordinate to your direction.

We conclude that the primary function of county police is traffic law enforcement and that the power to arrest is incidental to the statutory duty of enforcing the motor vehicle laws within the county.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID M. SATZ, JR.
Deputy Attorney General

OCTOBER 26, 1959

A. HEATON UNDERHILL, *Director*
Division of Fish and Game
230 West State Street
Trenton, New Jersey

FORMAL OPINION 1959—No. 22

DEAR DIRECTOR UNDERHILL:

You have requested our opinion as to whether members of the public may, with the permission of the State, fish or operate boats on the entire surface of a fresh water lake if the State owns any portion of its shore line or whether these activities may be carried on solely on the slice of the lake extending from the boundaries of the State-