1944, transferred to a non-exempt individual. The municipality contended that the property became taxable under L. 1945, c. 137 (N.J.S.A. 54:4–63.2). This law provided, in part, that property sold by a municipality after October 1st in the pre-tax year can be included in an "added assessment list." The act was approved on April 10, 1945 and provided: "This act shall take effect immediately." Nevertheless, it was there held that since the act became effective on April 10, 1945, it was prospective only and could not affect an assessment made as of October 1st, 1944.

Accordingly, it is our opinion that a statute which grants an exemption from taxation following October 1st of the pre-tax year will not effectively grant such exemption for the ensuing tax year, or part thereof, unless the Legislature clearly expresses its intent to make such exemption effective notwithstanding the prior taxable status of the property.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

JUNE 3, 1960

CHRISTOPHER H. RILEY, *Director*
Division of Shell Fisheries
Department of Conservation
and Economic Development
230 West State Street
Trenton, New Jersey

FORMAL OPINION 1960—No. 17

DEAR DIRECTOR RILEY:

You have requested an opinion defining the circumstances under which the State acting through the successors to the former riparian commissioners may make a riparian grant or lease to lands under tidewaters on which are found natural oyster beds.

The power to lease lands of the State beneath tidal waters for the planting and cultivation of oysters and clams was formerly exercised by the Board of Shell Fisheries. R.S. 50:1–23. With reference to the Board, R.S. 50:1–24 provided:

> "The power granted by this title to the board to lease lands under the tidal waters of this state for the planting and culture of shellfish is exclusive, and no other state agency may, in the name of the state or otherwise, give, grant or convey to any person the exclusive right to plant or take shellfish from any of such waters; and no grant or lease of lands under tidewater, whereon there are natural oyster beds, shall be made by any other state agency except for the purpose of building wharves, bulkheads or piers."

This power was transferred by Laws of 1945, c. 22, § 19, N.J.S.A. 13:1A–19 to the Division of Shell Fisheries in the former State Department of Conservation and in

the reorganization following adoption of the Constitution of 1947 was assigned to the Division of Shell Fisheries in the Department of Conservation and Economic Development. Laws of 1948, c. 448, § 93, N.J.S.A. 13:1B–42. Other riparian grants and leases of the State's lands beneath tidewaters were issued by the riparian commissioners and are now made by their statutory successors, the Planning and Development Council in the same Department, pursuant to R.S. 12:3–1 et seq. and N.J.S.A. 13:1B–13.

Proper resolution of your question requires historical analysis. Our courts from the earliest times have recognized that although the State owned all lands flowed by tidewater at ordinary high tide an adjacent upland owner had a license, revocable by the Legislature until exercised, to reclaim the riparian lands of the State between the high and low water marks. *Stevens* v. *Paterson and Newark R.R. Co.*, 34 N.J.L. 532 (E. & A. 1870). While this right did not exist at English common law, in this State it was affirmed as a matter of local custom. Though it was recognized that improvements of any nature might be placed between the high and low water marks by the abutting upland owner, his privilege to reclaim was ordinarily exercised in order that he might reach water navigable in fact. Thus this license became known as the privilege to "wharf out." *New Jersey Zinc and Iron Co.* v. *Morris Canal and Banking Co.*, 44 N.J. Eq. 398, 401 (Ch. 1888), *aff'd per curiam*, 47 N.J. Eq. 598 (E. & A. 1890); 56 *Am. Jur., Wharves* 1068 (1947). The Wharf Act, Laws of 1851, p. 335, which codified the privilege, with reference to the land between the high and low water marks declared:

> "That it shall be lawful for the owner of lands, situate along or upon tidewaters, to build docks or wharves upon the shore in front of his lands, and in any other way to improve the same, and, when so built upon or improved, to appropriate the same to his own exclusive use."

Therefore, between the high and low water marks the Legislature permitted any improvements, though recognizing that the principal improvements would be in aid of navigation. By section 2 of the Wharf Act it was provided "That it shall be lawful for the owner of lands situate along or upon tidewaters to build docks, wharves, and piers in front of his lands, beyond the limits of ordinary low water" upon the obtaining of a license as provided in the Act. Thus the Legislature conceived that all improvements below the low water mark would be made to enable the abutting upland owner to reach water navigable in fact. By the General Riparian Act, Laws of 1869, c. 383, the Wharf Act was repealed for the Hudson River, New York Bay and Kill Von Kull, it being made unlawful for any improvements to be made upon the State's land under the three enumerated bodies of water unless a license to do so were obtained. Though by Laws of 1871, c. 256 it was provided that grants of land beneath tidewaters could be made anywhere in the State, the Wharf Act was not finally repealed until 1891. Laws of 1891, c. 124. Since 1891 no abutting upland owner has been able to exercise the former local privilege to reclaim any of the State's lands between the high and low water marks. Rather, he must apply for a riparian grant to the appropriate State authority. In *Bailey* v. *Driscoll*, 19 N.J. 363 (1955), the Supreme Court, consistent with the foregoing statutory history, ruled that the principal purpose of a riparian grant given under the general statutes remains to aid the abutting upland owner to reach water navigable in fact.

Traditionally, riparian grants have been given solely to abutting owners. Such persons are deemed to have a "natural equity" to secure the grant. *Keyport and*

Middletown Point Steamboat Co. v. *Farmers Transportation Co.*, 18 N.J. Eq. 511, 516 (E. & A. 1866). Under both our local common law and the Wharf Act only abutting upland owners had the privilege to wharf out or fill in. *New Jersey Zinc and Iron Co.* v. *Morris Canal and Banking Co., supra.* But by section 8 of the General Riparian Act the riparian commissioners were authorized to make grants and leases of lands under the Hudson River, New York Bay and Kill Von Kull to persons other than abutting owners provided that the applicant had first given the abutting owner six months' notice of his application and the latter had neglected to apply for the grant during this period. Laws of 1869, c. 383, § 8, R.S. 12:3–7. Similar power was extended for other tidelands by Laws of 1891, c. 123, § 3, R.S. 12:3–23. See Memorandum Opinion dated April 18, 1960.

Grants to persons other than abutting owners are not usually made to facilitate access to waters navigable in fact. Such a grant normally forecloses the upland owner from the water. See *River Development Corp.* v. *Liberty Corp.*, 51 N.J. Super. 447, 479-81 (App. Div. 1958), *aff'd per curiam*, 29 N.J. 239 (1959). The Legislature recognized this in 1869 since by the General Riparian Act it provided that a non-abutting grantee could not improve the granted lands until the abutting owner had been compensated for his rights and interests in them. Laws of 1869, c. 383, § 13, R.S. 12:3–9. By rights and interests the Legislature had reference to the claim of the upland owner "to reach tide water from his land," *American Dock and Improvement Co.* v. *Trustees for the Support of Public Schools*, 39 N.J. Eq. 409, 445 (Ch. 1885). But, in a subsequent decision, *Stevens* v. *Paterson and Newark R.R. Co., supra*, the Court of Errors and Appeals definitively declared that this claim was not a property right.

The immediate source of R.S. 50:1–23 and 50:1–24 is Laws of 1931, c. 187, §§ 24, 25. But by Laws of 1888, c. 108 it was provided:

> "That no grant or lease of lands under tide-water whereon there are natural oyster beds, shall hereafter be made by the riparian commissioners of this state, except for the purpose of building wharves, bulkheads or piers."

The foregoing language is for our purposes indistinguishable from the proviso in R.S. 50:1–24 and is clearly its antecedent since Laws of 1888, c. 108 was repealed by Laws of 1931, c. 187, § 96. Thus from 1888 to the present it has been unlawful to issue a riparian grant or lease, except for wharves, bulkheads and piers, pursuant to the sections now comprising Chapter 3 of Title 12 of the Revised Statutes of 1937 when the lands to be granted house natural oyster beds. *McCarter* v. *Sooy Oyster Co.*, 78 N.J.L. 394 (E. & A. 1910). Laws of 1888, c. 108 in seeking to protect oyster beds is not reflective of a new policy but rather was another in an ancient series of statutes. Indeed "An Act for the Preserving of Oysters in the Province of New Jersey" had been passed on March 27, 1719 and in its preamble it was declared that the preservation of oysters "will tend to the great benefit of the poor People, and others inhabiting this Province." Bradford's Laws of New Jersey, 1703-19, p. 112. See also "An Act for the Preservation of Oysters," January 26, 1798; Laws of 1846, p. 179. Thus the Legislature in 1888 was dealing with two venerable and favored uses of the tidelands, development of the oyster industry and facilitation of efforts to reach navigable waters from the uplands. The new and less well established policy was the issuance of riparian grants for purposes other than the reaching of navigable waters whether or not given to abutting owners.

We therefore conclude that by Laws of 1888, c. 108 and by R.S. 50:1–24 the Legislature intended to reconcile the major policies and thus foreclosed riparian grants of lands housing natural oyster beds for purposes other than to facilitate the applicant or those entering upon the tidelands by virtue of his grant to reach navigable waters. Our conclusion is reinforced by the fact that wharfs, bulkheads and piers are in fact constructed to provide for the docking of vessels. Further "wharves" and "piers" were expressly authorized under the first and second sections of the Wharf Act. Hence, ordinarily a riparian grant of lands housing natural oyster beds should not be made to persons other than abutting owners. In this regard it should be noted that the Legislature by Laws of 1916, c. 98, R.S. 12:3–33 et seq., provided that whenever any municipal corporation or other subdivision of the State desires to place a public park, place, street or highway on any tidelands of the State, it can do so upon the securing of a riparian grant notwithstanding the fact that it is not an abutting upland owner. *Leonard* v. *State Highway Dept.*, 29 N.J. Super. 188 (App. Div. 1954). Grants so issued ordinarily are not made to aid any person to reach water navigable in fact and thus are forbidden if the granted lands house natural oyster beds. Finally, riparian grants to abutting owners may not be made for lands housing natural oyster beds except to facilitate the applicant's efforts to reach navigable water from his upland.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MORTON I. GREENBERG
Deputy Attorney General

JULY 26, 1960

HONORABLE SALVATORE A. BONTEMPO
Commissioner of Conservation and Economic Development
205 West State Street
Trenton, New Jersey

FORMAL OPINION 1960—No. 18

DEAR COMMISSIONER BONTEMPO:

You ask whether R.S. 12:3–33 et seq. authorizes the issuance of a riparian grant to a school district for a site of a school building and whether that section permits a grant to be made to a municipality for an athletic field, particularly when the municipality will charge admission for entrance to its athletic programs. In addition, you inquire whether any riparian grant may be made to a municipality for a consideration less than the fair market value of the property conveyed.

We deal first with the power of the State to make riparian grants for the specified purposes. Ordinarily, riparian grants may be made only to the owner of the upland abutting the riparian lands. R.S. 12:3–9; R.S. 12:3–23. An upland owner may use his granted premises for any lawful purpose consistent with applicable zoning ordinances upon the securing of a permit for the purpose from the Department of