the law would violate 12 U.S.C.A. § 548 and would therefore, render the Bank Stock Tax Act invalid as against national banks.

We therefore wish to advise you that in computing the tax due under the Bank Stock Tax Act a bank subject thereto may deduct from its net worth the assessed valuation of its real property in New Jersey and of the real property in New Jersey of its wholly owned subsidiaries, regardless of the county within which such real property may be located.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General

JULY 26, 1960

MR. JOHN WYACK, *Secretary*
Water Policy and Supply Council
Division of Water Policy and Supply
520 E. State Street
Trenton 25, New Jersey

FORMAL OPINION 1960—No. 21

DEAR MR. WYACK:

You ask the effect of a reduction in the area serviced by the Hackensack Water Company (hereinafter called "Hackensack") on its "free allowance" determined under Laws of 1907, c. 252, codified as R.S. 58:2-1.

Hackensack was chartered by Laws of 1869, c. 80. Its charter did not enfranchise it to divert any waters, surface or subterranean, without charge by the State. But in common with other water companies it did not, prior to 1907, make a payment to the State for its diversion of waters for public supply, no statute having required it to do so. See *State* v. *Trenton*, 97 N.J.L. 241 (E. & A. 1922), *appeal dismissed*, 262 U.S. 182 (1923). By the Laws of 1907, c. 252 the Legislature created the former State Water-Supply Commission which was charged with general supervision over all the sources of public and potable water supply in the State. Section 8 of the act provided as follows:

> "8. Every municipality, corporation or private person now diverting the waters of streams or lakes with outlets for the purpose of a public water-supply shall make annual payments on the first day of May to the State Treasurer for such water hereafter diverted in excess of the amount now being legally diverted; *provided, however,* no payment shall be required until such legal diversion shall exceed a total amount equal to one hundred (100) gallons daily, per capita for each inhabitant of the municipality or municipalities supplied, as shown by the census of one thousand nine hundred and five."

Pursuant to the proviso in the foregoing section a free allowance was determined for Hackensack. In 1907 the city of Hoboken was being served by Hackensack and

accordingly the allowance included diversions for its inhabitants. In 1926, however, Hoboken as a water consumption unit was transferred to the municipal system operated by Jersey City. Thus in 1927 the free allowance allotted to Hackensack was reduced by a sum approximately equal to the amount of water diverted for consumption in Hoboken in 1907. Hackensack was given notice of this reduction and acquiesced in it. Simultaneously the Jersey City free allowance was increased by a like amount. Hackensack now suggests that this shifting was erroneous and that its free allowance should be redetermined on the basis of the territory it served in 1907, including Hoboken. You have advised that the reduction in 1927 was in accordance with long standing practice. Free allowances have been regularly transferred in the other instances of realignment of the territory served by privately and municipally owned water companies.

It is our opinion that the benefit of the free allowance was intended to accrue to the consumers of each municipality and not to their suppliers and that the transfer in 1927 was accordingly proper. In *North Jersey District Water Supply Comm'n* v. *State Water Policy Comm'n*, 129 N.J.L. 326 (Sup. Ct. 1943) the prosecutors on certiorari (The North Jersey District Water Supply Commission, the Passaic Valley Water Supply Commission and the City of Newark) challenged a rule of the former State Water Policy Commission, a predecessor to the Department of Conservation and Economic Development, promulgated under the act of 1907 providing:

> "Whereas, the method of computing the free allowance for excess diversion of surface waters, under the provisions of chapter 252, Laws of 1907, are [sic] not clearly set forth in said law in cases where a municipality receives surface water from more than one diverter; Therefore,
>
> "Be It Resolved, That the following rule be adopted for the calculation of said free allowance for the calendar year 1932 and subsequent years:
>
> "The Free Allowance for excess diversion of surface water, under the provisions of Section 8, Chapter 252, Laws of 1907, in cases where a municipality receives surface water from more than one diverter, shall be credited to each diverter in proportion to the amount of surface water supplied." 129 N.J.L. at 329-30.

The court summarized the prosecutors' contention as follows:

> "(1) The defendant commission erred in refusing to grant to each prosecutor a full free allowance for each municipality served by it, regardless of whether a free allowance for that municipality had been granted to one or more of the other prosecutors; (2) the rate applicable to each prosecutor under the statute was the minimum rate of $1 per million gallons for excess water diverted; (3) the statute, 58:2-1, is discriminatory and unconstitutional in that it does not provide a uniform rate for the diversion of surface and of subsurface waters; (4) the Passaic Valley Water Commission is entitled to a full allowance for the Borough of Lodi." 129 N.J.L. at 330.

In rejecting these arguments and sustaining the challenged rule, the court held that the municipality was the benefited unit and that even though there apparently had been no municipalities with a divided supply in 1907, the statute required allocation in the event of a subsequent schism. The court's theory clearly controls this case. If

a partial transfer of service effects a *pro tanto* shift in the allowance then a total transfer must lead to a total shift.

This result is reinforced by the existence of the consistent long standing executive usage. Practical administrative interpretations should not be overturned, *Lane* v. *Holderman*, 23 N.J. 304 (1957); *In re Glen Rock*, 25 N.J. 241 (1957), particularly on the challenge of a previously complying person. A contrary result would lead to inequities to consumers in the area from which the free allowance is withdrawn.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MORTON I. GREENBERG
Deputy Attorney General

JULY 28, 1960

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

FORMAL OPINION 1960—No. 22

DEAR MR. KERVICK:

You have informed us of the following facts:

Between August 28, 1882 and October 7, 1897 six New Jersey corporations, known as New Jersey Telephone Company, Metropolitan Telephone and Telegraph Company, Domestic Telegraph and Telephone Company of Newark, New Jersey, Northeastern Telephone and Telegraph Company, Sea Shore Telephone Company and Hudson River Telephone Company were organized under the 1877 Revision of the Statutes of New Jersey, p. 1174, § 1, Telegraph Companies. Although this statute was enacted to provide for the formation of telegraph companies, it was construed to authorize the incorporation of telephone companies as well. See *Duke* v. *Central New Jersey Tel. Co.*, 53 N.J.L. 341 (Sup. Ct. 1891).

Thereafter, each of these companies, acting pursuant to New Jersey Compiled Statutes of 1910, p. 5319, § 11 (now superseded by R.S. 48:3-7) connected and consolidated with a telephone company organized under the laws of New York, i.e., either the New York and New Jersey Telephone Company or its successor by consolidation, the New York Telephone Company. The statute under which these actions were taken reads:

> "That any telegraph company chartered under the provisions of any act of this state, may connect and consolidate with any other incorporated telegraph company, whether chartered by or existing under a law of this state, or of any other state; and may upon such consolidation, by resolution of its board of directors, change its name, which change of name shall take effect on filing a copy of such resolution, certified under its corporate seal, in the office of the secretary of state of this state; provided, that neither such connection, consolidation or change of name shall affect the obligations