

have taken real estate or any right or interest therein in the name of the state for the use of the state in the improvement, betterment, reconstruction or maintenance of a state highway, and the commissioner has or shall have determined that the property so acquired is no longer required for such use, he may * * *

sell, lease or exchange such real estate or interest therein according to other conditions that do not need examination for the purpose of answering this question.

New Jersey, by statute, has codified the common law doctrine that the owner of the lands has exclusive control over the immediate reaches of the enveloping atmosphere. *Hyde v. Somerset Air Service*, 1 N.J. Super. 346 (App. Div. 1948); *United States v. Gausby*, 328 U.S. 256 (1946).

N.J.S.A. 46:3-19 states that:

"Estates, rights and interests in areas above the surface of the ground whether or not contiguous may be validly created in persons or corporations other than the owner or owners of the land below such areas and shall be deemed to be estates, rights and interests in lands."

Air rights pass by descent and distribution as do other estates, N.J.S.A. 46:3-20, and are subject to the same rights, privileges, incidents, powers and restrictions pertaining to other estates, N.J.S.A. 46:3-21. Laws pertaining to regular estates and land also apply to areas above the surface of the ground, N.J.S.A. 46:3-22.

Therefore, subject to the terms of N.J.S.A. 27:12-1 relating to the procedure to be followed regulating the manner of the sale or exchange of such lands, you are authorized by statute to convey air rights above highways and highway rights of way which are owned by the State.

Very truly yours,

DAVID D. FURMAN
Attorney General

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

NOVEMBER 7, 1960

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

FORMAL OPINION 1960—No. 30

DEAR MR. KERVICK:

You have asked whether certain taxes, penalties and interest which are owed to the State pursuant to R.S. 54:43-6 and R.S. 54:44-1 et seq. may be written off for accounting purposes when they have proved to be uncollectible.

Attorney General's Formal Opinion, 1959—No. 9 considered the question whether taxed costs owing to the Department of Labor and Industry pursuant to R.S. 34:11-67

may be written off for accounting purposes when they have proved uncollectible. That opinion pointed out that writing off an uncollectible debt was a recognized accounting practice, that it would not cancel the debtor's legal liability to the State and that it would, therefore, not contravene Art. VIII, § 3, par. 3 of the New Jersey Constitution which prohibits an "appropriation of money . . . by the State. . . to or for the use of any society, association or corporation whatever." See *In re Voorhees*, 123 N.J. Eq. 142 (Prerog. Ct. 1938); *Wilentz v. Hendrickson*, 133 N.J. Eq. 447 (Ch. 1943), aff'd 135 N.J. Eq. 244 (E. & A. 1944); *In re Wellhofer*, 137 N.J.L. 165 (S. Ct. 1948); *State v. Erie Railroad Co.*, 23 N.J. Misc. 203 (Sup. Ct. 1945). The opinion held that, subject to the uniform system of accounting authorized by the Treasurer pursuant to R.S. 52:27B-33, the Commissioner of Labor and Industry could write off for accounting purposes taxed costs due under R.S. 34:11-67 which in his judgment were uncollectible.

The principles stated in Attorney General's Formal Opinion, 1959—No. 9 are applicable to your present inquiry as well as to the general problem of how debts owed to the State may be written off as uncollectible. The Director of the Division of Budget and Accounting is authorized by law to "provide and maintain a uniform system of accounting for the State, its departments, institutions, courts and other State agencies. . . ." N.J.S.A. 52:27B-33. The Director, therefore, has the discretion to establish accounting procedures for reflecting the fact that items previously carried as receivables are no longer collectible.

The factual question of whether a particular receivable is collectible is a matter to be determined by the State Auditor upon recommendation of the department or agency directly concerned, subject to procedures established by the Director of the Division of Budget and Accounting. The State Auditor is directed by statute to "examine and post-audit all the accounts, reports and statements and make independent verifications of all assets, liabilities, revenues and expenditures of the State, its departments, institutions, boards, commissions, officers and any and all other State agencies now in existence or hereafter created. . . ." N.J.S.A. 52:24-4. The quoted statement of the duties of the State Auditor implies that if his independent verification indicates that certain receivables are no longer collectible—and therefore no longer assets in any meaningful sense—the Auditor should direct that the receivables be written off in accordance with the procedures established by the Director of the Division of Budget and Accounting.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General