

APRIL 18, 1960

HONORABLE KENNETH H. CREVELING
*Director, Division of Planning
and Development*
520 East State Street
Trenton, New Jersey

MEMORANDUM OPINION—P-8

DEAR DIRECTOR:

You have asked whether a riparian grant may be made to an applicant who has given six months' notice of his application to the owner of the upland abutting the area in the proposed grant where the owner thereafter conveys his interest in the uplands. It is our opinion that a conveyance by the upland owner whether before or after the expiration of the six months' period does not preclude the execution of the grant.

R.S. 12:3-23 provides as follows:

"The board, with the approval of the governor, may lease or grant the lands of the state below mean high-water mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shore-owner or owners, provided the riparian or shore-owner or owners shall have received six months' previous notice of the intention to take said lease or grant such notice given by the applicant or applicants therefor, and the riparian or shore-owner or owners shall have failed or neglected within said period of six months to apply for and complete such lease or grant; the notice herein required shall be in writing and shall describe the lands for which such lease or grant is desired, and it shall be served upon the riparian or shore-owner or owners personally; and in the case of a minor it shall be served upon the guardian; in case of a corporation upon any officer performing the duties of president, secretary, treasurer or director, and in the case of a nonresident owner the notice may be by publication for four weeks successively at least once a week in a newspaper or newspapers published in the county or counties wherein the lands are situate, and in case of such publication, a copy of such notice shall be mailed to such nonresident owner (or in case such nonresident owner be a corporation, then to the president of such corporation, directed to him at his post-office address, if the same can be ascertained, with the postage prepaid); but nothing contained in sections 12:3-21 to 12:3-25 of this title shall be construed as repealing, altering, abridging, or in any manner limiting the provisions and power conferred upon the riparian commissioners and governor by sections 12:3-19 and 12:3-20 of this title."

See also R.S. 12:3-7 (dealing with the Hudson River, New York Bay and Kill Von Kull). The reference in R.S. 12:3-23 to a "board" is to the former Board of Commerce and Navigation whose powers under the section have been transferred to the Planning and Development Council in the Department of Conservation and Economic Development. N.J.S.A. 13:1B-13.

Though literal application of R.S. 12:3-23 might indicate that a conveyance by the upland owner after receipt of notice defeats the grant, such a construction must

be rejected. By Laws of 1894, c. 71 and Laws of 1903, c. 1, § 168, codified as R.S. 18:10-5, all of the lands of the State then or formerly flowed by tidewater were appropriated for the support of free public schools. R.S. 12:3-23 and R.S. 18:10-5 are in *pari materia*. Cf. *Palmer v. Kingsley*, 27 N.J. 425 (1958).

A holding that a conveyance of realty by an upland owner defeats a grant to the person serving notice would tend to limit the appropriate state officers from aggrandizing the school fund and is therefore to be avoided. In the event that an upland owner made a conveyance prior to its issuance the grant would be invalid. Moreover, this construction would permit successive upland owners to prevent the issuance of a riparian grant by making repeated conveyances within each six month period. Such a result is not the kind of power afforded by the statute. The protection given by R.S. 12:3-23 to upland owners is to apply for a riparian grant on their own behalf within the time specified.

While there is no provision for recording the service of a notice on an abutting upland owner, his prospective grantee may protect himself by securing appropriate warranties in the contract for sale and the deed. We therefore hold that proper notice on an abutting upland owner is effective against his grantees or devisees.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MORTON I. GREENBERG
Deputy Attorney General

APRIL 26, 1960

HON. JOHN W. TRAMBURG, *Commissioner*
Department of Institutions and Agencies
135 West Hanover Street
Trenton, New Jersey

MEMORANDUM OPINION—P-9

DEAR COMMISSIONER TRAMBURG:

You have raised the following questions on behalf of the State Parole Board:

1. What constitutes a "crime" within the meaning of *N.J.S.A. 30:4-123.24*?
2. Are disorderly person offenses and quasi-criminal offenses without *N.J.S.A. 30:4-123.24*?
3. Where a prisoner has been paroled to another state and the offense occurs in that state, does the law of New Jersey or that of the other state determine what constitutes a "crime" within *N.J.S.A. 30:4-123.24*? *N.J.S.A. 30:4-123.24* provides that:

"A prisoner, whose parole has been revoked because of a violation of a condition of parole or commission of an offense which subsequently results in conviction of a crime committed while on parole, even though such conviction be subsequent to the date of revocation of parole, shall be required, unless sooner reparaled by the board, to serve the balance of time due on