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"A prisoner, whose parole has been revoked because of a violation of a condition of parole or commission of an offense which subsequently results in conviction of a crime committed while on parole, even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 reparoled by the board, to serve the balance of time due on

his sentence to be computed from the date of his original release on parole. If parole is revoked for reasons other than subsequent conviction for crime while on parole then the parolee, unless sooner reparoled by the board, shall be required to serve the balance of time due on his sentence to be computed as of the date that he was declared delinquent on parole."

The importance of determining what constitutes a "crime" in contemplation of the aforesaid section is evident because revocation of parole for conviction of crime committed while on parole obliges the parolee to suffer certain sanctions, namely, service of additional time in confinement.

The answers to questions 1 and 2 are found in *Sawran* v. *Lennon*, 19 *N.J.* 606 (1955), where our Supreme Court dealt with this same general subject matter and at page 611 the court said:

"There is considerable confusion in our law, both statutory and decisional, as to the nature of the various kinds of public wrongs which fall short of constituting crimes and as to the sanctions by which the law seeks to prevent them, on the one hand, and crimes on the other. Crimes are readily distinguished from all other public offenses by the fact that indictment by a grand jury is a constitutional prerequisite to proceedings to punish the defendants therefor, Const. 1947, Art. 1, par. 8, as is trial by jury, idem. Art. 1, par. 9, unless waived by the defendant, but the classes of offenses against the public other than crimes differ markedly from each other. Thus disorderly conduct, N.J.S. 2A:169–1 to 2A:170–96, a class of offenses which has grown extensively over the years, *State* v. *Maier*, 13 N.J. 235 (1953) (especially II, pp. 251-260) has always been deemed quasi-criminal in nature but not strictly criminal, and is punishable summarily without indictment or trial by jury by fines or imprisonment, or both. These offenses find their origin in statutes as above set forth, or in ordinances adopted pursuant to statute, *Paul* v. *Gloucester*, 50 N.J.L. 585 (E. & A. 1888); *Sherman* v. *Paterson*, 82 N.J.L. 345 (Sup. Ct. 1912); *Fred* v. *Mayor and Council, Old Tappan Borough*, 10 N.J. 515, 519 (1952); 6 McQuillan, Municipal Corporations (3rd ed.), chaps. 23, 24."

Thus, it will appear that a "crime," as the term is used in criminal jurisprudence in New Jersey and within the provisions of *N.J.S.A.* 30:4–123.24, is an indictable offense and where the defendant is entitled to a trial by jury unless same is waived. Also, by the same authority, "disorderly conduct" has always been deemed quasi-criminal and persons guilty of this offense are not deemed guilty of "crime" as this word is used in *N.J.S.A.* 30:4–123.24.

Concerning your inquiry as to whether the "crime" contemplated by *N.J.S.A.* 30:4–123.24 relates to a "crime" committed by the parolee in this state, or in some other state, there is no judicial determination of this precise question by our courts. However, some light is shed on the general problem by *In re Smith*, 8 *N.J. Super.* 573 (Essex Co. Ct. 1950) where Judge Hartshorne was called upon to determine whether an individual convicted of larceny in the State of Ohio would be deprived of the right of suffrage in New Jersey under that provision of our *Constitution*, (*Art.* II, *par.* 7), which provides that "The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate."

This constitutional provision, somewhat like *N.J.S.A.* 30:4–123.24, did not specify that the crimes shall be committed and conviction had in New Jersey. Nor does the implementing statute, *R.S.* 19:4–1, so provide. Judge Hartshorne reached the decision that the phrase "convicted of crime" in similar statutes consistently has been held in New Jersey to cover "convictions of crime in any jurisdiction, federal or state, domestic or foreign." Reference was made to *In re Marino*, 23 *N.J. Misc.* 159 (Co. Ct. 1945) wherein the court reviewed a long line of decisions which support the conclusion reached in both *Marino, supra,* and *Smith, supra.*

In *State* v. *Henson*, 66 *N.J.* 601 (E. & A. 1901) dealing with the disqualification of a witness because of a conviction of crime, the court said (p. 605):

> "It is the conviction of crime which is to affect credibility. The word 'crime' being used without qualification, must be held to be used in its general sense to include any crime. It is not a word of double meaning."

In *State* v. *Rombolo*, 89 *N.J.L.* 565 (E. & A. 1916), the defendant in a criminal trial, on his cross-examination, was asked if he had been convicted of the crime of burglary in one of the criminal courts of Pennsylvania. The State was permitted to produce the record of his conviction from the sister jurisdiction and "offered it in evidence for the purpose of impeaching the defendant's credit as a witness." See also *State* v. *Matelski*, 116 *N.J.L.* 543 (E. & A. 1936).

It is our opinion that the foregoing judicial decisions, which deprive a citizen of the right of suffrage in New Jersey and affect his credibility as a witness here for crimes committed elsewhere, apply with equal force to the interpretation to be placed upon the word "crime" as utilized in *N.J.S.A.* 30:4–123.24. Thus, if a parolee is convicted of an offense in another jurisdiction and if such offense would constitute a "crime" if conviction were had in our state courts, then such parolee must suffer the sanctions imposed by *N.J.S.A.* 30:4–123.24. However, if the offense were merely "disorderly person" in New Jersey (e.g., simple assault and battery as defined in *State* v. *Maier, supra*) and the same offense were a "crime" in a sister jurisdiction, then the sanctions of *N.J.S.A.* 30:4–123.24 should not apply following conviction of such offense outside New Jersey. This is so because of qualifying language in the opinion in *Smith, supra,* where the court said (p. 574) referring to *In re Marino, supra*:

> "it was there held that one could not vote in New Jersey, who was convicted in the United States District Court for the District of New Jersey of a crime which, *if in the state courts*, would disenfranchise him." (Emphasis supplied.)

It is evident that the conviction of "crime" occurring elsewhere must cover an offense which, if conviction were in our state courts, would constitute a "crime" in contemplation of *Sawran* v. *Lennon, supra.*

Very truly yours,

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