

together to divert wave accessibility to any considerable extent of the beach . . . the actual distance apart of these structures will be a function of the direction from which the waves strike the beach. . . ." *Id.*, p. 15.

It may be impossible, then, to protect isolated shore areas. The scope of action to meet the public purposes of beach protection is a matter for the judgment of the Commissioner of Conservation and Economic Development. Beach protection measures taken under the statute in question are not impaired by the conferring of a benefit upon neighboring property and individuals, *Simon v. O'Toole*, 108 N.J.L. 32 (Sup. Ct. 1931). These special benefits to abutting owners do not ". . . cause an otherwise authorized governmental activity to run afoul of the constitutional provisions relating to donations of public moneys." *Hoglund v. City of Summit*, 28 N.J. 540 (1959). Further, the public nature of the program is not destroyed by the proprietary use of beaches. This was clearly held in *Martin v. Asbury Park*, 114 N.J.L. 298 (E. & A. 1934) as follows:

"The previous case [*Martin v. Asbury Park*, 111 N.J.L. 364 (E. & A. 1933)] decided that the operation of a bathing establishment was a private and proprietary business, and further held that the land in question was used in such business. Such a finding as to the *use* of such land is not necessarily a finding as to the *purpose* of the use, and therefore as to the public or private nature of the property."

You are therefore advised that beach protection is a public purpose for which funds may be expended; that such purpose is not eliminated by the necessary use of and incidental benefit to private land; that the proprietary use of the beaches does not defeat the legality of the statute; and that, subject to your determination that a particular project is designed to protect the land and beaches in a certain area or is a part of a general program of beach protection along any one of the enumerated bodies of water, you may allocate funds under R.S. 12:6A-1, *et seq.* notwithstanding the proprietary use of such beaches.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: G. DOUGLAS HOFE, JR.  
*Deputy Attorney General*

FEBRUARY 6, 1961

HON. LEROY J. D'ALOIA  
*Speaker of the General Assembly*  
State House  
Trenton, New Jersey

FORMAL OPINION 1961—No. 3

DEAR MR. D'ALOIA:

You have sought my opinion as to whether 30 or 31 members constitute a majority of "all the members" of the General Assembly as required by Art. IV, § 4, para. 6 of the State Constitution for the passing of bills and joint resolutions.

The Constitution in Art. IV, § III, para. 1 provides that the number of members of the General Assembly is never to exceed sixty. By statute, the number of sixty is fixed as the membership of the General Assembly. L. 1941, c. 310; cf. L. 1961, c. 1, sec. 2. Because of resignations, the number of persons now serving as members of the General Assembly is 58.

In my opinion, the expression "all the members" refers to the full 60.

This phrase or a counterpart occurs in several places in the State Constitution. The majority of all the members of each house may petition for a special session. *Id.*, Art. IV, § 1, para. 4. The majority of all the members of a house constitutes a quorum to do business in that house. *Id.*, Art. IV, § IV, para. 2. The vote of two-thirds of all the members of a house is required to expel a member from that house. *Id.*, Art. IV, § IV, para. 3. The vote of three-quarters of all the members of a house is necessary to characterize a bill or joint resolution as an emergency measure in that house. *Id.*, Art. IV, § IV, para. 6. No bill or joint resolution shall pass unless the majority of all the members of each house are personally present and agree. *Ibid.* To pass a private, special or local law the vote of two-thirds of all the members of each house is required. *Id.*, Art. IV, § VII, para. 10. The vote of two-thirds of all the members of each house is necessary to override a veto by the Governor. *Id.*, Art. V, § I, para. 14 and 15. To impeach, the vote of a majority of all the members of the General Assembly is required. *Id.*, Art. VII, § III, para. 2. To convict after impeachment, the concurrence of two-thirds of all the members of the Senate is required. *Ibid.* To submit to the people an amendment to the Constitution the vote of three-fifths of all the members of each house in one year or of a majority of all the members of each house in successive years is required. *Id.*, Art. XI, para. 1.

In *Schermerhorn v. Jersey City*, 53 N.J.L. 112 (Sup. Ct. 1890), the court relied on the apparently accepted construction of the language of the State Constitution of 1844 referring to "a majority of all the members" of each house of the Legislature. It stated:

"Our house of assembly is composed of sixty members and the senate of twenty-one members. In the one case the votes of thirty-one and in the other the votes of eleven members are essential to the passage of a bill or joint resolution." *Id.*, at 116.

The court held that the votes of 9 of 11 aldermen remaining after 2 of the 13 called for by statute had died did not satisfy a statutory requirement of the vote of "three-quarters of all the members."

In *Ross v. Miller*, 115 N.J.L. 61, 65 (Sup. Ct. 1935), Justice Heher stated that the Legislature itself has practically construed the expression in the Constitution "a majority of all the members" to mean "a majority of the entire membership of each house provided by law." He relied on this construction of the language in the Constitution in holding that 3 votes from among 5 surviving members of a municipal council reduced from the 7 provided by law due to deaths did not satisfy a statutory requirement of "a majority of all the members."

In *Stanton v. Hoboken*, 52 N.J.L. 88 (Sup. Ct. 1889), the court held that 5 votes did not satisfy a statutory requirement of "two-thirds of the members elected" where 1 of 8 councilmen elected had died.

In *Dombal v. Garfield*, 129 N.J.L. 555 (Sup. Ct. 1943), the court held that where 1 of 8 councilmen had resigned, a statutory requirement for "a majority of the whole

number of councilmen" was not satisfied by the participation of 4 of the remaining 7 councilmen.

In *State v. Rogers*, 56 N.J.L. 480 (Sup. Ct. 1894), where the main question was whether holdover senators had a right to organize the Senate at the beginning of a legislative year, without the participation of newly elected senators not yet sworn in, both the majority and the dissenter assumed that a quorum of the Senate was 11 members, even though the dissenter would have held that the holdover senators, necessarily a number less than the full 21, could organize the Senate. *Id.*, at 630, 632, 649.

Since the above authorities are in point and explicit, it is my opinion that constitutional references to a majority or to fractions of "all the members" of the houses of the Legislature must be construed to refer to fractions of the full membership authorized by law, even though from time to time one or more seats may be vacant, and that requirements of a majority, three-fifths, two-thirds or three-quarters of the General Assembly are only satisfied if 31, 36, 40 or 45 members, respectively, concur.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

FEBRUARY 7, 1961

MAJOR GENERAL JAMES F. CANTWELL  
*Chief of Staff*  
Department of Defense  
Trenton, New Jersey

FORMAL OPINION 1961—No. 4

DEAR GENERAL CANTWELL:

You have requested an opinion as to the police powers and duties of Civil Defense auxiliary police. My conclusions are based upon a construction of the Civil Defense and Disaster Control Act (L. 1953, c. 438 supplementing L. 1942, c. 251; App. A :9-33 to 57), the regulations proclaimed by the Governor pursuant thereto, and related general laws on police powers and the carrying of firearms.

The Civil Defense and Disaster Control Act is broadly drawn to provide a system of protection to the public, including rescue operations and maintenance of law and order in the event of war emergency or local disaster emergency. A clear legislative intention is evident that Civil Defense auxiliary police be adequately trained to supplement regular police forces in safeguarding against war disasters and in coping with war disasters or disasters from natural causes such as hurricanes or floods. The statute sets forth in App. A :9-45:

"In order to accomplish the purposes of this act, the Governor is empowered to make such orders, rules and regulations as may be necessary adequately to meet the various problems presented by any emergency and from time to time to amend or rescind such orders, rules and regulations, including among others the following subjects:

". . . c. Concerning the organization, recruiting, training, conduct, duties and powers of volunteer agencies, including air raid wardens, auxiliary