

the Legislature has taken cognizance of the Supreme Court decision in *Switz v. Kingsley, supra*.

You are advised, therefore, that the proper mode or method for computing the parsonage exemption provided by N.J.S.A. 54:4-3.6, as amended, is by deducting the amount of the exemption from the true value of the taxable property.

In concluding, it is not inappropriate to observe that to use varying, non-uniform standards for computing the present partial exemptions based upon the failure of assessors to assess taxable property uniformly at true value may raise serious questions under the Federal as well as our State Constitution, which questions we do not consider necessary to resolve in view of our present analysis. Suffice to say, the effect of the Supreme Court's decision in the *Switz* case is to compel consistency and uniformity in the treatment of the present partial exemptions from property taxation and that the exemptions for veterans, senior citizens, household goods and parsonages must each be computed with reference to the true value of the underlying taxable property.

Very truly yours,

ARTHUR J. SILLS  
*Attorney General*

By: ALAN B. HANDLER  
*Deputy Attorney General*

MARCH 12, 1963

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

FORMAL OPINION 1963—No. 1

DEAR MR. KERVICK:

You have requested our opinion whether the issuing officials, being the Governor, yourself, the State Treasurer, and the Comptroller of the Treasury, may lawfully provide for and cause the issuance and delivery of \$32,000,000 State Recreation and Conservation Land Acquisition Bonds (Series B) under the "New Jersey Green Acres Bond Act of 1961," Chapter 46 of the Laws of 1961, in view of the fact that there exists litigation which apparently questions the constitutionality of a companion statute, the "New Jersey Green Acres Land Acquisition Act of 1961," Chapter 45 of the Laws of 1961, N.J.S.A. 13:8A-1, *et seq.* Your inquiry is prompted by the fact that the State has on February 19, 1963 accepted a bid for the purchase of the foregoing bonds pursuant to a public Notice of Bond Sale. The Notice of Bond Sale, pursuant to which bids were submitted, provided that before the successful bidder would be required to accept and pay for the bonds, he would be furnished satisfactory certificates to the effect that "there is no litigation pending or (to the knowledge of the signer or signers thereof) threatened affecting the validity or payment of the Bonds."

The litigation to which you have referred is entitled *State of New Jersey, etc. v. New Jersey Zinc Co., et al.* (Superior Court, Law Division, Docket No. L-23109-61).

This litigation was instituted by the State of New Jersey, acting by and through H. Mat Adams, Commissioner of the Department of Conservation and Economic Development, to condemn property situate in the County of Sussex for purposes of acquiring this land under the "New Jersey Green Acres Land Acquisition Act of 1961," (L. 1961, c. 45). The defendants in the action include the County of Sussex, the property owner, as well as a party who held an option to purchase the property at the time the condemnation proceedings were instituted.

With respect to the option holder, an order was entered by the Superior Court, Law Division that he had no interest in the property sufficient to give him standing in the condemnation proceeding. This party has instituted an appeal. In this appeal the option holder raises the question as to his standing to be made a proper and necessary party in the condemnation proceeding. In the brief filed by this appellant, he also made the statement that if he were a party, he would have advanced the argument that N.J.S.A. 13:8A-1 *et seq.*, known as the Green Acres Act, is unconstitutional for delegating legislative and administrative discretion without setting up adequate standards. Upon motion brought by the State of New Jersey, the Appellate Division on March 11, 1963 ordered that the foregoing contention be deleted from the pending appeal without prejudice and in the event of a reversal, the right to that defense be reserved.

With respect to the other defendants in the condemnation proceeding, no appeal has at the present time been taken from the judgment of the Superior Court, Law Division which was entered on February 18, 1963. It is to be noted, however, that time for appeal has not yet expired. The defendant, County of Sussex, in its Answer filed in the proceedings before the Superior Court, Law Division raised the defense that the "New Jersey Green Acres Land Acquisition Act of 1961," L. 1961, c. 45, N.J.S.A. 13:8A-1 *et seq.* was unconstitutional. The Superior Court, Law Division, on this issue, ruled adversely to the defendant County of Sussex and held that this statute was constitutional. The County of Sussex has taken official action by an appropriate resolution adopted by its Board of Chosen Freeholders that in the event an appeal will be taken from the determination of the Superior Court, Law Division it will assert on such appeal that Chapter 45 of the Laws of 1961 is unconstitutional but does not and shall not contend in said appeal that Chapter 46 of the Laws of 1961 is unconstitutional or invalid. Thus, this litigation does not present an attack or threat of attack on the "New Jersey Green Acres Bond Act of 1961," Chapter 46 of the Laws of 1961.

After having given due consideration to the various legal and factual aspects of the litigation heretofore described, we have reached the opinion that this present litigation cannot affect the validity or payment of the bonds issued pursuant to Chapter 46, the "New Jersey Green Acres Bond Act of 1961," L. 1961, c. 46.

At the threshold of this analysis, it is imperative to note the differences between Chapters 45 and 46 of the Laws of 1961. Chapter 46, the "New Jersey Green Acres Bond Act," is the statute which authorizes the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the aggregate amount of \$60,000,000.00. Chapter 46 was adopted by the people of the State of New Jersey in a referendum in the General Election held in November 1961. The act contains legislative recitals of fact that there exists an increasing need for lands for public recreation and for the conservation of natural resources; that the State must act now to acquire, and to assist local governments to acquire, substantial quantities of such lands as are now available; and that appropriations for such purposes in the

sum of \$60,000,000.00 are needed now to make such acquisition possible. The statute further states that "Bonds of the State of New Jersey in the sum of \$60,000,000.00 are hereby authorized to provide money to meet the cost of public acquisition of lands for recreation and conservation purposes." (L. 1961, c. 46, § 3). The Green Acres Bond Act further provides that the bonds "shall be issued from time to time as money is required for the purpose aforesaid, as the issuing officials herein named shall determine" and that the issuing officials "are hereby authorized to carry out the provisions of this act relating to the issuance of said bonds, and shall determine all matters in connection therewith subject to provisions hereof." (L. 1961, c. 46, §§ 6 and 7). Chapter 46 contains additional provisions with respect to the details of the bonds, including title, maturities, execution, issuance, etc. The statute also leaves to the determination of the issuing officials the matter of denominations of bonds, form thereof and whether bonds shall be coupon or registered as to both principal and interest. (L. 1961, c. 46, §§ 9-12). The power, thus granted, to issue bonds is in no way limited or made contingent upon any separate act of the Legislature.

In contrast to Chapter 46, Chapter 45, the "Green Acres Acquisition Land Act," is a statute designed to establish administrative authority, under legislative standards, to implement the Green Acres program and to appropriate for its purposes the moneys obtained from the separately authorized bond issue. The purpose and effect of Chapter 45 are to appropriate and expend the proceeds of the bonds to be issued and sold under Chapter 46. Chapter 45 specifically recites that such moneys "will be made available by the sale of bonds authorized by the New Jersey Green Acres Bond Act of 1961 \* \* \*" (L. 1961, c. 45, § 2(f)). It further provides that the Commissioner of Conservation and Economic Development "shall use the sum appropriated by this act from the proceeds of the sale of bonds under the New Jersey Green Acres Bond Act of 1961, and such other sums as may be appropriated from time to time for like purposes, to acquire lands for recreation and conservation purposes and to make grants to assist local units to acquire lands for such purposes, subject to the conditions and limitations prescribed by this act" (L. 1961, c. 45, § 4). It is further provided that "the money in the State Recreation and Conservation Land Acquisition Fund created by the New Jersey Green Acres Bond Act of 1961 is hereby appropriated to the Department of Conservation and Economic Development for use in executing the provisions of this act \* \* \*" (L. 1961, c. 45, § 17).

It thus clearly emerges that Chapter 46 of the Laws of 1961 is a statute which authorizes the State of New Jersey to create a debt of the State by the issuance of State bonds. Chapter 45 of the Laws of 1961, on the other hand, is a statute which merely appropriates and provides for the specific expenditures of the sums of money made available by the sale of such bonds. They are clearly independent enactments. Cf. *In re Application of McGlynn*, 58 N.J. Super. 1, 21-24 (App. Div. 1959). It is settled law that bonds issued by a state for a lawful purpose will be considered valid if such bonds have been issued pursuant to all constitutional and statutory requirements. 81 C.J.S. *States*, § 179 *et seq.* It cannot be questioned that the issuance of state bonds for the purpose of raising moneys for the acquisition of lands for public recreational and conservation uses is a lawful purpose and an appropriate exercise of governmental power. Cf. *Fishblatt v. Atlantic City*, 78 N.J.L. 134 (Sup. Ct. 1909), *aff'd*, 80 N.J.L. 269 (E. & A. 1910); *Bew v. Ventnor City*, 81 N.J.L. 207 (Sup. Ct. 1911).

The requirements imposed by the Constitution for the creation of a State debt or liability are that it must be authorized by a law for a single object, that such law

shall provide the ways and means, exclusive of loans to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted and that "No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legal qualified voters of the State voting thereon." N.J. Const. 1947, *Art. VIII, Sec. 2, par. 3*. It is not questioned that Chapter 46 complies with these constitutional requirements and has been adopted pursuant thereto. Additional statutory prerequisites for the issuance of the Green Acres Bonds are recited in the text of Chapter 46 of the Laws of 1961 (L. 1961, c. 46, § 12) and the issuing officials have complied with these requirements.

Chapter 46, as has been noted, does not impose as a requirement for the valid issuance of Green Acres Bonds, the prior or simultaneous adoption by the Legislature of a valid appropriations act. It is provided under Chapter 46 that "the proceeds from the sale of bonds shall be paid to the State Treasurer and be held by him in a separate fund, and be deposited in such depositories as may be selected by him to the credit of the fund, which shall be known as the 'State Recreation and Conservation Land Acquisition Fund'" (L. 1961, c. 46, § 14). Most significantly, Chapter 46 provides:

"The moneys in the said State Recreation and Conservation Land Acquisition Fund are hereby specifically dedicated to meeting the cost of public acquisition of lands for recreation and conservation purposes and shall not be expended except in accordance with appropriations from said fund made by law.

"At any time prior to the issuance and sale of bonds under this act, the State Treasurer is hereby authorized to transfer from any available money in the treasury of the State to the credit of the State Recreation and Conservation Land Acquisition Fund such sum as may be deemed necessary for the purposes of this act by the State House Commission, which said sum so transferred shall be returned to the treasury of this State by the treasurer thereof from the proceeds of the sale of the first issue of bonds.

"Pending their application to the purposes provided in this act, moneys in the State Recreation and Conservation Land Acquisition Fund may be invested and reinvested as other trust funds in the custody of the State Treasurer in the manner provided by law \* \* \*." L. 1961, c. 46, § 15.

We are aware of the Attorney General's Formal Opinion 1952—No. 15. This opinion held that L. 1951, c. 340, which authorized the creation of a debt of the State of New Jersey by the issuance of State bonds in the sum of \$15,000,000 for State Teachers' College buildings and other purposes did not contemplate the issuance of bonds prior to an actual legislative appropriation. The statute therein considered by the Attorney General did, in our opinion, evince an intent on the part of the Legislature that the bonds could not be issued without a prior legislative appropriation. The Legislature has already expressed its intent by its enactment of Chapter 45, to effectuate the Green Acres program and has empowered State officials to take measures within their discretion to fulfill this program. The issuing officials have acted within the discretion granted and provided for in the Green Acres Bond Act. Although there is an attack upon Chapter 45, L. 1961, it has already been upheld as constitutional and, in our opinion, an attack upon this statute does not constitute an attack upon Chapter 46, L. 1961. There was and is no legal impediment to the

course of action the issuing officials have taken. Thus we conclude that Formal Opinion 1952—No. 15 is not here applicable.

In view of the foregoing, we have reached the conclusion that the pending litigation which questions the constitutionality of Chapter 45 of the Laws of 1961 will not affect the validity or payment of the bonds authorized pursuant to Chapter 46 of the Laws of 1961. We advise you, therefore, that the issuing officials may lawfully provide for and cause the issuance and delivery of the bonds in question.

Very truly yours,

ARTHUR J. SILLS  
*Attorney General*

By: ALAN B. HANDLER  
*Deputy Attorney General*

JUNE 26, 1963

DR. F. W. RAUBINGER  
*Commissioner of Education*  
225 West State Street  
Trenton 25, New Jersey

FORMAL OPINION 1963—No. 2

DEAR DR. RAUBINGER:

You have asked our opinion as to whether the Supreme Court's decision in *School District of Abington Township v. Schempp* and *Murray v. Curlett*, Nos. 142 and 119 (Supreme Court June 17, 1963) affects the New Jersey statutes relating to the reading of five verses of the Old Testament and the recitation of the Lord's Prayer at the opening of each school day (R.S. 18:14-77 and 78).

The United States Supreme Court in the above decision held unconstitutional a Pennsylvania statute and a Rule adopted by the Board of School Commissioners of Baltimore City, Maryland, pursuant to Maryland law, which required readings from the Holy Bible in the public schools. The Pennsylvania law stated as follows:

"At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

The Baltimore Rule was similar.

"Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. . . . Any child shall be excused from participating in the opening exercises upon written request of his parent or guardian."

It was the decision of the Supreme Court that these statutes violated the First and Fourteenth Amendments of the United States Constitution. The issue is whether the holding and rationale of this decision applies to the following New Jersey statutes.