> is, therefore, clear that Stockton's annual 'contractual aid' payment to the fire company is actually carrying on a governmental activity or function by an authorized method rather than a proprietary arrangement." *Cf. Cuna v. Bd. of Fire Com'rs Avenel,* 42 N.J. 299 (1964).

The language singled out for emphasis by the Supreme Court signifies clear recognition by that court of the "semi-official" status of certain volunteer fire companies and indicates that any such company should be considered an "agency" or "authority" of a municipality, a "political subdivision" of the State within the terms of N.J.S.A. 47:3-16. The criteria established in the *Stockton* case for determining whether a volunteer fire company enjoys "semi-official" status must be met, however, in order for the Destruction of Public Records Act to be applicable, *i.e.*, the municipality must contribute substantially to the expense and equipment of the volunteer fire company.

Therefore, volunteer fire companies which receive substantial municipal financial support are subject to the provisions of the "Destruction of Public Records Act."

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: HOWARD H. KESTIN
Deputy Attorney General

July 22, 1964

HONORABLE ROBERT A. ROE
Commissioner, Department of
Conservation & Economic Development
Trenton, New Jersey

MEMORANDUM OPINION – NO. 6

Dear Commissioner Roe:

You have requested our opinion as to whether the provisions of R.S. 23:3-22 concerning revocation of licenses following second convictions may be applied to a license for commercial fishing in the Atlantic Ocean issued by the Division of Fish and Game pursuant to R.S. 23:3-47.

For the reasons expressed herein, we are of the opinion that the provisions of R.S. 23:3-22 do not apply to a license issued pursuant to R.S. 23:3-47.

R.S. 23:3-22 provides:

> "If a person shall, within 5 years after conviction of any violation of the fish and game laws of this or any other State or of any provision of the State Fish and Game Code of this State, be again convicted of another

violation of the fish and game laws of this or any other State or of any provision of the State Fish and Game Code of this State, any fishing license or hunting license or bow and arrow license held by the person so convicted shall be void upon such conviction and it shall be the duty of such person to surrender the same to the Division of Fish and Game for cancellation. A license issued to such person within a period of 2 years from the date of such second conviction, except as otherwise provided by law, or of 3 years from the date of his third or subsequent conviction, shall be void. If he shall be convicted of fishing or hunting under any license so made void, or without a license, during any such period, he shall be punished by a penalty of $100.00 for each offense."

R.S. 23:3-47 provides:

"A person who intends to take fish with shirred or purse seines, otter or beam trawls in the waters of the Atlantic Ocean within the jurisdiction of this State shall make application to the board for a license for that purpose for each vessel proposed to be engaged in the fishing.

"The board, upon the receipt of the application and the payment to it of the sum of fifty dollars ($50.00) for each vessel proposed to be engaged in the fishing, shall issue to the applicant *a license for the vessel to take with shirred or purse seine, otter or beam trawl*, fish of any kind, excepting striped bass, in the waters of the Atlantic ocean within the jurisdiction of this State at a distance of not less than two miles from the coast line. The license shall expire on December thirty-first in the year in which it is issued." (Emphasis supplied).

The problem thus resolves itself into whether a license issued pursuant to R.S. 23:3-47 is a fishing license within the intendment of R.S. 23:3-22.

Sport fishing in the Atlantic Ocean with conventional rod and reel requires no license under our laws. It is only when there is a taking of fish in great quantities with the aid of nets and other particular gear for obviously commercial purposes that the State requires licenses. As can be readily discerned, R.S. 23:3-47 does not license fishing, as such, but does license *a manner* in which fish are to be removed, i.e., "a license *for the vessel to take with shirred or purse seine, otter or beam trawl*, fish of any kind * * *".

In construing statutes, effect must be given to the intendment of the legislature as expressed in the statute and that intention is to be taken or presumed according to what is consonant with reason and good discretion. *Clarkson v. Ley,* 106 N.J.L. 38 (E. & A. 1929); *In re Merril*, 88 N.J. Eq. 261 (Prerog. Ct. 1917).

R.S. 23:3-49 imposes severe sanctions for violations of R.S. 23:3-47. Any person violating the latter statute is chargeable with a misdemeanor subject to a penalty of $200 for the first offense and $500 for any subsequent offense and in either case any fish unlawfully caught, taken or killed are forfeited to the State.

If a license issued under R.S. 23:3-47 is construed to be a fishing license within the intendment of R.S. 23:3-22, then in addition to the foregoing sanctions, the owner and operator of a fleet of vessels conducting an otherwise legitimate operation as a means of his livelihood could well be deprived of such livelihood for infractions of some relatively minor fish and game law such as exceeding the bag limit for up-

land game or shooting a female pheasant. It is not consonant with reason or good discretion to ascribe such an intention to the legislature.

Moreover, examination of the legislative histories of R.S. 23:3-22 and R.S. 23:3-47 and of the two separate articles in which these two statutes appear, would seem to bolster a conclusion that the legislature never intended that the two statutes were to be construed as being in *para materia.* History of legislation may properly be examined to assist in ascertaining legislative intent. ***Bass v. Allen Improvement Co.,*** 8 N.J. 219, 226(1951).

R.S. 23:3-22, and most of the laws which are found in Article 1 of Chapter 3, is derived from Laws of 1903, c. 246, p. 526, which was entitled:

> "An Act for the protection of certain kinds of birds, game and fish, to regulate their method of capture and provide open and closed seasons for such capture and possession."

Although the Act speaks in terms of preventing the taking of fish from "any of the waters of this State" the Act provides at p. 535 that:

> "* * * The term 'waters of this State' for the purpose of this Act, shall be construed to mean all of the *fresh* waters of this State." (Emphasis supplied).

On the other hand, the history of R.S. 23:3-47 and all the other sections contained in Article 2 of Chapter 3, is quite different. The origin of R.S. 23:3-47 is readily traced back to the Laws of 1929, c. 238, §§ 2 and 3. The preamble to that Act reads:

> "An Act to regulate fishing by vessels other than those engaged in the taking of menhaden, in the *waters of the Atlantic Ocean,* within the jurisdiction of the State of New Jersey, with shirred or purse seines, otter or beam trawls, and to require a license for such fishing." (Emphasis supplied).

Most of the other sections of Article 2 can be traced back to Laws of 1896, c. 103, §§ 1, 2, 3, 4, pp. 151-152. The preamble to this Act reads as follows:

> "An Act to regulate fishing by steam and other vessels with shirred or purse seines, in the waters of the State of New Jersey and to require a license for such fishing."

Although this preamble refers to "waters" of the State, the sections of the Act make it abundantly clear that the legislative reference point is to the Atlantic Ocean.

Thus, we have on one hand R.S. 23:3-22, a section in an article referring to fresh water fishing, the subject matter of which is traceable to the 1903 Act, and on the other hand, R.S. 23:3-47, a section in another article which refers to fishing in the Atlantic Ocean and the licensing of vessels therein, as well as the regulation of the method by which fish may be taken from that body of water, the latter article

finding its origin in an 1896 Act.

The use of chapter, article and section headings has often been referred to by the courts in ascertaining the meaning of an ambiguous statute. *Knowlton v. Moore,* 178 U.S. 41, 20 S. Ct. 747, 44 L. Ed. 969 (1900); *Maguire v. Commissioner of Internal Revenue,* 313 U.S. 1, 9, 61 S. Ct. 789, 85 L. Ed. 1154 (1941). See also, *Crawford Statutory Construction* (1940), § 207.

In the matter of *In Re Green's Estate,* 76 N.J. Super. 559 (Cty. Ct. 1962) the court, in discussing the internal revenue code, at page 568 stated:

> "* * * it is not likely to be assumed that the difference between the two sections is unintentional."

Similarly, the presence of R.S. 23:3-22 and R.S. 23:3-47 in different articles of Chapter 3, Title 23 manifests a legislative intent which militates against the conclusion that a license issued pursuant to R.S. 23:3-47 is a license which is revocable upon invocation of R.S. 23:3-22.

We are of the opinion, therefore, that the provisions of R.S. 23:3-22 relating to the revocation of licenses upon second convictions may not be applied with respect to a license issued by the Division of Fish and Game pursuant to R.S. 23:3-47.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: REMO M. CROCE
Deputy Attorney General

July 22, 1964

ROBERT A. ROE, *Commissioner*
Department of Conservation
and Economic Development
Trenton, New Jersey

MEMORANDUM OPINION – NO. 7

Dear Commissioner Roe:

You have asked whether marine patrolmen, appointed pursuant to the provisions of N.J.S.A. 12:7-34.52, may exercise those police powers conferred upon inland harbor masters under the terms of N.J.S.A. 12:6-6.

For the reasons stated herein we are of the opinion that such marine patrolmen may exercise the powers vested in inland harbor masters.

The laws concerning the regulation of navigation on the waters of this state distinguish between inland waters and tidal waters. The legislature in 1909 authorized