

FORMAL OPINION

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

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the appointment of harbor masters to serve in any locality where an inland waterway shall have been constructed or improved by the State. N.J.S.A. 12:6-4. The legislature, in the same act, provided that such harbor masters would have the following general powers and duties:

“Such harbor masters shall have authority within the limits fixed by the board at the time of the appointment:

- “a. To supervise the use of the inland waterways in such locality;
- “b. To prevent permanent anchorage or obstruction of any character from being located therein;
- “c. To remove all temporary obstructions therefrom; and
- “d. In all other ways to protect the interests of the state and the public in the waterway by keeping it free from obstruction and open to navigation.” N.J.S.A. 12:6-5.

In addition to the general powers enumerated above, the same act provided for more specific powers with respect to power and other vessels using inland waterways.

“Such harbor masters shall have power:

- “a. To stop any vessel using any of the inland waterways of the State and to examine the same to see that it complies with the requirements of the law, whether in the matter of equipment, identification or otherwise;
- “b. To require the production of permits and licenses;
- “c. To arrest, without warrant, for violations of chapter 7 of this title (§ 12:7-1 *et seq.*) and any other laws of this state, committed in their presence;
- “d. To act as special officers for the detection and arrest of those who violate or infringe upon the provisions of chapter 7 of this title (§ 12:7-1 *et seq.*) and other laws relating or pertaining to the operation of vessels on the inland waterways and for the violations of the rules and regulations of the board; and
- “e. Generally to act as special officers for the enforcement of the laws of this state pertaining to power and other vessels, their operation and maintenance, and the enforcement and observance of the rules and regulations of the board.” N.J.S.A. 12:6-6.

This authority has not been affected by any subsequent legislative enactment, except as hereinafter indicated.

In 1952 the legislature extended the operation of Title 12 to tidal water in:

“An Act for the regulation of power vessels on the tidal waters within the jurisdiction of this State, fixing the penalties for violations, supplementing Title 12 of the Revised Statutes, and repealing ‘An Act for the regulation of power vessels, providing for the registration of the same and the licensing of the operators thereof, fixing the amount of license and registration fees and penalties for violations, and supplementing Title 12 of the Revised Statutes,’ approved June fourth, one thousand nine hundred and thirty-eight (P.L. 1938, c. 306). L. 1952, c. 157, p. 523.”

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This Act provided *inter alia* for the appointment of harbor masters "to supervise the use of tidal waters within the jurisdiction of this State." N.J.S.A. 12:7-50.

In addition to providing for the appointment of harbor masters, the 1952 Act further provided that the enforcement of such Act should be the same as that provided for inland waters.

The Act of 1952 does not specifically enumerate the powers and duties of harbor masters as did the Act of 1909 which established harbor masters for inland waterways. However, the Supreme Court of New Jersey, in determining the validity of "Navigation Courts", stated that "*section 9 of the tidal waters act, N.J.S.A. 12:7-52, in its language 'the procedure for such enforcement [by the Department] shall be the same as in the case of other violations * * * in other than tidal waters,' adopts by reference the provisions of the nontidal waters act * * *.*" *State v. Osborn*, 32 N.J. 117, 125 (1960).

This same reasoning was the basis of Formal Opinion 1956 No. 11, dated July 13, 1956, addressed to the then Commissioner of Conservation and Economic Development, holding that harbor masters could apprehend juvenile offenders of the State Navigation Laws and further holding that this authority extended equally to tidewater and inland waterway harbor masters.

The legislature subsequently enacted the "New Jersey Boat Numbering Act of 1962", effective June 11, 1962. L. 1962, c. 73; N.J.S.A. 12:7-34.36. This act provides for the numbering of vessels, the procedure for making application for certificate, procedure with respect to accidents, the establishment of a Boat Regulation Commission and for the enforcement of such act. N.J.S.A. 12:7-34.52 provides as follows:

"The department shall be responsible for the enforcement of this act. A supervisory force of marine patrolmen shall be formed and their appointments, rank and pay shall be regulated by the Civil Service Commission in compliance with the provisions of Title 11. Harbor Masters and Power Vessel Inspectors shall hereafter be known as marine patrolmen and those appointed in accordance with Title 12 of the Revised Statutes will serve in accordance with rules and regulations to be promulgated by the commission. L. 1962, c. 73, § 17."

This provision of the act of 1962 provides that harbor masters appointed in accordance with Title 12 shall henceforth be known as marine patrolmen. It further grants authority to hire a force of marine patrolmen under the Civil Service provisions of Title 11. This redesignation of both inland and tidal harbor masters as marine patrolmen does not divest the harbor masters of authority previously conferred but, on the contrary, indicates all harbor masters shall have the same authority.

We are of the opinion, therefore, that tidal water harbor masters, now termed marine patrolmen, have the same powers with respect to arrest and enforcement as conferred upon nontidal water harbor masters by N.J.S.A. 12:6-6.

Very truly yours,
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