

MAY 12, 1953.

HONORABLE DANIEL BERGSMAN,  
*Commissioner, Department of Health,*  
State House,  
Trenton, New Jersey.

## FORMAL OPINION—1953. No. 20.

DEAR COMMISSIONER:

Your department has raised the question whether it has the power to issue an "order of necessity" under N. J. S. A. 40:1-16(g) for the purpose of authorizing a municipal bond ordinance for sewer purposes without the usual down payment provided for in section 40:1-12, when the bond issue will not cause the municipality to exceed its debt limitation.

In my opinion, your department does have the power to make such an order, even though the municipality's debt limitation will not be exceeded, provided that your department makes the findings required by section 40:1-16(g), i.e. "that the expenditure and every part thereof, is necessary to protect the public health and to prevent or suppress a present menace to the public health of sufficient gravity to justify the incurrence of debt in excess of statutory limitations, and that no less expensive method of preventing or suppressing such menace exists."

Section 40:1-12 requires a down payment of five per cent of the amount of the bonds to be authorized by a municipal bond ordinance, but subsection (c) thereof declares that the provisions of this section shall not apply to a municipal bond ordinance "which authorizes obligations solely for purposes described in subsection 'a,' 'b,' 'c,' 'f,' 'g,' or 'h' of section 40:1-16 of this Title \* \* \*."

Even though section 40:1-16, of which the aforesaid section (g) is a part, deals with exceeding the debt limitation, it is believed that said subsection (g) is referred to in subsection (c) of 40:1-12 in order solely to describe the purpose of the bond issue to be exempted from the down payment, i.e., construction of a sewage disposal system, the need for which is sufficiently urgent from a health standpoint, and which constitutes the least expensive method of preventing or suppressing the health menace. In my opinion, the reference to the incurrence of debt in excess of statutory limitations, as contained in subsection (g), is intended merely to show the degree of gravity which must prevail in order to justify the order of necessity. It is not intended to indicate that such an order may be granted only when the debt limitation is to be exceeded. The contrary construction of section 40:1-12(c), read together with section 40:1-16(g), would lead to the absurd result that a municipality which is already heavily in debt should be ordered by the department to incur more debt for a sewage disposal system, while a municipality in good financial shape should not be ordered to do so, even though the menace to the public health were the same in both cases.

Yours very truly,

THEODORE D. PARSONS,  
Attorney General,

By: THOMAS P. COOK,  
*Deputy Attorney General.*