OCTOBER 28, 1955.

HON. GEORGE C. SKILLMAN,
Director of Local Government,
Commonwealth Building,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 37.

DEAR DIRECTOR:

You have requested our opinion as to the authority of a municipality to invest in its own bonds or other obligations. The inquiry falls into two parts:

a. May a municipality subscribe for its own bonds or notes at the time they are issued?

b. May a municipality purchase its own bonds or notes after they have first been sold to someone else?

We have reached the conclusion that New Jersey municipalities have the power to purchase their own obligations in the latter case, but not in the former.

N. J. S. A. 40:5—7.1 reads as follows:

"It shall be lawful for the board of chosen freeholders of any county, the governing body of any municipality or the board of education of any school district to use moneys, which may be in hand, for the purchase of war savings bonds or other obligations of the United States of America or bonds of any Federal Intermediate Credit Bank or Federal Home Loan Bank, which have a maturity date not greater than twelve months from the date of purchase, or bonds or other obligations of the county, municipality or school district. Said bonds or other obligations, if suitable for registry, may be registered in the name of the county, municipality or school district and the authorization to purchase these bonds or other obligations shall be by resolution adopted by a majority vote of all of the members of any such board of chosen freeholders, governing body, or board of education, as the case may be."

Section 40:5—7.3 further provides:

"Whenever the board of chosen freeholders of any county, the governing body of any municipality or the board of education of any school district shall purchase any bonds or other obligations of said county, municipality or school district, pursuant to this act, the said bonds or other obligations shall not be cancelled but may be sold as and when directed by resolution adopted by a majority vote of all the members of such board of chosen freeholders, governing body or board of education."

In our opinion, Section 40:5—7.1 contains an express grant of authority to a county, municipality or school district to buy its own bonds; and Section 40:5—7.3 authorizes each such governmental unit to resell such bonds by resolution of a majority of all the members of its governing body. One qualification should be added to the authority granted by the former section: it should not be construed to authorize the purchase of the issuer's own obligations at a price in excess of face value. Purchase at such a price is expressly authorized by N. J. S. A. 40:1—60.1 for the sole purpose of retiring the obligation, and the procedure in that case is subject to the safeguards established in that statute. Purchase under Section 40:5—7.1, however, can not be made for retirement, but only for purposes of investment or resale. See Section 40:5—7.3, *supra.* It would be against public policy for a municipal corporation to pay a price above the face value except in connection with retirement of the obligation: such a purchase would be speculative, to say the least; and the bonds could be resold at a lower price at private sale. The abuses made possible by the existence of such powers would be obvious. A reading together

of Sections 40:1—60.1 and 40:5—7.1 leads to the inference that if the Legislature had intended to allow purchases above face value under 40:5—7.1, it would have expressly said so as it did in 40.1—60.1.

As to the second inquiry, we do not read Section 40:5—7.1 as authorizing a municipality to use its surplus funds to subscribe for its bonds or other obligations at the time of the initial offering. For one thing, R. S. 40:1—43, et seq. requires that any permanent bond issue of more than $10,000.00 shall be sold in the first instance at public sale to the highest bidder. It would seem somewhat incongruous for a municipality to be competing with other bidders at an initial offering of its own obligations. Indeed, if such competition by the municipality were to be permitted, it would enable an unscrupulous governing body to evade the statute by bidding in the bonds and then disposing of them at private sale.

Furthermore, it is generally considered an unsound practice for a public agency to issue more debt than necessary for its corporate purposes. Thus, if a municipality has a surplus available for the purposes for which its bonds are proposed to be issued, the surplus should be appropriated for that purpose, and the amount of the proposed bond issue should be reduced accordingly. If, on the other hand, the municipality needs its surplus for expenses to be incurred over the near term, such moneys should not be subject to diversion to other purposes.

For these reasons, we construe the word "purchase", as used in the sections above quoted, to mean the acquisition from some other seller, and not the taking of moneys from one fund and putting them into another by going through the formality of subscribing to one's own bonds.

A municipality has no power to loan or invest its surplus moneys except as authorized by statute. See McQuillin *Municipal Corporations* (1950 Ed.), Section 38.14, and cases there cited.

In view of the policy considerations previously referred to, we believe that the statutes above quoted do not grant broader powers than those we have indicated. There being no other statutory or judicial authority on the point at issue, we conclude that a municipality does not have the power to invest in its own obligations at the time of the initial offering, or to purchase them at any other time at more than their face value.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.
By: THOMAS P. COOK,
Deputy Attorney General.

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NOVEMBER 4, 1955.

HON. JOSEPH E. MCLEAN, *Commissioner,*
Department of Conservation and Economic Development,
State House Annex,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 38.

DEAR COMMISSIONER:

You have requested our advice as to the right of the State and of the City of Atlantic City, respectively, to the sum of $906,000 allocated by the Federal Government to the construction of a beach erosion project in Atlantic City, pursuant to Public Law 727—79th Congress, approved August 13, 1946. That law provides for

COMMISSION ON INTERSTATE COOPERATION

Chapter 21, P. L. 1936, N. J. S. A. 52:9B-1 created the Commission on Interstate Cooperation. It is composed of five members of the Senate, five members of the Assembly and five officials of the state named by the Governor, N. J. S. A. 52:9B-4. Its primary functions, as outlined in N. J. S. A. 52:9B-1, are to

> "* * * carry forward the participation of the state as a member of the council of state governments * * * to confer with officials of other states * * * to formulate proposals for co-operation between this state and other states and with the federal government, and to organize and maintain governmental machinery for such purposes."

N. J. S. A. 52:9B-6 requires that "the commission shall report to the governor and to the legislature * * *."

It is seen that the essential functions of the Commission on Interstate Co-operation are to confer with officials of other states, to formulate proposals for co-operation between states and to report to the Governor and the legislature. In our opinion, these functions are principally in aid of the legislative process and, therefore, we advise you that its fiscal control should be exercised by the Legislative Budget and Finance Director.

INTERSTATE SANITATION COMMISSION

The Interstate Sanitation Commission has been created pursuant to a compact between the States of New Jersey, New York and Connecticut, R. S. 32:18-1 et seq. Appointments of New Jersey members are made by the Governor. It is required to make an annual report to the Governor and Legislature of each State making recommendations for legislative action, if advisable, R. S. 32:18-6. It is empowered to fix a date after which a municipality shall discharge only treated sewage into the waters under its jurisdiction, R. S. 32:18-11. It also has power to investigate and determine if its orders have been complied with and to bring actions to enforce compliance, R. S. 32:18-12. The New Jersey statute, R. S. 32:19-3, grants power to make rules, regulations and orders. See *Interstate San. Com'n. v. Township of Weehawken,* 1 N. J. 330 (1949). While some of the functions may be described as quasi-legislative, the statutes outlined above grant powers of an administrative nature, which, in our opinion, are vested in the executive branch. We, therefore, advise you that fiscal control of the Interstate Sanitation Commission is the function of the Treasury Department.

COMMISSION ON STATE TAX POLICY

The Commission on State Tax Policy was created by Chapter 157, P. L. 1945, as amended by Chapter 6, P. L. 1949, N. J. S. A. 53:pI-1. It consists of seven members, one a member of the Senate appointed by the President of the Senate, one a member of the Assembly appointed by the Speaker, and five citizen members appointed by the Governor.

N. J. S. A. 52:91-3 provides that:

> "The Commission shall engage in continuous study of the State and local tax structure and related fiscal problems, with particular attention to (a) all laws relating to the assessment and collection of taxes in this State; (b) all proposals for change in such laws; and (c) the impact of Federal tax laws on the state financial structure."

N. J. S. A. 52:9I-5 requires the commission to report the results of its studies to the Governor and the Legislature together with its recommendations for changes in the tax laws.