

regional planning program. This appropriation may be applied with Federal assistance under Title VII for planning grants to municipalities within the State of New Jersey. Chapter 448 of the Laws of 1948 (N.J.S.A. 13:1B-65) empowers the Department of Conservation and Economic Development, acting through the Commissioner, with the approval of the Governor, to serve as the State planning agency to apply for and accept the Federal planning grants.

Master plans for the physical development of a municipality are prepared in this State by planning boards (N.J.S.A. 40:55-1.10); no authority, statutory or otherwise, exists in the municipal governing body or any other local agency for the formulation of a master plan, in the absence of a planning board established pursuant to the Municipal Planning Act of 1953.

Zoning ordinances are promulgated under R.S. 40:55-33 by the municipal governing body or board of public works pursuant to the recommendations of a planning board or a zoning commission. The establishment of a planning board and its preliminary report is not prerequisite. As an alternative, the municipal governing body or board of public works may appoint a zoning commission from among citizens of the municipality to recommend appropriate zoning regulations and boundaries.

We therefore advise you that Federal and State financial assistance under Title VII of the Federal Housing Act and the State Appropriations Act for 1957-58 may be made available (1) for the drafting of master plans in municipalities in the population range fixed in the Federal act which have organized planning boards and (2) for the drafting of zoning ordinances in all municipalities eligible under the Federal act without regard to the existence of a municipal planning board.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

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JULY 12, 1957

HONORABLE CHARLES F. SULLIVAN
Director of the Division of Purchase and Property
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 10

DEAR DIRECTOR SULLIVAN:

You have requested our opinion concerning the power of the Division of Purchase and Property to secure additional building space for the Department of Agriculture by arranging for the erection of certain structures by private contractors either upon State-owned or privately-owned land. According to the proposed arrangement payment for the structures would be made over a period of time in the form of rentals with title to the structures (and to the land, in cases where it is not owned by the State) to remain in the contractor or other private party until the completion of all payments, whereupon it will vest in the State. The total payments under such plan

would approximate the purchase price of the structures and of the land upon which they are located if the State does not already own it. For the reasons hereinafter stated it is our opinion that you are without authority to enter into the above-described contracts.

It is clear that the proposed transaction is not a true lease. In essence it is the installment purchase by the State of a building. Payments to be made under the proposed agreement though designated rentals would not be compensation for the use of the building but would constitute the purchase price of the structure. *McCutcheon v. State Building Authority*, 13, *N.J.* 46 (1953). In this case it was held that such arrangement violated the debt limitation provisions of Article VIII, Section II, paragraph 3 of the New Jersey Constitution for the reason that the obligation to pay for the purchase price of such structures constituted an indebtedness of the State. It would seem that the proposed agreement is equally vulnerable to such constitutional objection.

In any event, however, the plan under consideration cannot be executed because of lack of statutory authority therefor. This point was not raised in the *McCutcheon* case because the statute there involved did purport to confer the necessary power to enter into lease-purchase contracts.

The power of a State officer to enter into contracts is limited by statute. *State v. Eric Railroad Co.*, 23 *N.J. Misc.* 203 (*Sup. Ct.* 1945). A public officer can make for the government he represents only such contracts or agreements, expressed or implied, as he is authorized to make. *Id.* at pp. 212, 213. We find no general authority in the Division of Purchase and Property to independently contract for the erection of buildings. Even that power which it has by virtue of the transfer of powers from the State House Commission with respect to the construction of new buildings in the City of Trenton is subject to the requirement that no debt or obligation shall be incurred therefor until the Legislature has been fully informed as to the proposed structure and the improvement is concurred in by both houses of the Legislature. *N.J.S.A.* 52:20-14 and 52:27B-64.

The authority to contract for the erection of buildings is found in line items of appropriation acts or, if an appropriation is not required (as where federal funds have been made available to the State), in some other statute clearly setting forth the power in question. That authority, once a specific appropriation is made or funds are otherwise available, is vested in the Director of the Division of Purchase and Property. *N.J.S.A.* 52:34-6, *et seq.* See *Formal Opinion* No. 9 (1956); *Memorandum Opinion to Honorable Robert L. Finley*, September 26, 1956. In the present situation we have neither funds appropriated to the Department of Agriculture for the construction of a building nor other legislation empowering the Director of the Division of Purchase and Property to act.

We point out also that the proposed arrangement may be open to the charge that it constitutes a donation of State property in violation of Article VIII, Section III, paragraph 3 of the New Jersey Constitution and *Wilentz v. Hendrickson*, 133 *N.J. Eq.* 447 (*Ch.* 1943), affirmed 135 *N.J. Eq.* 244 (*E. & A.* 1944).

Very truly yours,

GROVER C. RICHMAN, JR.
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