

JUNE 22, 1959

DR. DANIEL BERGSMA  
*Commissioner of Health*  
129 E. Hanover Street  
Trenton, New Jersey

## MEMORANDUM OPINION 1959—P-12

DEAR DR. BERGSMA :

We have been asked whether L. 1959, c. 20 provides means by which all municipalities may continue to permit within their boundaries the disposition of garbage by open dumping until June 30, 1960 or is limited in its application to municipalities which had taken advantage of a somewhat similar extension of a right to dispose of garbage by open dumping until March 31, 1959 contained in L. 1958, c. 38. Our conclusion is that the former alternative is the correct interpretation.

When the Department of Health was reorganized in 1947, L. 1947, c. 177, a Public Health Council was established. N.J.S.A. 26:1A-4. It was given power to adopt a State Sanitary Code covering *inter alia* "any subject affecting public health" and "prohibiting nuisances hazardous to human health". N.J.S.A. 26:1A-8. The component sanitary regulations of the Code and any amendments were to be adopted only after a public hearing. *Id.* On March 11, 1957 the Public Health Council held such a hearing to consider a proposed Chapter 8 of the Code entitled "Refuse Disposal." On May 13, 1957 the Council adopted Chapter 8 effective July 1, 1958. Regulation 1 of Chapter 8 declared dumps to be nuisances hazardous to human health. It provided that organic matter (garbage) and combustible matter may be disposed of on land in this State only through the use of sanitary landfills or incinerators complying with the regulations of the Air Pollution Control Commission. Before this regulation became effective, L. 1958, c. 38 was enacted on May 16, 1958. This permitted any municipality, by ordinance, to extend the cutoff date for the disposition of garbage in dumps prescribed by Regulation 1 of Chapter 8 of the State Sanitary Code until March 31, 1959. In the absence of such a statute the provisions of the Sanitary Code would have the force of law and would supersede ordinances in conflict. N.J.S.A. 26:1A-9.

As the March 31, 1959 deadline approached apparently there were some municipalities which considered that it would be a hardship if the disposition of garbage by open dumping ceased at that time. S 60 (1959), intending to afford some relief was passed by both Houses of the Legislature to amend the 1958 extender by changing the March 31, 1959 deadline to June 30, 1960. The Bill in this form was conditionally vetoed by the Governor. The Governor had the following objection :

"The factual basis for the bill is that there are some municipalities, primarily in rural districts, where the population density is very low and where municipal collection and disposal are not yet provided. It is claimed that application of the Code at this time would work hardship on such municipalities because of the small population in relation to the cost of securing equipment.

"In those instances where the concentration of population is low, I can appreciate that economic considerations may justify the proposed authority to extend the date. At the same time, there are other locations in highly

populated areas where open dumping is extensive, often close to residential areas and sometimes across the boundary line in a contiguous municipality. In these cases further extension cannot be permitted since open dumping provides a breeding place for rats, insects and other vermin.

"This factual conflict can only be resolved on an administrative basis so that the varying facts of each location can be taken into account.

"I am accordingly returning herewith Senate Bill No. 60 for reconsideration and with the recommendation that it be amended as follows:

"On page 1, section 1, line 11, immediately following the word 'prevail,' insert the following: '; provided, however, that no such ordinance shall take effect until it shall have been submitted to and approved by the State Commissioner of Health, who shall, in each case, make his determination on the basis of the extent of the need to establish such methods in the particular area affected.'"

The conditional veto message was issued March 9, 1959, several weeks before the previous extender would have expired. The Legislature accepted the objections of the Governor and repassed S 60 in the amended form which became law in L. 1959, c. 20 on April 14, 1959. At the time of the signing of the law by the Governor, his office made a press release which included the following comment on his action in signing the Bill into law:

"'Open dumping' disposal now in effect under ordinances extending non-compliance until March 31, 1959, may continue only if a new municipal ordinance extending the time period receives the approval of the State Commissioner of Health, whose determination will be based on the extent of the need to establish the approved methods in the particular locality."

The plain language of the law as it now reads includes within its scope any municipality. The municipality must both pass an ordinance and have it approved by the Commissioner of Health before it may lawfully permit disposition of garbage by open dumping after March 31, 1959. There is no limitation on the municipalities which may seek to take advantage of these provisions.

The suggestion has been made that the above quoted statement by the Governor in his conditional veto message and the excerpt from his press release, *supra*, may indicate that the law was only intended to provide a possible further extension for municipalities who had taken advantage of the 1958 extender. A fair reading of this material does not lend support to such a view. At the time of the Governor's conditional veto message, three weeks still remained in which municipalities might take advantage of the 1958 extender. There was then no limitation on the number of municipalities which might take advantage of the 1958 extender. The message speaks of municipalities where population density is low and municipal collection and disposal of garbage is not yet provided for. It does not speak of municipalities which had or might take advantage of the 1958 extender.

The statement in the press release does direct attention to municipalities having ordinances permitting open dumping of garbage until March 31, 1959 under the 1958 extender. However, the reason for this was to call the attention of these municipalities to the fact that even though S 60 opened an avenue of relief to them it was necessary for them to adopt a new ordinance extending the time period and to obtain the

approval of the Commissioner of Health before such an ordinance could become effective.

In summary, it is our opinion that both a fair reading of the statute and a consideration of the legislative history indicates that there is no limitation on the expression "any municipality" in L. 1959, c. 20. A municipality adopting an ordinance extending the time for open dumping under this act must obtain the approval of the Commissioner of Health before the ordinance can become effective.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: WILLIAM L. BOYAN  
*Deputy Attorney General*

JUNE 30, 1959

HONORABLE JOHN A. KERVICK  
*State Treasurer*  
State House  
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-13

DEAR MR. KERVICK:

You have requested our opinion as to the proper interpretation of paragraph 2 of N.J.S.A. 18:13-112.22 with regard to the payment of interest. This paragraph reads as follows:

"Upon the submission of such evidence as the board of trustees may require, the board of trustees shall refund to any member, at his request, that part of his accumulated deductions which were paid into the retirement system as a result of deductions based on payments to him over and above compensation as defined in this act."

The above quoted section provides for the refund to a member, at his request, of that part of his accumulated deductions which were paid into the retirement system based on deductions of payments to him over and above his actual compensation. Compensation is defined in N.J.S.A. 18:13-112.4(d) as "\* \* \* the contractual salary for services as a teacher \* \* \*". Accumulated deductions are defined by N.J.S.A. 18:13-112.4(a) as follows:

"'Accumulated deductions' means the sum of all the amounts, deducted from the compensation of a member or contributed by him, including interest credited prior to January 1, 1956, standing to the credit of his individual account in the annuity savings fund."

Thus, where a member has made contributions to the Teachers' Pension and Annuity Fund which were based on payments made to him over and above his actual contractual salary for services as a teacher, such member may request a return of these contributions including interest credited prior to January 1, 1956.