

not to make a profit, but rather to help keep home and family together. There is no indication that any Homemaker Service group has been operating at a profit or that the salaries paid to the Director and office help are higher than that usually paid to people of comparable ability and training. Second, the group benefited is large enough to be termed an "indefinite class;" certainly the services rendered by these groups are "beneficial to the community."

N.J.S.A. 16:1-51 declares the public policy of the statute to be "the protection of non-profit corporations, societies and associations organized for religious, charitable, educational or hospital purposes." This policy would be furthered by holding the local homemaker service groups to be "charitable" within the meaning of the statute. Thus, notwithstanding the fact that the homemaker service groups are not "charitable" in the traditional sense of hospitals, churches, etc., it would seem that they come within the scope of the applicable legislation.

Very truly yours,

DAVID D. FURMAN
Attorney General

NOVEMBER 30, 1959

THOMAS S. DIGNAN, *Acting State Director*
Civil Defense and Disaster Control
Department of Defense
Armory Drive
Trenton 10, New Jersey

MEMORANDUM OPINION—P-23

DEAR MR. DIGNAN:

You have requested our opinion as to whether or not the Division of Civil Defense may print paid advertisements in a State Civil Defense magazine, "The Siren." We are of the opinion that the question must be answered in the negative.

The Office of Civilian Defense Director is a State administrative body within the State Department of Defense. *N.J.S.A.* App. A:9-37. It is a general rule of statutory construction that only those powers are granted to an administrative agency which are expressly or by necessary implication conferred. *Welsh Farms Inc. v. Bergsma*, 16 N.J. Super. 295 (App. Div. 1951); Sutherland, *Statutory Construction*, 3d Edition, §6603. Further, a basic principle accepted in this State is that "an administrative officer is a creature of legislation who must act only within the bounds of authority delegated to him. . . ." *Elizabeth Federal Savings & Loan Association v. Howell*, 24 N.J. 488 (1957).

The purpose of the act creating the Office of Civilian Defense is to provide for the health, safety and welfare of the people of this State and to aid in the prevention of damage to and destruction of property during any emergency. *N.J.S.A.* App. A:9-33. The Legislature, in furthering this purpose has not conferred any express authority to negotiate contracts for the sale of advertisements as it has, for instance, expressly given the power to contract as is necessary and convenient to cooperate with the Federal government in wartime. *N.J.S.A.* App. A:10-1(e).

Nor can it be fairly implied that such a power is incidental or necessary to carry out the stated purpose. In this regard you call our attention to N.J.S.A. App. A:9-63 (L. 1951, c. 72, p. 462, §6), which reads as follows:

"Acceptance of services, equipment, supplies, or funds from individuals, firms or corporations

Whenever any person, firm, or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purpose of civil defense, the State, acting through the Governor, or such political subdivision, acting through its executive officer or governing body, may accept such offer and upon such acceptance the Governor of the State or executive officer or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer."

The same bill also added the immediately preceding section (N.J.S.A. App. A:9-62) entitled "Acceptance of services, equipment, supplies, or funds from Federal government." This section was enacted to allow the State and municipalities to receive contributions from the Federal government permitted by 50 U.S.C.A. §2281(i), enacted on January 12th of the same year. The statement appended to the New Jersey bill indicates the intent of the Legislature in passing both of these sections was to allow "the State and political subdivisions to *accept* gifts, grants or loans for civil defense purposes." (Emphasis ours)

In view of the identity of wording of the two New Jersey sections and the obvious purpose of the former, we conclude that N.J.S.A. App. A:9-63 was intended merely to allow the acceptance of contributions and the like from private sources. Therefore, the above quoted section cannot carry with it the power to contract for the sale of advertising space since the purchase cannot be construed as a gift, grant or loan nor can the sale of space be construed as an acceptance contemplated by the act.

In reaching this conclusion, we are not unmindful of the value "The Siren" will have in advancing the interests of civil defense and we note that section App. A:9-63 allows the acceptance of funds for that purpose. Therefore, you may accept gifts to defray the cost of publication. While the appearance of display advertisements of private concerns might be interpreted by readers as an official endorsement contrary to the public policy of this State, a formal public acknowledgment of such financial support printed in the magazine at the discretion of the Division is certainly proper. Authority to acknowledge any gifts is an incidental power which may be fairly implied from the above quoted section.

For these reasons we conclude, and you are so advised, that the Division of Civil Defense may not accept paid advertisements for insertion in a State Civil Defense magazine.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: G. DOUGLAS HOFF, JR.
Legal Assistant