

JUNE 20, 1961

HONORABLE SALVATORE A. BONTEMPO
*Commissioner of Conservation and
Economic Development*
205 West State Street
Trenton, New Jersey

FORMAL OPINION 1961—No. 9

DEAR COMMISSIONER :

You have requested our opinion as to whether a limited-dividend housing corporation may be incorporated under the authority of Laws of 1949, c. 184, N.J.S.A. 55:16-1 et seq., as a wholly owned subsidiary of a business corporation organized pursuant to Title 14 of the Revised Statutes. In our opinion such incorporation would be lawful subject to the restrictions set forth below.

N.J.S.A. 55:16-6 provides for the incorporation of limited-dividend housing corporations in the following manner :

“Any 3 or more citizens of the State, as individuals or as the representatives of 1 or more banks, foundations, labor unions, employers’ associations, veterans’ organizations or insurance companies or any combination of the foregoing, may form a housing corporation for the aforesaid purposes by making, signing, acknowledging and filing a certificate as required for other corporations formed under Title 14, Corporations, General, of the Revised Statutes, * * *”

The statute was enacted to encourage capital investment to alleviate the housing shortage in New Jersey by offering tax exemptions for projects providing decent, safe and sanitary dwellings for families in need of housing. N.J.S.A. 55:16-2, 18. The Legislature intended that such exemptions would encourage capital investment in the projects. At the same time, such corporations are subject to certain operating conditions among which are the control and supervision by the Department of Conservation and Economic Development over the projects, N.J.S.A. 55:16-11 to 17; and restrictions on payments of dividends to stockholders, N.J.S.A. 55:16-5, 6.

However, while the operations and profits are limited, the above quoted language of N.J.S.A. 55:16-6 does not prevent ownership, following formation pursuant to that section, by a Title 14 corporation. Delineation of the several types of business associations is not designed to be restrictive or exclusive as to the type of organization that may have control over or eventually function as a limited-dividend housing corporation. The apparent intent is to permit those enumerated entities to engage in limited-dividend housing activities despite other statutory limitations or disabilities which are found in legislation conferring authority to organize and function as such associations.

N.J.S.A. 55:16-6 permits 3 citizens of this State, as individuals, to form a limited-dividend housing corporation. At the same time, absent any statutory limitation to the contrary, such individuals may act as incorporators pursuant to the terms of R.S. 14:2-1 et seq. as agents for and in the name of a Title 14 corporation. In turn, all of the stock of the limited-dividend corporation may be purchased and held by a Title 14 corporation.

N.J.S.A. 55:16-19 provides that the provisions of law applicable to ordinary stock corporations shall, except in the case of conflict with the Limited-Dividend Housing Corporations Law, apply to corporations organized under the latter statute. N.J.S.A. 14:7-1 and 14:7-2 require that every corporation shall have at least three directors selected from its stockholders or from the stockholders of a corporation owning not less than 25% of its stock. The matter of directors not being dealt with in the Limited-Dividend Housing Corporations Law, this provision applies to corporations organized thereunder. Thus when a Title 14 corporation is the sole stockholder of a limited-dividend housing corporation, three directors of the latter corporation must be stockholders in the Title 14 corporation.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DAVID M. SATZ, JR.
First Assistant Attorney General

JUNE 20, 1961

HONORABLE FRANK A. VERGA
Deputy Attorney General
Chief, Bureau of Consumer Frauds
1100 Raymond Boulevard
Newark 2, New Jersey

FORMAL OPINION 1961—No. 10

DEAR MR. VERGA:

In your letter of May 4, 1961 you outlined a situation concerning which your office has received information and requested our advice. The situation is as follows:

Ice cream manufacturers often lend refrigeration equipment to retailers. These units have four to twelve wells or recesses wherein ten-gallon containers are placed. Ice cream is then scooped out of the open containers and placed on ice cream cones or hand packed in small cartons. The refrigeration unit bears the lending manufacturer's brand name. Some retailers are using these units to store and sell other brands of ice cream. Additionally, we are advised that retailers have used the borrowed units to store other frozen foods.

Such use other than to store ice cream of the brand name constitutes a violation of several statutes of this State. Ice cream manufacturers and dealers should be so advised.

Section 2 of the Laws of 1960, Chapter 39 (N.J.S.A. 56:8-2) states that:

"[t]he act, use or employment by any person of any . . . misrepresentation . . . in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice. . . ."

The customer who purchases ice cream which is scooped out of open ten-gallon containers located in the wells or recesses of the refrigeration unit, may see only the