

Capehart Act, is not subject to the Corporation Business Tax Act (1945), N.J.S.A. 54:10A-1 *et seq.*

Very truly yours,

ARTHUR J. SILLS  
*Attorney General*

By: ALAN B. HANDLER  
*Deputy Attorney General*

---

JANUARY 9, 1963

HONORABLE H. MAT ADAMS  
*Commissioner, Conservation and  
Economic Development*  
Trenton, New Jersey

MEMORANDUM OPINION—P-1

DEAR COMMISSIONER ADAMS:

You have asked whether a county housing authority can be created under the provisions of the Local Housing Authority Law, N.J.S.A. 55:14A-1 *et seq.*, in a county where several local housing authorities have already been created under this same act. In our opinion the county may establish a county housing authority, but the area of its operation is limited to those municipalities who have not already created a local authority and who by ordinance consent to join such a county authority.

N.J.S.A. 55:14A-4 provides for the creation of housing authorities. With respect to county housing authorities the applicable portions of N.J.S.A. 55:14A-4 are as follows:

“Any governing body may, by resolution in the case of counties, \* \* \*, create a body corporate and politic to be known as the ‘Housing Authority of \_\_\_\_\_’ inserting the name of the \* \* \* county creating such authority. Such authority shall constitute an agency and instrumentality of the \* \* \* county creating it. \* \* \* Where there is no housing authority in existence in any municipality of a county, the governing body of said county may create a housing authority; *provided*, the Director shall certify that there is a need for housing within said county; thereafter, no municipality within said county shall create an authority or join in the creation of a regional authority without the consent of the governing body of said county and without the consent of the county’s housing authority.”

The “area of operation” of a county authority is defined by N.J.S.A. 55:14A-3(e) as follows:

“\* \* \* (3) in the case of a housing authority of a county, shall include all of the county except that portion which lies within the territorial limits of a municipality or group of municipalities for which a housing authority has been created; with respect to any municipality which has not created or joined in the creation of an authority, a housing authority of a county shall not include such municipality within its area of operation, unless it has first

secured the approval of such action by said municipality (such approval to be evidenced by an ordinance adopted by the governing body of the municipality)."

It is obvious from N.J.S.A. 55:14A-4 that where no municipality has created a housing authority or has joined with another municipality in creating a regional housing authority, the governing body of a county may establish a county housing authority, provided the state director [the executive officer of the Public Housing and Development Authority in the State Department of Conservation and Economic Development, N.J.S.A. 55:14A-3(n)] certifies that there is a need for housing within said county. This opinion, however, deals with a different set of facts, namely, the situation in a county where, before the creation of county housing authority, there is first established one or more municipal housing authorities or one or more regional authorities composed of two or more municipalities.

In a county where one or more municipal housing authorities have been created or one or more regional housing authorities have been created by two or more municipalities [N.J.S.A. 55:14A-3(e)(2)] a county housing authority thereafter can be established. N.J.S.A. 55:14A-3(e)(3). However, a county housing authority established in a county in which there exists a municipal or regional housing authority cannot operate within the territorial limits of the municipality or group of municipalities for which a housing authority has been created and cannot operate within any other municipality unless that municipality first approves by ordinance its inclusion within the area of operation of the county housing authority. If a municipality has been included with its consent within the area of operation of a county housing authority, it cannot thereafter create its own authority or join in the creation of a regional authority. N.J.S.A. 55:14A-4.

It is to be noted that the state director must certify the need for housing within the county only in the case where there is no housing authority in existence in *any* municipality within the county. There is no requirement for approval by the director for the establishment of a county housing authority in a county where municipal or regional housing authorities exist in some but not in all municipalities within that county.

Very truly yours,

ARTHUR J. SILLS  
*Attorney General*

By: WILLIAM BLOHM, JR.  
*Deputy Attorney General*

MAY 3, 1963

Ross BECK, *Secretary*  
Monmouth County Board of Taxation  
Freehold, New Jersey

MEMORANDUM OPINION—P-2

DEAR MR. BECK:

You have asked our opinion as to the method of apportioning the tax burden between constituent municipalities of a consolidated school district which have elected