

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

to operate as a regional school district beginning July 1, 1963. Our conclusion is that in the case at hand the apportionment of taxes for the school year beginning July 1, 1963 should be made on the basis of the average daily enrollment of pupils in the municipalities constituting the school district.

The Township of Upper Freehold and the Borough of Allentown, in Monmouth County, now comprise a consolidated school district. N.J.S.A. 18:5-17.1 *et seq.* In December of 1962, by referendum, the voters of this consolidated school district determined to adopt the form of a regional school district. N.J.S.A. 18:8-1 *et seq.* As a result, the constituent municipalities will become a regional school district effective July 1, 1963. N.J.S.A. 18:8-26.

N.J.S.A. 18:5-17.14 provides that in a consolidated school district taxes are apportioned among the constituent municipalities comprising the school district on the basis of apportionment valuations as defined in N.J.S.A. 54:4-49. But the apportionment of taxes for a regional school district may be made either upon the basis of (a) apportionment valuations or (b) average daily enrollment of pupils from the constituent municipalities in the regional school district during the preceding year. N.J.S.A. 18:8-26; see also N.J.S.A. 18:8-17. The newly formed Upper Freehold Township regional school district chose the latter basis of apportionment. In so doing, the tax burden of the Borough of Allentown was increased while that of the Township of Upper Freehold was correspondingly decreased.

On April 3, 1963 the Commissioner of Education certified to the Monmouth County Board of Taxation the average daily enrollment of the constituent municipalities of Upper Freehold regional school district and stated that such statistics were to be used as the basis for making the apportionment of local school taxes in the tax year of 1963 for the fiscal school year beginning July 1, 1963. The Borough of Allentown has questioned this certification on the ground that the now existing consolidated school district does not become a regional school district until July 1, 1963, and contends, therefore, that the county tax board should use apportionment valuations as the basis for apportioning school taxes. Although the apportionment of taxes is made in April of the tax year (N.J.S.A. 54:4-52) and the taxes are raised in the current calendar tax year, in the case at hand the taxes will be raised to meet a budget for the fiscal year of the regional school district beginning July 1 of the tax year. Therefore, in our opinion, the apportionment of taxes should be made in accordance with the law applicable to the type of school district for which the funds are to be raised and expended.

School taxes are raised to meet expenditures during a "school year." A school year is that period beginning on July 1 of one year and ending on June 30 of the following year. R.S. 18:14-76. In the case at hand, the moneys to be expended for the consolidated school district during its fiscal year beginning July 1, 1962 and ending June 30, 1963 were, in fact, raised on a valuation basis during the tax year 1962. The consolidated school district, therefore, has available to it sufficient moneys to complete the present school year, at the end of which the consolidated school district will cease to exist. We understand that this conforms to the usual practice, namely, that taxes for most school districts in the state are raised in a given *calendar tax year* for the *fiscal school year* beginning on July 1 of that year and ending on June 30 of the following year. This practice appears to be supported by the provisions of R.S. 54:4-45 and N.J.S.A. 54:4-75.

R.S. 54:4-45 provides that the clerk or other proper officer of a school district on or before March 1 in each year must transmit to the county board of taxation a

certified statement of the amount of moneys appropriated for school purposes "for the *school year* for which such appropriations are made * * *." (Emphasis added.) The moneys appropriated for local school purposes are paid by the municipality to the custodian of school moneys on this basis: 20% of the annual appropriation must be paid within 40 days after the beginning of the school year, and the remainder is paid from time to time as requested by the board of education, but prior to the last day of the school year. N.J.S.A. 54:4-74.

It is noted that R.S. 18:7-79 provides for a different method of raising taxes for school purposes applicable to some of school districts which operate under the provisions of Chapter 7 of Title 18 of the Revised Statutes, commonly known as Chapter 7 school districts. This section permits the raising of taxes in a calendar year to cover school budget needs during the same calendar year, that is to say, for the last half of the preceding fiscal school year and for the first half of the ensuing fiscal school year. However, assuming but not deciding, that the provisions of R.S. 18:7-79 may be made applicable to a regional school district by virtue of the reference to Chapter 7 in R.S. 18:8-14, the consolidated school district in question has been appropriating moneys on a fiscal school year basis and the appropriation for the regional school district has been made for the fiscal year beginning July 1, 1963.

It is evident that although the municipalities still comprise a consolidated school district at the time the commissioner of education certifies the average daily enrollment for purposes of the apportionment, the resultant taxes will be utilized for the ensuing school year, commencing July 1. The taxes raised will be supporting a regional school district. Logic dictates that if the taxes are to be expended to support a regional school district they should be apportioned according to the regional school district law.

In our opinion, therefore, in this case the taxes to be raised in the 1963 tax year for the fiscal school year of the regional school district beginning July 1, 1963 should be apportioned on the basis selected by the voters of that district. As noted above, the apportionment basis selected was that of average daily enrollment of pupils from the constituent municipalities in the regional school district.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: JOSEPH A. HOFFMAN
Deputy Attorney General

JULY 19, 1963

HONORABLE ROBERT J. BURKHARDT
Secretary of State
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-3

DEAR SECRETARY BURKHARDT:

We have been asked whether voting machines equipped with the printed return mechanism manufactured by the Automatic Voting Machine Division of the Rockwell