

JULY 19, 1963

HONORABLE ROSCOE P. KANDLE, M.D.
Commissioner, Department of Health
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-4

DEAR COMMISSIONER KANDLE:

You have asked whether the State Department of Health has authority to promulgate regulations in order to enforce the provisions of Chapter 52, Laws of 1961 (N.J.S.A. 24:6B-1 *et seq.*), the law dealing with the registration and regulation of drug manufacturing and wholesale drug businesses. This is to confirm informal advice previously given to you that you have the power to promulgate necessary regulations.

Chapter 52 of the Laws of 1961 (N.J.S.A. 24:6B-1 *et seq.*) is an act entitled: "An Act concerning the drug manufacturing and wholesale drug businesses, amending Section 24:3-1 of the Revised Statutes, supplementing subtitle 1 of Title 24 of the Revised Statutes and making an appropriation therefor." The title clearly states that Chapter 52 supplements subtitle 1 of Title 24. R.S. 24:2-1, which is in subtitle 1 of Title 24, states:

"The State Department (of Health) shall execute and enforce the provisions of this subtitle and make and publish all necessary rules and regulations providing for the enforcement and carrying into effect of any provision of this subtitle and for the government of its officers and employees.* * *"

Generally, amendments and supplements to existing statutes "are to be construed together with the original act to which they relate as constituting one law * * *." *City of Newark v. Rockford Furniture Co.*, 4 N.J. Super. 205, 208, 209 (App. Div. 1949). As the court there said:

"Thus, the amendment or supplement becomes a part of the original statute as if it had always been contained therein. In the enactment of amendments or supplements, the earlier act on the same subject is generally presumed to have been within the knowledge and view of the Legislature, which is regarded as having adopted the new statute in the light thereof and in reference thereto." *Id.* at 209.

It is noted that subtitle 1 of Title 24 deals generally with food and drugs, the inspection, condemnation and regulation of various foods and drugs and the enforcement of the laws and regulations relating thereto. The enforcement provisions are contained in Chapter 2 of the subtitle, and these provisions relate to the commodities and businesses set forth in the various chapters of the subtitle. Chapter 52 of the Laws of 1961 merely adds to the subtitle another class, namely, drug manufacturing and wholesale drug businesses, and imposes certain requirements in connection with the conduct of such businesses.

Therefore, it is our opinion that the regulatory powers given to you by R.S. 24:2-1 apply to all of the provisions of subtitle 1 of Title 24, including Chapter 52 of the Laws of 1961 which has been made a part of that subtitle.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: WILLIAM BLOHM, JR.
Deputy Attorney General

JULY 19, 1963

ROSS R. BECK, *Secretary*
Monmouth County Board of Taxation
Hall of Records
Freehold, New Jersey

MEMORANDUM OPINION—P-5

DEAR MR. BECK:

The Monmouth County Board of Taxation has asked our opinion as to the taxability of land acquired by the Small Business Administration, a governmental entity created by federal statute.

In your request for this opinion you have indicated that the Small Business Administration acquired title to a particular portion of property on February 29, 1960 by a "Sheriff's Deed." It is assumed that title was thus acquired by virtue of mortgage foreclosure proceedings in which the Small Business Administration was the foreclosing mortgagee under a mortgage to secure a loan given by it to the particular property owner-mortgagor under the Small Business Administration Act, 15 U.S.C.A. § 631, et seq.

Under the Act creating the Small Business Administration, it is expressly provided that any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due thereon to the state or any political subdivision thereof, 15 U.S.C.A. § 646. Consequently, there can be no question that the subject property was taxable to the owner thereof at the time the Small Business Administration held a mortgage security interest on the property.

We are of the opinion, however, that the property became tax exempt when the fee title was acquired by the Small Business Administration upon the foreclosure of its mortgage lien. It is settled law that in the absence of Congressional consent, a Federal instrumentality cannot be subjected to the plenary taxing power of the states or any of its political subdivisions. *McCulloch v. Maryland*, 17 U.S. (4 Wheat,) 316 (1819). Nor can the property of any Federal instrumentality be subject to local taxation. *Clallam County, Wash. v. United States*, 263 U.S. 341, 44 S. Ct. 121 (1923).

These principles are applicable to the Small Business Administration and any property owned by it. The Small Business Administration was created expressly to serve Federal purposes as declared in the operative enabling legislation, 15 U.S.C.A. §§ 631, 633. This was recognized by the United States Supreme Court in *Small Business Administration v. McClellan*, 364 U.S. 447, 450, 81 S. Ct. 191, 195 (1960) wherein it was stated: