FORMAL OPINION

March 18, 1964

HON. GEORGE C. SKILLMAN, *Director*
Division of Local Government
137 East State Street
Trenton, New Jersey

FORMAL OPINION 1964—No. 2.

Dear Mr. Skillman:

You have requested our opinion as to whether a municipality which receives payments from the State of New Jersey as compensation for loss of tax revenue under the Round Valley act of 1956[1] or the Spruce Run act of 1958[2] has the right to retain these moneys exclusively for local municipal purposes or must pay a portion thereof for county and school purposes.

In our opinion, for the reasons set forth herein, a municipality receiving moneys from the State in lieu of taxes for property acquired by the State for use in the Round Valley or Spruce Run Reservoir projects cannot retain such receipts exclusively for local municipal needs but must apply such moneys to local municipal, county, and school purposes in accordance with the proportions established under the general tax rate of the municipality in the year preceding the year of receipt.

N.J.S.A. 58:20-1 *et seq.* authorized and directed the Commissioner of Conservation and Economic Development to acquire in the name of the State an area of land in Hunterdon County for the purpose of establishing a reservoir to be known as the Round Valley Reservoir. N.J.S.A. 58:21-1 *et seq.* authorized and directed the Commissioner to make a comparable acquisition of an area also located in Hunterdon County for the purpose of establishing a water supply system, to be known as the Spruce Run Reservoir. The State was authorized to make the necessary land acquisitions by purchase or by the exercise of its eminent domain powers.

When originally enacted, the Round Valley act of 1956 contained the following provision:

> "To the end that municipalities may not suffer loss of taxes by reason of the acquisition and ownership by the State of New Jersey of property therein, the State Treasurer upon certification of the Commissioner of Conservation and Economic Development shall pay annually to each municipality in which property is acquired pursuant to this act a sum equal to that last paid as taxes upon such land for the taxable year immediately prior to the time of its acquitision" (L. 1956, c. 60, §5).

In 1957 this section was amended as follows:

> "To the end that municipalities may not suffer loss of taxes by reason of the acquisition and ownership by the State of New Jersey of property therein, the State Treasurer upon certification of the Commissioner of Conservation and Economic Development shall pay annually on October 1 to each municipality in which property is acquired pursuant to this act (a) a sum equal to that last paid as taxes upon such land for the taxable year immediately prior to the time of its acquisition and (b) in addition, for a period of 13 years beginning with the year 1958 the following amounts: in

the first year a sum of money equal to that last paid as taxes upon improvements upon such land for the taxable year immediately prior to the time of its acquisition; and thereafter the following percentages of the amount paid in the first year, to wit, second year 92%; third year 84%; fourth year 76%; fifth year 68%; sixth year 60%; seventh year 52%; eighth year 44%; ninth year 36%; tenth year 28%; eleventh year 20%; twelfth year 12%; thirteenth year 4%.

"All sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of the said municipalities, and to accomplish this end such sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt" (L. 1957, c. 215, §3).

L. 1958, c. 33, §6, N.J.S.A. 58:21-6, which is contained in the statute establishing the Spruce Run Reservoir, is identical in all respects to the above-quoted 1957 amendment of the Round Valley act.

The interdict of each statute is that "all sums of money received by the respective municipalities as compensation for loss of tax revenue pursuant to this section shall be applied to the same purposes as is the tax revenue from the assessment and collection of taxes on real property of the said municipalities * * *". The purposes to which revenues derived from the assessment and collection of taxes on real property may be applied are specified by statute. They are local municipal purposes (N.J.S.A. 54:4-42), public school purposes (N.J.S.A. 54:4-39, 54:4-45), state purposes (N.J.S.A. 54:4-40), and county purposes (N.J.S.A. 54:4-41). *See e.g.: Village of Ridgefield Park v. Bergen County Bd. of Taxation,* 31 N.J. 420 (1960), *appeal dismissed* 365 U.S. 648, 81 S. Ct. 834 (1961). It is clear, therefore, that a municipality receiving moneys from the State under N.J.S.A. 58:20-5 or N.J.S.A. 58:21-6 cannot retain such receipts exclusively for local municipal needs and avoid appropriate payments for other statutory purposes.

The statutes also specify the method by which moneys received by municipalities from the State must be applied for the respective needs of municipalities, school districts and the county. It is thus provided that "* * * Such sums shall be apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt" (N.J.S.A. 58:20-5; N.J.S.A. 58:21-6). Thus, to formulate an example, if in the year preceding the year of receipt, under the general tax rate of the municipality, 15% of all tax revenues were apportioned for county purposes, 75% were apportioned for local and regional school purposes and 10% were apportioned for local municipal purposes, then the same respective proportions of the moneys received by the municipality from the State would have to be applied to the county, the school districts and the municipality.

If the Legislature intended to permit municipalities to retain for local purposes all payments made by the State, it obviously would not have amended L. 1956, c. 60, §5 by enacting L. 1956, c. 215, §3, which amendment was repeated verbatim in L. 1958, c. 33, §6, and which states specifically that such receipts must be applied to the same ends and for the same purposes as ordinary revenues from real estate taxes. Nor can it be urged that the absence of a specific directive in the statutes permitting municipalities to retain such payments was a mere matter of legislative inadvertance.

Certainly, if the Legislature intended that such payments or contributions be retained by the recipient municipalities, it would have made explicit provision to accomplish this result. As stated in *Duke Power Co. v. Patten,* 20 N.J. 42, 49 (1955), "If that had been intended, it could have been easily provided for". The Legislature, for example, in connection with contributions in lieu of taxes which are made by the Palisades Interstate Park Commission, did make such an explicit provision permitting their retention for municipal purposes, L. 1947, c. 73, §4; N.J.S.A. 54:4A-7.

These payments or distributions by the State are designed to compensate municipalities for the loss of tax revenues; they may be considered in the nature of voluntary contributions in lieu of taxes. As stated in *State v. Lanza,* 27 N.J. 516, 524, 525 (1958), *appeal dismissed* 358 U.S. 333, 79 S. Ct. 351 (1959):

> "* * * [I]t is an inherently voluntary subsidiary measure to avert economic crisis in the functioning of its [the State's] own local subdivisions of government as a direct result of its own action for the common good of its inhabitants in a critical area of state responsibility, the basic object of the legislation. It was a secondary or minor means of warding off undue hardship and failure in local administration of government by its own agencies that would otherwise be an incident of a course taken to meet a great necessity of the people as a whole. The losses thus reimbursed have no direct relation to the compensation to be made for the real property to be acquired for the service of the general current and reasonably foreseeable needs. * * * And, moreover, the recompense thus provided for the loss of tax revenue shall be applied 'to the same purposes as is the tax revenue' from the assessment and collection of taxes on real property of the particular municipality, and 'apportioned in the same manner as the general tax rate of the municipality for the tax year preceding the year of receipt,' a course of action in which the State is directly interested. * * *".

Affected municipalities are not unjustly deprived of the "contributions in lieu of taxes" paid by the State under the statutes merely because they must pay a proportion thereof to the county and local or regional school districts. Upon the acquisition of municipal lands by the State for reservoir purposes, the municipalities, of course, were deprived of ratables and tax revenues. So also were the county and school districts. The municipalities, however, also received a corresponding benefit in connection with taxes to be raised by them for county and school purposes since the loss of these ratables would result in proportionate decreases in county and school taxes. And, the tax payments for school and county purposes of other municipalities which did not lose such ratables, would be proportionately increased. If affected municipalities were not required by the statutes to make some partial payment of the revenues received from the State for county and school needs, they would clearly be enriched at the expense of other municipalities within the county required to share in these costs. Moreover, even if these partial payments to the county and school districts by affected municipalities create surplus revenues for the school districts and the county in the year in which payments are made, the annual budgets for the year succeeding the year of payment would be diminished and all municipalities would benefit proportionately in these reduced budget requirements.

Thus, while it is apparent that the statutes do not furnish full compensation for the losses of tax revenues, there is no constitutional precept which would require an

arithmetically perfect adjustment. "It is well-recognized that absolute equality in taxation is a practical impossibility and that the Legislature in setting up taxing procedures is not held to a standard of perfection". *Totowa v. Passaic County Bd. of Taxation,* 5 N.J. 454, 464 (1950); cf. *Berkeley Heights Tp. v. Div., etc., Dept. Taxation,* 68 N.J. Super. 364, 369 (App. Div. 1961), *certif. denied* 36 N.J. 138 (1961). Moreover, the State has the right to determine, as it has by these statutes, the manner in which its own subdivisions for local self-government shall share in revenues for their respective public purposes. *State v. Lanza, supra; City of Passaic v. Passaic County Bd. of Taxation,* 31 N.J. 413 (1960).

We advise you, therefore, that under N.J.S.A. 58:20-5 and N.J.S.A. 58:21-6, municipalities receiving payments from the State of New Jersey may not retain these receipts exclusively for local municipal purposes but must pay an apportioned share thereof to the county and school districts in accordance with the general tax rate of the municipality for the tax year immediately preceding the year in which any such payment is received.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: ALAN B. HANDLER
Deputy Attorney General

1. L. 1956, c. 60, §1 *et seq.*; N.J.S.A. 58:20-1 *et seq.*, as amended L. 1957, c. 215, §1 *et seq.*
2. L. 1958, c. 33, §1 *et seq.*; N.J.S.A. 58:21-1 *et seq.*

May 6, 1964

MR. JOSEPH P. LORDI, *Director*
Division of Alcoholic Beverage Control
Department of Law and Public Safety
1100 Raymond Boulevard
Newark, New Jersey

FORMAL OPINION 1964 - NO. 3

Dear Director Lordi:

We have been asked for an interpretation of Chapter 152, Laws of 1962, as it applies to specific situations hereinafter described. Chapter 152 generally limits the direct or indirect ownership of alcoholic beverage retail licenses to no more than two per person.

The first question posed is whether a landlord who is the owner of more than two alcoholic beverage retail licenses may make a lease with a tenant who operates a retail liquor store with rent based in part upon a percentage of gross sales. The question is whether such a lease gives the landlord a beneficial interest in an additional license contrary to the provisions of Chapter 152.