

FORMAL OPINION

July 22, 1964

THELMA PARKINSON SHARP
President, Civil Service Commission
State House
Trenton, New Jersey

FORMAL OPINION 1964 - NO. 4

Dear Mrs. Sharp:

We have been asked whether the freeze on appointments imposed by the Faulkner Act* between the date of the municipal election and the date the newly elected officers take office applies only in the year of the effective date of an optional plan of government adopted pursuant to the Act or both in that year and in all subsequent years in which elections are held.

In our opinion, the freeze applies only in the year of the effective date of an optional plan of government adopted pursuant to the Act.

The freeze on appointments is stated in N.J.S.A. 40:69A-208(a) in the following language:

"No subordinate board, department, body, office, position or employment shall be created and no appointments shall be made to any subordinate board, department or body, or to any office, employment or position, including without limitation patrolmen and firemen, between the date of election of officers and the date the newly elected officers take office under any optional plan."

This language taken by itself, would admit of either construction. However, a consideration of N.J.S.A. 40:69A-26 and an analysis of the structure of the Faulkner Act indicate that N.J.S.A. 40:69A-208(a) applies only during the year in which a new plan of government was adopted.

N.J.S.A. 40:69A-26 states that upon the adoption of any of the optional forms of government under the Faulkner Act, the municipality shall be governed by the plan adopted, by those provisions of the Faulkner Act which are common to all plans, and by the general law, "subject to the transitional provisions of Article 17" of the Act (N.J.S.A. 40:69A-150 to 40:69A-210). N.J.S.A. 40:69A-208(a) is a transitional provision of the Faulkner Act. Therefore, N.J.S.A. 40:69A-208(a) is applicable only as a transitional measure, at the time of the adoption of the new plan.

An analysis of the structure of the Faulkner Act leads to the same conclusion. The Faulkner Act enacted as L. 1950, c. 210, was divided into seventeen articles. Article 17 is captioned, "Additional Provisions Common to Optional Plans".

Subarticle H of article 17 is entitled "Succession in Government". This subarticle did not originally contain the above quoted paragraph (a) of N.J.S.A. 40:69A-208. The four sections that it did contain dealt only with the transitional aspects of instituting a new form of government in the year of the effective date of an optional plan.

The above quoted language of paragraph (a) of N.J.S.A. 40:69A-208 was incorporated into the law by the enactment of section 7 of L. 1954, c. 69. The amendatory act re-enacted what had been section 17-59 of the Faulkner Act as paragraph (b) of that act, which today appears as N.J.S.A. 40:69A-208(b).

ATTORNEY GENERAL

Subarticle I of article 17 of the Faulkner Act is entitled "General Provisions". It contains three sections. The first is a severability provision, the second gives the short title and the third gives the effective date. Subarticle A of article 17 deals with elections in general. Subarticle B deals with regular municipal elections. Subarticle C deals with officers and employees. General provisions for incorporation and powers of a municipality governed by a form of government under the Faulkner Act are found in Article 2 (N.J.S.A. 40:69A-26 to 30). If the language with which we are concerned was intended to be applicable to election years generally, it would have been much more appropriate for the draftsmen of the amendatory legislation to have included it in one of the other subarticles of article 17 referred to above or in article 2.

The language with which we are concerned stands in sharp contrast to the freeze on appointments in certain Walsh Act cities that took effect after every election. For example, R.S. 40:73-5 banned appointments "between the first Tuesday in May and the third Tuesday in May in any year in which an election of a board of commissioners for that city shall be held." See *Abbott v. Donohoe*, 10 N.J. Misc. 1037 (Sup. Ct. 1932). As is well known, the Walsh Act was carefully considered by the draftsmen of the Faulkner Act. The difference in the language used in the amendment to the Faulkner Act is significant and suggests a different meaning.

Because N.J.S.A. 40:69A-208(a) is a transitional provision referred to in N.J.S.A. 40:69A-26 and because the aforesaid section has been deliberately placed in a subtitle which applies only to the year of the date of the adoption of a new form of government, it is our opinion that the freeze on appointments imposed by the Faulkner Act applies only in the year of the effective date of the optional plan of government adopted pursuant to the Act.

Very truly yours,
ARTHUR J. SILLS
Attorney General

By: MARILYN H. LOFTUS-SCHAUER
Deputy Attorney General

*N.J.S.A. 40:69A-1 *et seq.*, officially entitled the Optional Law, N.J.S.A. 40:69A-210.