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available duty in the department which his employer is willing to assign to him and that such incapacity is likely to be permanent and to such an extent that he should be retired." N.J.S.A. 43:16A-6(1) and N.J.S.A. 43:16A-7(1).

December 30, 1964

HONORABLE RAYMOND F. MALE  
*Commissioner, Department of Labor & Industry*  
John Fitch Plaza  
Trenton, New Jersey

FORMAL OPINION, 1964 — NO. 10

Dear Commissioner Male:

You have requested our opinion as to whether or not the following situations are covered by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25, *et seq.*:

- a. A sewerage authority created by a municipality having a population of less than 45,000 people; and
- b. A school district having a population of less than 45,000 people.

It is our opinion for the reasons stated herein that the foregoing governmental bodies are covered by the New Jersey Prevailing Wage Act.

The Act states *inter alia*:

"Every contract in excess of \$2,000.00 for any public work to which any public body is a party shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workmen employed in the performance of the contract and the contract shall contain a stipulation that such workmen shall be paid not less than such prevailing wage rate . . . ." N.J.S.A. 34:11-56.27.

The Act is remedial in nature in that it seeks to insure payment of a minimum wage to all employees engaged on a public works project. The Legislature declared it to be the public policy of this State that there should be established:

" . . . a prevailing wage level for workmen engaged in public works in order to safeguard their efficiency and general well being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being." N.J.S.A. 34:11-56.25.

Similar acts have been upheld as a valid exercise of the state's police power for the

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public welfare. *E.g., Roland Electrical Co. v. Mayor & City Council*, 124 A. 2d 783, 789-790 (Md. Ct. of App., 1956); also see *Annotations* at 50 A.L.R. 1480, and 132 A.L.R. 1297. The Act is one of modern social legislation as it regulates business practices. 3 *Sutherland Statutory Const.* (3rd. ed.) § 5702 (1964 P.P.). Even though such laws constitute a regulation of business, they must be given "a liberal interpretation to accomplish their long-range social objectives." *Ibid.* § 7207. The usual strict interpretation of laws involving a penalty are not applicable in such cases. *Ibid.* It is a remedial statute which should be liberally construed. See *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, 248 (4th Cir., 1952) and cases cited therein dealing with interpretation of the Federal Fair Labor Standards Act.

A municipality or any other political subdivision of the State derives its existence and power from the Legislature. The Legislature, therefore, has the power to regulate the practices and define the scope of the powers of such a political subdivision. *Aikin v. Kansas*, 191 U.S. 207, 24 S. Ct. 124, 48 L. Ed. 148 (1903).

As stated above, the Act covers "every contract . . . for *any public work* to which any *public body* is a party . . ." N.J.S.A. 34:11-56.27. (Emphasis supplied).

A "public body" is defined as:

" . . . the State of New Jersey, any of its political subdivisions, except municipalities having a population of less than 45,000, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or any of its political sub-divisions." N.J.S.A. 34:11-56.26(4).

"Public work" as defined by the Legislature,

" . . . means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program." N.J.S.A. 34:11-56.26(5).

The only exception mentioned in the Prevailing Wage Act is a *municipality* having a population of less than 45,000 people. Prior to its enactment, the bill read: "\*\*\*except municipalities having a population of less than 35,000." This figure was, however, raised to 45,000 prior to the enactment. The legislative history of the Act does not disclose any express reason for the exception.

The apparent legislative purpose of the Prevailing Wage Act was to encompass all public works projects except those specifically excepted. Had the Legislature intended to except other public works, they could have done so. The definition of a "public body", N.J.S.A. 34:11-56.26(4) is clear, and the *only* exception is a *municipality* having a population of less than 45,000. In any event, the guiding principle in the interpretation of statutes is to ascertain and effectuate the legislative intention and purposes. The intention is the essence of the law. *N.J. State Bd. of Optometrists v. S.S. Kresge Co.*, 113 N.J.L. 287 (Sup. Ct. 1934), modified and affirmed 115 N.J.L. 495 (E. & A. 1935). Since it is the avowed public policy of this State to establish a prevailing wage level for workmen engaged in public works, any exception to contracts covered must be narrowly construed. In interpreting the Fair Labor Standards

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Act of 1938, 29 U.S.C. § 213(a)(2), the United States Supreme Court refused to give a narrow interpretation to an exemption for "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce." In discussing the aforementioned exemption, the Supreme Court stated,

" . . . Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. *To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.*" *Phillips Co. v. Walling*, 324 U.S. 490, 493, 89 L. Ed. 1095, 65 S. Ct. 807 (1944). (Emphasis supplied).

A sewerage authority is a *public body* created by a municipality pursuant to N.J. S.A. 40:14A-4. N.J.S.A. 40:14A-4(b) states that:

"The governing body of any municipality may, by ordinance duly adopted, create a *public body* corporate and politic under the name and style of 'the . . . sewerage authority' . . ." (Emphasis supplied).

A sewerage authority is an independent body which is a political subdivision of the state.

"Every sewerage authority shall be a public body politic and corporate constituting a *political sub-division* of the State established as an instrumentality exercising public and essential governmental functions to provide for the public health and welfare and shall have perpetual succession and have the following powers:

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"(11) to enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary . . ." N.J.S.A. 40:14A-7 (Emphasis supplied).

Therefore, since a sewerage authority is a "political subdivision" of the State as defined by the Sewerage Authority Act and a "public body" as defined by the Prevailing Wage Act, (N.J.S.A. 34:11-56.26(4)), you are advised that any sewerage authority created by a municipality regardless of population is a public body within the meaning of the Prevailing Wage Act.

A school district is also "a separate corporate entity, distinct and free from the government of the municipality except to the extent that the Legislature has provided for its connection or interdependence. R.S. 18:6-21; N.J.S.A. 18:6-23 and 34." *Gualono v. Bd. of Estimate of Elizabeth School Dist.*, 39 N.J. 300, 303 (1963).

R.S. 18:6-21 states: "The board shall be a body corporate . . ." A board of education is a completely independent body: "The board shall have power, in and by its corporate name, to sue and be sued; and may submit to arbitration and determination any and all matters of dispute or controversy which arise, within the terms and provisions of chapter twenty-four of Title 2A, Administration of Civil and Criminal Justice, of the New Jersey Statutes (N.J.S. 2A:24-1, *et seq.*)." N.J.S.A. 18:6-23. A

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board of education has the further powers to: "purchase, lease, receive, hold, and sell property, real and personal, and to take and condemn land and other property for school purposes . . ." N.J.S.A. 18:6-24.

Although it may seem that the Act creates an anomalous situation when a sewerage authority or school district in a municipality of less than 45,000 persons is within the Act, while the municipality itself is not, the Legislature so prescribed the law. Remedial legislation of this type must be given a broad interpretation to effect the public policy of this State.

For the foregoing reasons, it is our opinion that both a sewerage authority and a school district with a population of less than 45,000 persons come within the meaning of a "public body" as defined in N.J.S.A. 34:11-56.26(4) and are therefore subject to the provisions of the Prevailing Wage Act.

Very truly yours,  
ARTHUR J. SILLS  
*Attorney General*

By: MORRIS YAMNER  
*Deputy Attorney General*

December 29, 1964

HONORABLE JOHN A. KERVICK  
*State Treasurer*  
State House  
Trenton, New Jersey

FORMAL OPINION 1964—NO. 11

Dear Mr. Kervick:

You have asked for our opinion as to the effect of N.J.S.A. 43:10-18.6a on the eligibility for membership in the Public Employees' Retirement System of those persons employed by Essex County subsequent to March 26, 1961 and those persons in the employment of Essex County prior to the aforesaid date.

The statute, N.J.S.A. 43:10-18.6a, reads as follows:

"Any person employed by a county of the first class after the effective date of this act having a population of over 800,000 shall become a member of the Public Employees' Retirement System of New Jersey as a condition of employment and shall be entitled to all the rights and benefits and subject to all obligations of other members of said system, provided that the board of chosen freeholders of such county has adopted and submitted to the Public Employees' Retirement System a resolution providing for such membership and agreeing that said county shall be subject to the same liabilities with respect to such members as all other counties participating in the Public Employees' Retirement System. Such employees shall not be