

FORMAL OPINION

May 13, 1976

JOHN LAEZZA, *Chairman*
Local Finance Board
Department of Community Affairs
363 West State Street
Trenton, New Jersey

FORMAL OPINION NO. 14 — 1976

Dear Chairman Laezza:

You have asked our opinion whether the recent amendment (chapter 353 of the Laws of 1975) to the Local Public Contracts Law (N.J.S.A. 40A:11-1, *et seq.*, hereinafter the "Act") alters the exception of professional services from the competitive bidding requirements of the Act. You are advised that the Act continues to provide a complete exception from open competitive bidding for all professional services as defined by the Act.

The Act provides that units of local government shall bid by public advertisement for every contract or agreement for the performance of work or the furnishing of materials and supplies when the monies for same shall be paid from public funds and will exceed \$2500 in the fiscal or calendar year. N.J.S.A. 40A:11-4. All contracts, agreements and purchases which are publicly advertised shall be awarded to the lowest responsible bidder. N.J.S.A. 40A:11-6.1; N.J.S.A. 40A:11-16. However, there are certain subject matters which are excepted entirely from the competitive bidding requirements of the Act. N.J.S.A. 40A:11-5. One such exception is for professional services. N.J.S.A. 40A:11-5(a). This exception was first codified as chapter 198 of the Laws of 1971 although the courts apparently had read a similar exception into the Act previously. See *Samuel v. South Plainfield*, 136 N.J.L. 187 (E. & A. 1947); *Murphy v. West New York*, 132 N.J.L. 595 (Sup. Ct. 1945). The question presented by your inquiry is whether this exception has been in any way altered by the recent amendment to the Act.

The exception from competitive bidding requirements for "professional services" contained in N.J.S.A. 40A:11-5(1) (a) has been amended by adding a further exception for "extraordinary unspecifiable services". The sub-section in its present form, with the part added by the recent amendment underlined, reads as follows:

"...professional services or extraordinary unspecifiable services which cannot reasonably be described by written specifications. The application of this exception to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible and the Division of Local Government Services is authorized to establish rules and regulations limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action and the resolution awarding each contract and shall cause such resolution to be printed once in a newspaper authorized by law to publish its legal advertisements." (Emphasis added).

It has been suggested that the phrase "which cannot reasonably be described by written specifications" might be read to qualify not only the new exception for "extraordinary unspecifiable services" but also the exception for "professional ser-

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VICES." However, we have concluded upon a full review of the statute that such a reading would not be consistent with the probable legislative intent. * First of all, it is significant that the exception for "professional services" is a well established one in the Local Public Contracts Law. It is therefore reasonable to assume that if the Legislature had intended to alter this exception, it would have done so in clear and unequivocal terms. See *Singleton v. Consolidated Freightway Corp.*, 64 N.J. 357, 362 (1974). Such a clear and unequivocal expression of legislative intent cannot be found in the recent amendment. Secondly, the suggestion that the phrase "which cannot be described by written specifications" should be read to modify not only "extraordinary unspecifiable services" but also "professional services" would be inconsistent with the rule of the last antecedent. This canon of statutory construction erects a presumption that a modifying phrase which is not set off by a comma refers only to its last antecedent, in this instance "extraordinary unspecifiable services". *New Jersey Underwriters Association v. Clifford*, 112 N.J. Super. 195, 204 (App. Div. 1970). This conclusion is further strengthened by the fact that the remainder of the recent amendment to N.J.S.A. 40A:11-5(1) (a) expressly refers solely to the new exception for "extraordinary unspecifiable services" and not to "professional services". Thus, the second sentence of the sub-section as amended provides:

"The application of this exception to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible and the Division of Local Government Services is authorized to establish rules and regulations limiting the use of this exception in accordance with the intention herein expressed."

Therefore, a reasonable inference may be drawn that the Legislature did not intend in any way to modify or change its policy that professional services are to be expected from public competitive bidding but intended only to define a new category of exempt services — "extraordinary unspecifiable services" — and apply the new portions of N.J.S.A. 40A:11-5(a) to that term.

You are accordingly advised that chapter 353 of the Laws of 1975 has not modified or altered in any way the blanket exemption from open competitive bidding professional services under the Act.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: ARTHUR WINKLER
Deputy Attorney General

* We recognize that the statement of the Senate County and Municipal Government Committee to Senate Bill 3090 (which was enacted as chapter 353 of the Laws of 1975) stated in part that the amendments to the Act would "require(s) public advertisement for bids on any professional services for which specifications can be drawn." This portion of the Committee statement refers to section one of the amending legislation as the provision which would accomplish the described change in the Act. This apparently was designed to describe an earlier draft of Senate Bill 3090, which had redefined exempt "professional services" in section one as applying only to services which cannot reasonably be described by written specifications. However, there is nothing in section one of Senate Bill 3090 as ultimately enacted which even arguably achieves

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that result. Therefore, it must be concluded that the Senate Committee statement inadvertently and mistakenly referred to the draft despite the amendments made to it by the Committee.

May 13, 1976

HONORABLE RAYMOND H. BATEMAN
Senator, 16th District
21 East High Street
Somerville, New Jersey 08876

FORMAL OPINION NO. 15—1976

Dear Senator Bateman:

You have asked for an opinion as to whether Assembly Bill No. 1330, which grants property tax relief to homeowners and certain additional tax relief to homeowners who are senior citizens,¹ is violative of the New Jersey Constitution. For the reasons set forth below, you are advised that the property tax relief provided to homeowners is permissible. However, the relief provided for senior citizens over and above the relief provided general homeowners is unconstitutional.

Article VIII, §1, par. 1 provides in part that "property shall be assessed for taxation under general laws and by uniform rules. . . ." Under this provision:

"Exemptions from taxation. . .that are based not upon any characteristic possessed by such property, or upon the uses to which it is put, but upon the personal status of the owners of such property, are void." *Tippett v. McGrath*, 70 N.J.L. 110, 113 (Sup. Ct. 1903) *aff'd o.b.* 71 N.J.L. 338 (E. & A. 1904).

Therefore, in order to provide property tax relief based upon home ownership, a constitutional amendment was necessary to permit preferential treatment based upon "the personal status of the [home] owners".

The recent constitutional amendment adopted in November 1975 permits such preferential treatment for homeowners. The amendment, *inter alia*, adds paragraph 5 to Art. VIII, § 1 which states as follows:

"The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates, and subject to such limits, as may be provided by law."

A-1330 is designed to implement the aforesaid 1975 constitutional amendment. It provides a "homestead exemption" to every homeowner in the State "calculated at \$2.00 per \$100 to \$10,000 of equalized value, or two-thirds of equalized value, whichever is less, plus 25% of the effective tax rate in the municipality wherein the exemp-