

FORMAL OPINION

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-

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tion is claimed, multiplied by \$10,000 of equalized value or two-thirds of equalized value whichever is less." Sec. 2a of A-1330.

The issue arises whether the relief granted in A-1330 constitutes a "rebate or credit" as used in Art. VIII, § 1, par. 5.² Although A-1330 describes the relief provided as a "homestead exemption",³ the amount set forth in the formula is an actual partial satisfaction of the homeowner's final tax bill.⁴ It is thus similar to the tax "credits" listed in the Internal Revenue Code (see § 40 to § 46) which provide partial satisfaction of tax liability.

The history of Art. VIII, § 1, par. 5 indicates an intent to use the term "rebate or credit" broadly. Earlier versions specifically limited the amount of relief that could be afforded and required that such relief be in relation to household income. S. Con. Res. 122, 140 (1974). The resolution finally adopted excluded such limitations apparently on the basis that they were too detailed and inflexible. See Public Hearing on SCR 120, 121, 122, 137, 139, 140; Assembly Committee Substitute for ACR 175, 177, 178; ACR 176, as amended; and ACR 180 and 187 at p. 22 (1974). Assemblyman Walter E. Foran while conducting the hearing on the resolution adopted made the following statement:

"The passage of this resolution by both Houses of the Legislature and its subsequent adoption by the electorate would provide flexibility for the Legislature in dealing with property tax relief generally. The specific provisions of such relief would then appear in individual bills and the provisions of such bills could be altered as situations changed." Public Hearing on Assembly Substitute for ACR 175, 177 and 178, at p. 1-2 (1975).

The intent to provide the Legislature with flexibility coupled with the nature of the remedy in the form of a partial satisfaction of the homeowner's tax liability leads us to the conclusion that the relief provided in A-1330 constitutes a "rebate or credit" as used in Art. VIII, § 1, par. 5.

A-1330 also grants senior citizens who are homeowners an exemption for "an additional \$2.00 per \$100 on equalized value up to \$5,000 or to an aggregate of \$15,000 of equalized value or two-thirds of equalized value whichever is less; provided, however, in no instance shall the amount of the homestead exemption be greater than 50% of the property tax otherwise due." Sec. 2a of A-1330. The second issue presented, therefore, is the constitutionality of providing such an additional credit to senior citizens. This requires a brief review of the constitutional provision relating to senior citizen property tax reform.

Prior to 1960, senior citizens were treated in the same manner as general homeowners in accordance with the uniformity provisions of the Constitution. In order to provide preferential tax relief for senior citizens, a constitutional amendment was adopted in 1960 and was subsequently amended in 1962, 1970, 1971 and 1975. This constitutional provision, set forth in Article VIII, § 1, par. 4, presently limits senior citizens tax relief to a maximum \$160 deduction from property taxes.⁵ It also provides the following limitation:

"Any such deduction when so granted by law shall be granted so that it will not be in addition to any other deduction or exemption to which the said citizen and resident may be entitled. . ." Art. IV, § 1, par. 4

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This provision has been interpreted as prohibiting a senior citizen from simultaneously taking advantage of the veteran's property tax deduction permitted by Article VIII, § 1, par. 3. See Attorney General Formal Opinion 1962-3. Therefore, in order to permit senior citizens to additionally take advantage of the general homestead rebate or credit provided by the 1975 constitutional amendment in paragraph 5, it was necessary to amend the senior citizen tax provisions in paragraph 4. Accordingly, paragraph 4 was amended in the same 1975 referendum to provide that "Said [senior] citizen. . . may receive in addition any homestead rebate or credit provided by law."

In view of the aforementioned constitutional mandate in Article VIII, § 1, par. 1 requiring uniformity in property taxation, it is clear that deviations from that standard must be set forth in explicit terms. The senior citizen tax relief authorized in Article VIII, § 1, par. 4 limits such relief to a maximum \$160 deduction from property taxes and cannot be used as the basis for the additional senior citizen homestead credit proposed in A-1330. To do so would grant senior citizens total preferential tax relief in excess of the \$160 maximum deduction authorized in paragraph 4. Not only did the 1975 constitutional amendment retain the \$160 senior citizen tax benefit limitation in paragraph 4, but also the change in language in paragraph 4 only permitted senior citizens to take advantage of a general homestead exemption in addition to the \$160 senior citizen tax relief otherwise provided in paragraph 4. If senior citizens were permitted an additional tax credit beyond the \$160 maximum authorized in paragraph 4 and the general homestead relief in paragraph 5, it would render meaningless the \$160 maximum in paragraph 4. This is in contravention of well-settled canons of construction that all provisions are to be given full effect. *Hackensack Bd. of Education v. Hackensack*, 63 N.J. Super. 560, 569 (App. Div. 1960).

The homestead exemption authorized in paragraph 5 may be enjoyed by all "homeowners, residential tenants and net lease residential tenants". Absent specific enabling language relating to senior citizens only, it cannot be used as the basis for permitting an additional homestead exemption for senior citizens in derogation of the uniformity mandate of the New Jersey Constitution. Therefore, it is our conclusion that insofar as A-1330 provides such additional tax benefits for senior citizen homeowners, these provisions are unconstitutional.

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

HERBERT K. GLICKMAN

Deputy Attorney General

1. Senior citizen as used in this opinion refers to the following three classes:
 - (1) Any citizen and resident of this State who is 65 years or older.
 - (2) Any citizen and resident of this State who is permanently and totally disabled according to the provisions of the Federal Social Security Act.
 - (3) Certain surviving spouses of a deceased senior citizen and resident of this State as described in Art. VIII, § 1, par. 4 of the New Jersey Constitution.
2. The question whether the constitutional amendment permits the Legislature to provide relief only for homeowners and not for tenants, who are also included in Art. VIII, § 1, par. 5, need not be reached. A-1330 takes effect only upon the passage of an income tax and Assembly Committee Substitute for Assembly Bill No. 1513, which provides such a tax, contains an income tax credit for tenants.

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3. An "exemption" from property taxes is usually regarded as a reduction in the real property assessment. For instance, the original constitutional amendment in Art.VIII, §1, par. 4 adopted in 1960 permitted an \$800 "exemption" from the property tax assessment of senior citizens. This "exemption" was eventually changed to the present \$160 "deduction" from the tax bill of senior citizens.
4. Sec. 14 of A-1330 specifically refers to the satisfaction of the homeowner's tax liability as a "credit". After the Director of Taxation certifies the amount due each taxing district for homestead exemptions, and the State Treasurer distributes to each taxing district the amount so certified, Sec. 14 provides that the local tax collector "shall *credit* the November 1 property tax payment in the amount due under the homestead exemption."
5. Legislation implementing the senior citizen deduction is set forth in N.J.S.A. 54:4-80.40, *et seq.*

May 17, 1976

CHRISTOPHER DIETZ, *Chairman*
MARIO R. RODRIGUEZ, *Associate Member*
VERNER V. HENRY, *Associate Member*
New Jersey State Parole Board
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 16-1976

Gentlemen:

You have requested an opinion concerning the administrative implementation of the commutation credits provided in N.J.S.A. 30:4-140 for purposes of determining the parole eligibility date of an inmate under the jurisdiction of the Parole Board. Specifically, you have inquired as to whether the present administrative practice by which the entire statutory entitlement is credited to an inmate on his incarceration and subject to divestment only for flagrant misconduct is consistent with the language and intent of the governing legislation. It is our opinion that this method for the application of good time credits is entirely in conformity with N.J.S.A. 30:4-140 since the statute requires that the prescribed credits are to be deducted from the minimum and maximum term of a sentence and fully accrued to the benefit of an inmate as of the date of the commencement of incarceration.

N.J.S.A. 30:4-140, as amended by Laws of 1957, c. 27, governs the allowance of time credits on account of continuous orderly deportment of inmates in our state correctional institutions. This statutory section provides as follows:

"For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional institution for a minimum-maximum term *there shall be remitted to him* from both the maximum and minimum term of his sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein. When a sentence contains a fractional part of a year in either the minimum or maxi-