

FORMAL OPINION

September 1, 1976

JOANNE E. FINLEY, M.D., M.P.H.

*Commissioner*

Department of Health

Health and Agriculture Building

John Fitch Plaza

Trenton, New Jersey 08625

FORMAL OPINION NO. 22—1976

Dear Commissioner Finley:

The Department of Health has asked for an opinion as to the validity of provisions of an Administrative Code adopted by the Union County Board of Chosen Freeholders (hereafter the Freeholders) abolishing the Union County Mosquito Extermination Commission and transferring the powers and duties of the Commission to another County agency. For the following reasons, you are advised that the provisions in question are inconsistent with both the Optional County Charter Law, L. 1972, c. 154, N.J.S.A. 40:41A-1 *et seq.*, and the State laws creating State and county mosquito extermination commissions. L. 1948, c. 383, as amended L. 1971, c. 207, N.J.S.A. 26:9-13 *et seq.*

On May 1, 1976, the Freeholders, acting pursuant to the Optional County Charter Law, adopted by ordinance an Administrative Code establishing a new county manager plan of government. See N.J.S.A. 40:41A-45 *et seq.* and 40:41A-125. The Code states that all County boards, committees, commissions, and other County agencies previously established by the Freeholders are abolished unless specifically provided otherwise in the Code. Another provision specifically includes the Union County Mosquito Extermination Commission among the abolished agencies. The Code vests the functions of the former Mosquito Control Commission in a new Division of Mosquito Control and Extermination headed by a Mosquito Control and Extermination Superintendent, who in turn is responsible to the Director of Public Works. Our inquiry into the validity of the Freeholders' action in abolishing the Mosquito Extermination Commission and transferring its functions to another County agency requires a brief examination of the provisions of the Optional County Charter Law under which the Freeholders purported to act as well as the law governing mosquito extermination commissions.

The Optional County Charter Law permits the voters of each county, upon the recommendation of an elected Charter Study Commission, to decide by referendum whether to reorganize the existing county governmental structure by adopting any of four optional plans of government. The statute confers on counties that elect to adopt a new charter broad powers to abolish or reorganize existing county agencies the establishment of which is required by State law, so long as the functions of the abolished or reorganized agencies continue to be performed. Thus, N.J.S.A. 40:41A-26 provides in pertinent part:

“Nothing in this act shall be construed to prevent counties from abolishing or consolidating agencies the existence of which has heretofore been mandated by State statute providing that such abolition or consolidation shall not alter the obligation of the county to continue providing the services previously provided by such abolished or consolidated agency.”

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It is therefore necessary to determine at the outset whether a county mosquito commission is a purely *county agency* for purposes of this law.

L. 1948, c. 383, § 1 (N.J.S.A. 26:9-13) provides that the county board of freeholders of each county shall appoint a county mosquito extermination commission. The act originally provided with respect to the composition of county mosquito commissions:

“Each county mosquito extermination commission shall be composed of six members in addition to the Director of the State Experiment Station and the Commissioner of Health, who shall be ex-officio members *and who shall cooperate with them for the effective carrying out of their plans and work. . . .*” N.J.S.A. 26:9-14 (emphasis added).

In December 1973, the following provision was added:

“Notwithstanding the provisions of any other law, a county mosquito extermination commission shall be composed of the members appointed pursuant to R.S. 26:9-14 plus one additional member appointed for a term of 3 years.” L. 1973, c. 295, § 1, N.J.S.A. 26:9-14.1.

Each county mosquito commission constitutes a “body politic” with power to sue and be sued and to make bylaws. N.J.S.A. 26:9-21. On or before November 1 of each year, each commission is required to file with the Director of the State Agricultural Experiment Station, who as noted above is an ex officio member of all such commissions, a detailed estimate of the funds required for the next year and a plan of work to be done. N.J.S.A. 26:9-22. The estimate must be reviewed and approved by the Director, *ibid.*, and the amount so approved must be appropriated by the board of freeholders subject to the maximum limits specified by N.J.S.A. 26:9-23. *Nolan v. Fitzpatrick*, 9 N.J. 477, 483 (1952). The act provides that nothing therein “shall be construed. . . to alter, amend, modify or repeal any law conferring upon the state department [of health] or local boards of health any powers or duties in connection with the extermination of mosquitoes, but shall be construed to be supplementary thereto.” N.J.S.A. 26:9-25.

In addition to the above law creating county mosquito commissions, L. 1956, c. 135, § 1 (N.J.S.A. 26:9-12.3) creates in the Department of Environmental Protection a State Mosquito Control Commission consisting of six members appointed by the Governor with the advice and consent of the Senate, as well as the Director of the State Agricultural Experiment Station sitting ex officio. Among other duties, the Commission is required to “carry on a continuous study of mosquito control and extermination in the State,” recommend to the Legislature the amount of appropriations needed for mosquito control purposes, and allocate among the counties, through the State Agricultural Experiment Station, funds appropriated for State aid for mosquito control. N.J.S.A. 26:9-12.6. The act further states that all county mosquito extermination commissions as well as the Agricultural Experiment Station “shall cooperate with the [state mosquito control] commission in the furnishing of information and the performance of any services which may be

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requested of them by the commission in the carrying out of the purposes of this act.” N.J.S.A. 26:9-12.8.

It is clear from the foregoing statutory provisions that county mosquito extermination commissions are an integral part of a State-county cooperative effort designed to control the mosquito population throughout the State. As previously noted, the Commissioner of Health and the Director of the State Agricultural Experiment Station, in addition to the substantial mosquito extermination powers vested in them by the applicable laws, are designated as ex officio members of every county mosquito commission. It is well-settled in this regard that ex officio members of state or local agencies, absent a clear legislative declaration to the contrary, may participate and vote on an equal basis with appointed members. See, e.g., *Barber Pure Milk Co. v. Alabama State Milk Cont. Bd.*, 156 So. 2nd 351 (Ala. Sup. Ct. 1963). The designation of the Commissioner and Director as ex officio members of county mosquito commissions is plainly intended to implement the reciprocal duty of cooperation between State and county mosquito control officials imposed by N.J.S.A. 26:9-12.8 and 26:9-14.

In *Formal Opinion No. 17-1976*, we concluded that provisions of an administrative code adopted by the Hudson County Board of Chosen Freeholders pursuant to the Optional County Charter Law which purported to transfer most of the functions of the Hudson County Board of Taxation to another County agency were invalid. In so holding, we cited the decision of the State’s highest court in *Warren v. Hudson County*, 135 N.J.L. 178 (E. & A. 1947), where the court, in language whose underlying rationale is equally applicable here, said:

“ . . . the county boards of taxation are an integral part of the state tax system, and as such their status is necessarily that of state agencies having specific functions in the administration of a system for the assessment and collection of taxes. . . .

“ . . . While these boards of taxation exercise a jurisdiction that is confined within definite territorial limits, *their duties concern the state at large in a governmental field of major importance.*” 135 N.J.L. at 180-181 (emphasis added).

Although the structure and functions of county boards of taxation differ in some respects from those of county mosquito extermination commissions, it is clear from the membership and statutory responsibilities of such commissions that “their duties concern the state at large in a governmental field of major importance” and they are thus “an integral part of the state [mosquito extermination] system.” *Warren v. Hudson County, supra*. Consequently, such commissions, no less than county boards of taxation, may not be deemed county agencies within the meaning of the Optional County Charter Law’s authorization to freeholder boards to alter or abolish the structure of existing “county” agencies.\* For these reasons, we conclude that a county mosquito commission is not a county agency within the contemplation of the Optional County Charter Law and that such commissions may not be abolished or reorganized pursuant to the provisions of the act.

Furthermore, the alteration or abolition of county mosquito commissions is prohibited by the plain terms of the law creating such commissions. Section

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26 of the Optional County Charter Law states that freeholder boards may alter or abolish such commission "absent a clear legislative declaration to the contrary." Thus, where the law creating a particular county agency explicitly provides that the composition of the agency shall remain intact, the freeholders may not properly include in an administrative code adopted pursuant to the Optional County Charter Law a provision altering or abolishing such an agency. As one court has recently observed, "What constitutes such a legislative declaration so as to withdraw a particular statute from the operation of the Law must be determined on a case by case basis." *Am. Fed. State, Cty., Mun. Em. v. Hudson Welf. Bd.*, 141 N.J. Super. 251, 256 n. 3 (Ch. Div. 1976).

In December 1973, more than a year after enactment of the Optional County Charter Law, the Legislature adopted an amendment to the law creating county mosquito commissions which states that "notwithstanding the provisions of any other law" such commissions "shall be composed" of the members appointed pursuant to N.J.S.A. 26:9-14 plus an additional member appointed for a three-year term. L. 1973, c. 295, N.J.S.A. 26:9-14.1. Since there is nothing in the legislative history of this amendment that points in another direction, it is necessary to read the provision in accordance with its plain terms. It explicitly states that despite the provisions of "any other law", county mosquito commissions "shall be composed" of the specified members.\*\* The reference to "any other law" must be read to include the Optional County Charter Law, and in particular those provisions generally authorizing the reorganization of county agencies following adoption of a new charter. The latter act expressly states that a county freeholder board may not exercise its general authority to abolish an existing county agency where there exists "a clear legislative declaration to the contrary." N.J.S.A. 26:9-14.1, which states that county mosquito extermination commissions "shall be composed" of the specified regular and ex officio members "notwithstanding the provisions of any other law," plainly constitutes such a declaration, thereby exempting county mosquito commissions from the provisions of the Optional County Charter Law respecting reorganization of county agencies.

You are advised, therefore, that a county board of freeholders lacks authority under the Optional County Charter Law as well as under the laws creating State and county mosquito extermination commissions to alter or abolish the structure of county mosquito commissions. Accordingly, the provisions of the Union County Administrative Code that purport to abolish the Union County Mosquito Extermination Commission and to transfer the powers and duties of the Commission to another County agency are invalid.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General of New Jersey*  
By MICHAEL S. BOKAR  
*Deputy Attorney General*

\* The Supreme Court in closely analogous contexts has adopted a practical and nondoctrinaire approach in declaring that nominally "county" agencies and officials may be considered "State" agencies and agents for various purposes. See, e.g., *Dunne v. Fireman's Fund Am. Ins. Co.*, 69 N.J. 244, 250-251 (1976) (county detectives are employees of county

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for "certain administrative and remunerative purposes" but "agents of the State" for purposes of tort liability in executing search warrant); *Godfrey v. McGann*, 37 N.J. 28 (1962) (probation officers). In the words of the Supreme Court in the *Dunne* case, county mosquito commissions "possess a hybrid status." 69 N.J. at 248.

\*\* Section 14.1 refers to "the members *appointed* pursuant to [§ 14]" as well as "one additional member *appointed* for a term of 3 years." Although § 14.1 does not explicitly refer to the Commissioner of Health and the Director of the State Agricultural Experiment Station, who are made *ex officio* members of county mosquito commissions by § 14, there is no reason to suppose that the Legislature did not intend to continue these officials as *ex officio* members.

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September 8, 1976

DR. STANLEY S. BERGEN, JR.  
*President, College of Medicine  
and Dentistry of New Jersey*  
100 Bergen Street  
Newark, New Jersey

FORMAL OPINION NO. 23 - 1976

Dear Mr. Bergen:

You have requested advice regarding the status of the Faculty Practice Service conducted by the College of Medicine and Dentistry of New Jersey at each professional school comprising the College. More specifically, you have inquired whether the Faculty Practice Services are operational units of the College and, therefore, subject to State statutes and regulations generally applicable to the College. In order to address this question, however, it is necessary to determine whether the College of Medicine and Dentistry is authorized to organize and establish a faculty practice program.

At the outset, some attention should be directed to the declared purpose of a faculty practice service. At the inception of the College, the Board of Trustees of the College of Medicine and Dentistry of New Jersey determined that it would be in the best interest of the College and the State of New Jersey for the College to rely principally on full-time faculty, i.e., instructional personnel who devote their total efforts and derive their principal compensation from the College. At the same time, the Board was cognizant of the professional, educational, and financial benefits which could accrue to the College, faculty, and State by virtue of a system which would allow supplemental faculty professional practice. The principal reasons highlighted by the Board in favor of a faculty practice program are the following:

1. The treatment of patients is an integral part of the training of medical and dental students and house staff. The College must take necessary steps to attract patients who will be treated by the faculty and observed by the students.
2. The salaries the College can pay under the State approved salary schedule from State appropriations for academic salaries are not competitive enough