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specifically limited this exception to "banking rates." Since the setting of utility rates does not constitute the setting of "banking rates," they may not be discussed in closed session under this exception.

In addition to the exceptions discussed above, there appears to be no other exception in the Act that would permit the Public Utilities Commission to conduct its deliberations on utility rate applications in closed session. There is also nothing to indicate a legislative intent to exempt these deliberations from public scrutiny. You are therefore advised that the Open Public Meetings Act requires the deliberations of the Public Utilities Commission on utility rate applications to be conducted in public session.

Very truly yours,

WILLIAM F. HYLAND  
*Attorney General*

By: MICHAEL A. SANTANIELLO  
*Deputy Attorney General*

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January 19, 1977

HONORABLE RAYMOND H. BATEMAN  
21 East High Street  
Somerville, New Jersey 08876

FORMAL OPINION 1977 - No. 1

Dear Senator Bateman:

You have asked whether the procedures initiated by the New Jersey Education Association with various local boards of education for political action contributions are authorized under New Jersey law. This question has been generated by Bylaw 2 approved by the N.J.E.A. Delegate Assembly, effective September 1, 1976 in the following form:

*"Professional Payment—Each Active Professional Member shall remit to the Association, through the same procedures by which the dues of such member are paid and under standards established by the Executive Committee, an annual total professional payment which shall include, in addition to the established dues for such member, a contribution, in the amount of two (\$2) dollars, for the NJEA Political Action Committee. Each fall when the Automatic Payroll Deduction members receive their membership cards, a letter explaining the Political Action Committee deduction, a form to request the return of the two (\$2) dollars, and a self-addressed envelope to NJEA will be included. Upon receipt of a request in writing from any member, the Association shall return the member's two (\$2) dollar contribution for the fiscal year during which the request was received. The Association shall transmit to the NJEA Political Action Committee those two (\$2) dollar contributions for which no refund request is received."*

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Pursuant to Bylaw 2, material provided the N.J.E.A. membership indicates that:

“Professional payment for 1976-77 in N.J.E.A. is \$75. N.J.E.A. dues are \$73. Two dollars is for a voluntary contribution to N.J.E.A. PAC. Contributions to N.J.E.A. PAC will be used to support candidates and issues on the state and federal level. Contributions are voluntary and are not required as a condition of membership in any organization. This agreement may be revoked and a request for a N.J.E.A. PAC refund may be submitted in writing to N.J.E.A. headquarters before June 30, 1977.”

This explanatory note accompanies the form used by N.J.E.A. members to direct local boards of education to make certain deductions from their earnings under checkoff procedures.

The question presented is whether the Professional Payment and specifically the \$2 contribution for N.J.E.A. Political Action Committee falls within N.J.S.A. 52:14-15.9e which states in pertinent part:

“Whenever any person holding employment, whose compensation is paid by this State or by any county, municipality, *board of education* or authority in this State, or by any board, body, agency or commission thereof shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation, *for the purpose of paying the employee's dues to a bona fide employee organization*, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.” (Emphasis added.)

A fair reading of this statute leads to the conclusion that public employers are only authorized to make deductions from the wages of their employees “for the purpose of paying the employee's *dues* to a bona fide employee organization.” (Emphasis added.)

Dues have been defined as certain mandatory monetary sums paid by a member of an organization as a condition of his membership therein and for its direct support and maintenance. The term covers only fixed and definite charges applicable to all club members. *Black's Law Dictionary* (4th ed. 1968); *Greenwald v. Chiarello*, 57 N.Y.S. 2d 765 (1945). In *National Labor Relations Board v. Injection Molding Co.*, 211 F.2d 59 (8th Cir. 1954), the court construed a contract between union and employer which authorized deductions of “union membership dues (including assessments if they are regularly part of membership dues) and initiation fees.” The court determined that this agreement did not authorize an employer at the request of a union to deduct from the wages of its employee a fine levied by the union against its member for non-attendance at meetings.

It was held in *Internation Longshoreman's Ass'n. v. Seatrain Lines Inc.*, 326 F. 2d 916 (2d Cir. 1964), that a form of alternative payment by an employer “in lieu of dues checkoff” could not be characterized as “dues” within the exclusive meaning of membership dues in the Labor Management Relations Act. Also, in *Culotta v. Pick-*

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*ett*, 448 F. 2d 255 (9th Cir. 1971), deductions for union dues were held not to include a sum which constitutes either a levy of back dues or an improper penalty assessed against a union member. The United States Supreme Court determined in *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 92 S. Ct. 2247, 33 L. Ed. 2d 11 (1972), that in order to comply with federal law, political contributions must be strictly segregated from union dues and assessments and that the solicitation for such funds must be conducted under circumstances which plainly indicate that these donations are exclusively for the political purposes of the labor organization. *Pipefitters, supra*, at 435. See also generally *United States v. Auto Workers*, 352 U.S. 68 S. Ct. 1349, 92 L. Ed. 1849 (1948).

Therefore, it is clear from these decisions that dues have been interpreted to mean those mandatory, monetary contributions which are exacted from all members of a labor organization as a condition of membership and which are used for the direct support and maintenance of that organization. It is reasonable to conclude that "dues" should have a similar meaning under New Jersey law and would not include within the probable legislative meaning of that term in N.J.S.A. 52:14-15.9e those voluntary contributions paid to support the political purposes of the labor organization.

Bylaw 2, approved by the N.J.E.A. Delegate Assembly, describes two components of "Professional Payment." The first represents a sum certain, required of all members, to be paid to the general purpose funds of the union for the union's support and maintenance and is a condition of membership in the union. This component possesses the traditional indicia of "dues," is expressly characterized as such and may properly be deducted from the wages of public employees pursuant to N.J.S.A. 52:14-15.9e. However, the second component is voluntary in nature, not exacted as a condition of membership, is segregated from the general funds received from payment of "dues" and is expended for political purposes. This component is essentially a voluntary political contribution distinct from the mandatory dues payment of union members, and is expressly characterized in Bylaw 2 as a "contribution." It is, therefore, our opinion that the controlling statute dealing with the checkoff of union dues set forth in N.J.S.A. 52:14-15.9e does not authorize school districts to deduct the "political contribution" component of the N.J.E.A. Professional Payment from the wages of its employees.

Very truly yours,  
WILLIAM F. HYLAND  
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By: MARY ANN BURGESS  
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