

FORMAL OPINION

statutory ban on the advertising of prices of ophthalmic goods under N.J.S.A. 52:17B-41.17 is an unconstitutional infringement of the First and Fourteenth Amendments to the United States Constitution and all enforcement procedures of the Division of Consumer Affairs pertaining to that statute should be terminated.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

* That statute provides in pertinent part:

"It shall be lawful for an ophthalmic dispenser or ophthalmic technician to advertise; *provided*, that no mention shall be made, either directly or indirectly by any means whatsoever, of a discount, any definite or indefinite price or credit terms on corrective ophthalmic lenses, frames, complete prescription or corrective glasses; . . ."

April 15, 1977

G. THOMAS RITI, *Director*
Division of Public Welfare
3525 Quakerbridge Road
Trenton, New Jersey

FORMAL OPINION 1977—No. 5.

Dear Director Riti:

You have asked whether county and municipal shares of public welfare assistance may be excluded from the limitation on local government spending imposed by the Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.* (P.L. 1976, c. 68, amended by P.L. 1977, c. 10), as "[e]xpenditures mandated after the effective date of [that] act pursuant to State or Federal law." For the following reasons you are advised that while such expenditures may not be excluded as expenditures mandated after the effective date of the Local Government Cap Law pursuant to state or federal law, the financial share of a municipality in a public assistance program may be excluded from the municipal spending limitation as expenditures for "[p]rograms funded wholly or in part by Federal or State funds. . . ." You are also advised, however, that there is no similar authorization for the exclusion of the matching share of a county in a federal or state funded welfare program, and those expenditures must be included in the county spending limitation.

The purpose of the Local Government Cap Law is to limit increases in local government spending to 5% over the previous year's expenditures, except where specifically authorized, and to restrain increases in local property taxes. The exclusions for "[e]xpenditures mandated after the effective date of this act pursuant to State or Federal law" under sections 3(g) and 4(e) of the Act were intended to exclude expen-

ATTORNEY GENERAL

ditures for programs required by newly enacted legislation in order to avoid the harsh result of forcing local governments to cut other services to provide funds for newly created programs not included in previous budgets.

While an initial reading of these provisions would seem to justify a construction whereby appropriations for preexisting state and Federal programs made after the effective date of the Local Government Cap Law could be excluded, such a construction has two inherent defects. First, this construction would nullify the significance of the words "after the effective date of this act" since all future appropriations would be after that date, and the same meaning could have been conveyed if these words were excluded. More significantly, such a construction would undermine the expressed legislative purpose to limit local government spending by limiting only the small proportion of expenditures arising out of local initiatives. For these reasons it has been determined that these provisions must be construed strictly to exclude only those expenditures for mandatory programs enacted after the effective date of the Local Government Cap Law. Formal Opinion No. 3-1977, pp. 10-11. It is thus clear that any county or municipal expenditures for public welfare assistance required by laws predating the Local Government Cap Law cannot be excluded from the spending limitation under sections 3(g) and 4(e) of that law.

However, it has also been determined that the exclusion for "programs funded wholly or in part by Federal or State funds" embodied in section 3(b) of the law was intended to exclude from the limitation on municipal spending all local matching expenditures necessary to secure federal or state financial aid for municipal governments. *Id.* at 6-7. Thus, municipal shares of public welfare assistance required for a municipality to be eligible for state or federal aid may be excluded from the municipal spending limitation under section 3(b).

There is, however, no similar legislative authorization to exclude from the county spending limitation county matching shares on which federal aid may be conditioned. Although this appears to be entirely inconsistent with the specific exclusion provided municipal matching shares under section 3(b), an exclusion from the spending limitation must be found in the plain language of the statute. Clearly, this apparent inconsistency is of legislative origin and should be corrected by further recourse to that body. However, pending the enactment of amendatory legislation, there is no authorization provided in the Act to exclude from the county spending limitation those expenditures for matching shares paid by a county as a condition for participation in federally funded public assistance programs.

Very truly yours,
WILLIAM F. HYLAND
Attorney General
By: ANDREA KAHN
Deputy Attorney General