

FORMAL OPINION

April 28, 1977

MICHAEL KACHORSKY, *Chairman*  
*Public Health Council*  
*Department of Health*  
John Fitch Plaza  
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 6.

Dear Mr. Kachorsky:

The Public Health Council has asked for our opinion as to whether it may prohibit, by the exercise of its rule-making authority, the construction of a high containment facility to be used for artificially recombinant DNA research. It has also been asked whether the Public Health Council has the authority to either prohibit in its entirety or regulate the conduct of artificially recombinant DNA research and experimentation. Artificially recombinant DNA research entails removing pieces of DNA material from a particular organism and transplanting them into an entirely different organism. It is widely predicted that such research and experimentation may result in the discovery of effective methods for genetic engineering or the capacity to alter artificially a person's biological or behavioral characteristics.

The Public Health Council in the Department of Health has been given authorization by the Legislature to:

“establish . . . such reasonable sanitary regulations . . . as may be necessary properly to preserve and improve the public health in this State. The regulations so established shall be called the State Sanitary Code.

“The State Sanitary Code may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey . . .” N.J.S.A. 26:1 A-7.

Although there is no express mention of the authority to regulate artificially recombinant DNA research, it is clear that the grant of an express regulatory power to an administrative agency is accompanied by such implicit or incidental power as is necessary to carry out the legislative intent. *In re Promulgation of Rules of Practice*, 132 N.J. Super. 45, 48, 49 (App. Div. 1974). Moreover, the power delegated to an administrative agency should be construed in a manner so as to permit the fullest accomplishment of the underlying legislative purpose. *Cammarata v. Essex County Park Comm.*, 26 N.J. 404, 411 (1958). Thus, the apparent legislative intent behind the delegation of expansive rule-making authority to the Public Health Council was to enable that agency to protect the public from significant risks to its health.

In this instance, it has come to our attention that certain categories of artificially recombinant DNA experimentation may, under certain circumstances, involve a risk to the public health. Therefore, in the event the Public Health Council finds as a matter of its administrative expertise that the material used to construct a high containment biological facility would in and by itself pose a serious threat to the public health, without regard to the nature of the proposed experimentation to be conducted therein, it may promulgate appropriate regulations to prohibit the construction of such a facility. Also, in the event the Public Health Council concludes that the conduct of one or more categories of artificially recombinant DNA research and

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experimentation, irrespective of all precautions, would constitute a serious threat to the public health, the Council may under those circumstances promulgate interim or permanent regulations proscribing the conduct of such category of experimentation and research. Finally, in the event the Council cannot, in its judgment, justify a total ban on one or more categories of the conduct of experimentation and research, it may promulgate reasonable interim or permanent regulations designed to regulate those categories of artificially recombinant DNA research and experimentation which, consistent with the statutory objective, pose a serious risk to the public health. Of course, it is clear that in each of these cases it would be incumbent on the Public Health Council under the requirements of the Act to solicit public and scientific comment on each of its proposals at a public hearing (N.J.S.A. 26:1A-7), to develop an adequate supporting record and to fully document the reasoning underlying its regulatory action.

In conclusion, the Public Health Council may, under its broad regulatory authority under the State Sanitary Code, adopt reasonable interim or permanent regulations to prohibit or regulate one or more categories of the conduct of artificially recombinant DNA research and experimentation where it specifically finds as an administrative determination that such prohibition or regulation is reasonably necessary and related to the prevention of a serious risk to the public health.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

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April 29, 1977

JOHN J. HORN, *Acting Commissioner*  
*Department of Labor and Industry*  
John Fitch Plaza  
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 7.

Dear Commissioner Horn:

You have requested an opinion as to the taxability of the principal, interest income and capital gain profits relating to bonds issued by the New Jersey Economic Development Authority ("EDA") under the Corporation Business Tax Act, N.J.S.A. 54:10A-1 *et seq.*, the Corporation Income Tax Act, N.J.S.A. 54:10E-1 *et seq.*, the Savings Institution Tax Act, N.J.S.A. 54:10D-1 *et seq.*, and the Gross Income Tax Act, N.J.S.A. 54A:1-1 *et seq.* You are hereby advised that the capital gain and interest income derived from these bonds are exempt from being directly taxed under the corporation income tax and gross income tax but that EDA bonds are not exempt