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other licensing standards should be adopted as rules and regulations with the approval of the Health Care Administration Board in accordance with the Administrative Procedure Act.

Very truly yours,
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Attorney General

By: DOUGLASS L. DERRY
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July 28, 1977

JOANNE E. FINLEY, M.D., M.P.H.
Commissioner of Health
Department of Health
Health and Agriculture Building
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 16

Dear Dr. Finley:

You have asked for an opinion as to which government entities have authority to inspect food preparation and service areas of county government facilities. In particular, you have inquired about county government jails. Also, you have asked us to discuss the legal remedies available against recalcitrant county government facilities generally, and county government jails in particular, which refuse to close their food preparation areas despite the receipt of an unsatisfactory rating.

Pursuant to the State Department of Health Reorganization Act (N.J.S.A. 26:1A-1 *et seq.*), the Public Health Council, a citizen board within the Department of Health, is empowered to establish reasonable sanitary regulations "prescribing standards of cleanliness for public eating rooms and restaurants." N.J.S.A. 26:1A-7(m). In 1972, under this statutory grant, the Public Health Council promulgated Chapter XII of the State Sanitary Code (N.J.A.C. 8:24-1.1 *et seq.*) which specified sanitary requirements for various food establishments, including any "public or non-profit organization or institution serving food." N.J.A.C. 8:24-1.2. In order to enforce the public health laws and the State Sanitary Code, the Commissioner of Health is empowered to "exercise general supervision over all matters relating to sanitation and hygiene throughout the State." N.J.S.A. 26:1A-18. See N.J.S.A. 26:1A-15. To fulfill her responsibilities, the Commissioner is expressly authorized to "enter upon, examine and survey any . . . prison, public or private place of detention. . . ." N.J.S.A. 26:1A-18. See N.J.S.A. 26:1A-16; N.J.A.C. 8:24-9.2(a). Consequently, it is clear that the State Department of Health is authorized to enter and inspect the food preparation and service areas of county jails. Any inspection, however, should be coordinated with the legitimate operational and security requirements of the correctional institution.

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Municipal or county health departments or local health agencies may inspect the food service and preparation areas of county facilities and county jails within their territorial jurisdictions. Local boards of health exercise a portion of the State's police power in order to implement a state oriented and supervised health program. *Myers v. Cedar Grove Tp.*, 66 N.J. Super. 530, 535-536 (App. Div. 1961), *modified on other grounds*, 36 N.J. 51 (1961); *Grosso v. Paterson*, 55 N.J. Super. 164, 172 (Law Div. 1959). The general statutory scheme envisions a statewide public health organization "with local boards charged in the first instance to safeguard public health in their several vicinages. . . ." *State v. Mundet Corp.*, 126 N.J. Eq. 100, 102 (Ch. 1939), *aff'd*, 127 N.J. Eq. 61 (E.&A. 1940) (emphasis supplied). In addition, the Local Health Services Act of 1975 (N.J.S.A. 26:3A2-1 *et seq.*) authorizes the creation of new county boards of health armed with "all the powers of a local board of health pursuant to law" within the geographic area of each municipality which arranges with the county board of health for the provision of public health services. N.J.S.A. 26:3A2-3(c). See also N.J.S.A. 26:3A2-3(h) and 5(c). Each board of health, whether it be a municipal board, a county board, or some other local health agency,¹ is empowered to enforce the State Sanitary Code, abate public nuisances on public property, and "[s]ecure the sanitary condition of every building, public or private" within the territorial limits of its jurisdiction. N.J.S.A. 26:3-33(a). See N.J.S.A. 26:1A-9; N.J.S.A. 26:3-48; N.J.S.A. 26:3A2-5(c). "Public building," as that term is customarily used, includes county offices and jails. See, *e.g.*, *State v. Freeholders of Bergen*, 46 N.J. Eq. 173 (Ch. 1889), *aff'd*, 48 N.J. Eq. 294 (E.&A. 1891). The power to "[s]ecure the sanitary condition of every building, public or private" thus encompasses the authority to inspect county jails and other public buildings. N.J.S.A. 26:3-33. *Cf. State v. Freeholders of Bergen, supra; Camden Board of Health v. Freeholders*, 50 N.J.L. 396, 397 (Sup. Ct. 1888). See also N.J.S.A. 24:3-1; N.J.A.C. 8:24-9.2. Consequently, municipal and county boards of health, as well as other duly constituted local health agencies, have concurrent jurisdiction with the State to inspect the food service and food preparation areas of county jails and to enforce the State Sanitary Code within their territorial jurisdictions. See N.J.S.A. 26:1A-9; N.J.A.C. 8:24-9.2(a). However, any inspection should be coordinated with the legitimate operational and security requirements of the correctional institution.

You have also asked what legal action may be taken by the Department, county or municipal boards or local health agencies to compel the closing of a county jail's food preparation area. This may occur when county officials will not do so voluntarily despite notice of an unsatisfactory assessment. Generally, "where procedural requirements are complied with, 'suits between political subdivisions will be entertained.'" *Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick*, 48 N.J. 94, 108 (1966), quoting 17 *McQuillin, Municipal Corporations*, § 49.04 (3d ed. 1950). *Cf. Newark Aqueduct Board v. Passaic*, 45 N.J. Eq. 393, 400-401 (Ch. 1889), *aff'd*, 46 N.J. Eq. 552-553 (E.&A. 1890). If conditions in a county jail constitute a nuisance or source of foulness hazardous to the health of the inmates, the appropriate local government agency or board has the responsibility in the first instance to "institute an action in the Superior Court, in the name of the State, on relation of the board, for injunctive relief to prohibit the continuance of such nuisance." N.J.S.A. 26:3-56. *Cf. Myers v. Cedar Grove Tp., supra*, at 536; *State v. Freeholders of Bergen, supra*, at 173.² In the event the Commissioner is dissatisfied with the action taken or to be taken by a local board, she may exercise her general supervisory authority over all matters relating to sanitation and hygiene throughout the State.³ "[T]he Commissioner may institute an action in the Superior Court in the name of the State on the

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relation of the Commissioner to enjoin the continuance of the nuisance or the source of foulness." N.J.S.A. 26:1A-27. In addition, the Commissioner has been authorized to institute legal proceedings to enjoin specific violations of the State Sanitary Code. See N.J.S.A. 26:1A-15(d) and (h).

You are therefore advised that the State Department of Health and county or municipal boards of health and local health agencies have the right to enter upon, examine and inspect the food service and preparation areas of county government facilities and jails. The appropriate municipal or county board of health or local health agency has the responsibility, in the first instance, to institute judicial proceedings to close food service and preparation areas of county facilities and jails. The State Department of Health is also empowered to institute court action where it deems the local response inadequate to properly correct the hazard to the public health. In addition, the Department of Health or the appropriate local board or health agency may sue to recover monetary penalties for violations of the State Sanitary Code.

Very Truly Yours,
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By FREDERICK S. TITLE
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1. Each municipality has the option of providing public health services which meet the applicable public health laws by utilizing either its own local health agency, contracting with another town's local health agency, joining a regional health commission, or using the services of a county health department. See N.J.S.A. 26:3-83 to 94; N.J.S.A. 26:3A2-1 *et seq.*
2. Chapter XII of the State Sanitary Code states that retail food establishments, including nonprofit or public organizations or institutions serving food, which are found to be "in violation of this Chapter [N.J.A.C. 8:24-1.1 *et seq.*] are hereby declared to be *nuisances*, hazardous to health." N.J.A.C. 8:24-1.1. See also N.J.A.C. 8:24-1.2 (emphasis supplied).
3. The Commissioner may cause a written notice to be sent to the local board requiring it to abate the nuisance within a specified time. N.J.S.A. 26:1A-26.