

FORMAL OPINION

August 9, 1977

CLIFFORD A. GOLDMAN
Treasurer
Department of the Treasury
State House
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 17.

Dear Treasurer Goldman:

The Department of the Treasury has asked whether information derived from State income tax forms can be compared with information maintained by the Division of Public Welfare and/or county welfare agencies in order to insure that persons receiving aid to families with dependent children (AFDC) under N.J.S.A. 44:10-1 *et seq.* (recently amended by L. 1977, c. 127) have reported the correct amount of their income to the Division of Public Welfare.

The Director of the Division of Taxation may not provide the Division of Public Welfare or a county welfare agency with information derived from a taxpayer's income tax return. The State Tax Uniform Procedure Law, made applicable to the administration of the Gross Income Tax by N.J.S.A. 54A:9-1, states that neither the Director of the Division of Taxation nor his employees may divulge or disclose any information obtained from the records or files of the Division of Taxation with exceptions not here relevant. N.J.S.A. 54:50-8 and 54:50-9. However, an applicant's income tax return can be disclosed to the Division of Public Welfare or a county welfare agency if the applicant has consented to the disclosure pursuant to N.J.S.A. 54:50-9(a) which provides that:

"Nothing herein contained shall be construed to prevent *** [the] delivery to a taxpayer or his duly authorized representative of a copy of any other paper filed by him pursuant to the provisions of [the Gross Income Tax Act]." (emphasis added).

The Commissioner of Human Services is empowered by statute to make all rules and regulations and to take all other actions necessary to secure the greatest amount of federal assistance for the AFDC program, as well as to accomplish the purpose of the Act. N.J.S.A. 44:10-3. The statute specifically authorizes and directs the Commissioner to take action necessary "to provide that, in determining eligibility for financial assistance and the amount of assistance to be granted, there shall be taken into consideration all other income and resources of the dependent child and of the parent, parents, or other relatives with whom such child is living ***." N.J.S.A. 44:10-3(c). To implement this statutory directive, the Director of the Division of Public Welfare, N.J.S.A. 44:10-2 and N.J.S.A. 44:7-6*, and the directors of the county welfare agencies, N.J.S.A. 44:7-20, have been given broad subpoena power to compel the production of books, records and other documents pertinent to an examination of facts concerning an application for aid. Rules have been promulgated which stress the need for documenting the eligibility of each claimant, N.J.A.C. 10:81-3.2, and which state that the county welfare agencies will contact sources other than the applicant to obtain all information necessary to document the applicant's eligibility. N.J.A.C. 10:81-3.4(a). These rules specifically provide that verification from public

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records should be exhausted before other sources are utilized. N.J.A.C. 10:81-3.4 (a) (1). Thus, the county welfare agencies are empowered and directed to verify all applicants' income, and the Division has provided for their obtaining that information from public records.

An administrative agency has such powers as are expressly conferred upon it by law and those implied or incidental powers necessary to achieve its essential statutory purpose. See *Board of Education of Plainfield v. Plainfield Education Association*, 144 N.J. Super. 521, 524 (App. Div. 1976). In order to further enable the Division of Public Welfare and county welfare agencies to verify or document statements or representations made to establish eligibility for financial assistance, the Commissioner may promulgate rules and regulations that require as a condition of continued public assistance an applicant to authorize and consent to the disclosure of relevant State income tax information. Such rules and regulations would clearly serve to insure that all of an applicant's income and resources are fully considered in determining eligibility under the public assistance statutes. N.J.S.A. 44:10-3(c). Accordingly, the Division of Public Welfare or the county welfare agencies may, after securing the necessary authorization and consent of an applicant for public assistance, obtain copies of the applicant's income tax return or information derived from that return from the Division of Taxation consistent with the provisions of the Uniform Tax Procedure Act.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By DOUGLAS G. SANBORN
Deputy Attorney General

* The "division of old age assistance" referred to in N.J.S.A. 44:7-6 denominates the present Division of Public Welfare. L. 1967, c. 206, §1; L. 1962, c. 197, §4; L. 1950, c. 166, §1.

August 9, 1977

HONORABLE VIRGINIA LONG
Commissioner of Banking
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 18.

Dear Commissioner Long:

You have requested our opinion on whether state-chartered commercial banks, savings banks, and savings and loan associations may make graduated mortgage loans on residential property. A graduated mortgage loan is a loan, the terms of