

FORMAL OPINION

February 22, 1979

JOSEPH A. LE FANTE, *Commissioner*  
Department of Community Affairs  
363 West State Street  
Trenton, New Jersey

FORMAL OPINION NO. 3—1979

Dear Commissioner LeFante:

The Department of Community Affairs has requested an interpretation of the Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 *et seq.* Specifically, the Department has asked whether it has jurisdiction to hear cases arising under N.J.S.A. 20:4-1 where a municipality is the displacing agency. You are advised that the Department does have jurisdiction to hear such cases.

The New Jersey Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 *et seq.* (hereinafter "Act"), is designed to establish a uniform policy for the fair and equitable treatment of persons displaced by State and local acquisition of real property. N.J.S.A. 20:4-2. The Act provides that persons and businesses displaced by a taking agency shall be compensated by relocation payments made to them by the taking agency in the amount specified by the Act. N.J.S.A. 20:4-4. The Act establishes the Commissioner of Community Affairs as the Act's administrator and grants to the Commissioner the power to adopt rules and regulations necessary to assure:

that any person aggrieved by a determination as to eligibility for a payment authorized by this act, or by the amount of a payment, may have his application reviewed by the head of the taking agency or other appropriate officer. [N.J.S.A. 20:4-10(a)(3).]

This provision permits the head of the taking agency to review cases where a person is aggrieved by the decision of that taking agency.\* Thus, a municipal official is the appropriate person to review a decision of a taking agency where the taking agency is a municipality. However, the Act also grants review power to an "other appropriate officer." This additional grant of review power demonstrates an obvious intent to permit review of relocation matters by a party other than the head of the taking agency. The answer to the present inquiry, then, turns on whether the Commissioner of Community Affairs is an "appropriate officer" as this term is used in the Act.

The Relocation Act, as originally introduced as Assembly Bill No. 2320 on April 1, 1971, provided that the Attorney General and not the Commissioner of Community Affairs was to be the state officer responsible for the Act's administration. The Attorney General was to be granted authority to adopt rules and regulations providing for administrative re-

\*A "taking agency" is defined as "the entity, public or private, including the State of New Jersey, which is condemning private property for a public purpose under the power of eminent domain." N.J.S.A. 20:4-3(a).

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view of decisions of taking agencies. The Commissioner of Community Affairs was substituted as the administrator of the Act prior to its final adoption by the Legislature. This change indicates the legislative intent to involve the Department of Community Affairs in relocation matters, presumably because of the Department's high degree of expertise in administering the State's existing Relocation program pursuant to the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 *et seq.* From this designation of the Commissioner of Community Affairs as administrator of the Act it may also be reasonably assumed to have been the legislative purpose that this official act as arbiter in complaints brought pursuant to the Act. The Commissioner has the greatest familiarity statewide with the operation of the Act and is the "appropriate officer" to rule on its proper enforcement.

Support for this view may be found in §10(b) of the Act and in that section of the regulations pertaining to grievance procedures, N.J.A.C. 5:11-2.16. Section 10(b) provides that:

The Commissioner may prescribe such other regulations *and procedures*, consistent with the provisions of this act, as he deems necessary or appropriate to carry out this act. [Emphasis supplied.]

The general clause enables the Commissioner to promulgate procedural regulations as he may find necessary to implement the provisions of the Act. Pursuant to this broad regulatory power the Commissioner has promulgated a series of regulations setting forth the grievance procedure to be followed in hearings conducted pursuant to the Act. For example, Subsection (a) provides that

An application for a hearing must be filed with the Commissioner within 15 business days of the receipt by the applicant therefore of notice of the action, ruling, notice or order complained of.

Subsection (g) indicates in pertinent part that

[A] hearing shall be conducted by a hearing examiner designated by the Commissioner. . . .

This grievance procedure is clearly consistent with the broad legislative authorization given to the Commissioner to prescribe appropriate procedures to carry out the Act. Indeed, the Commissioner has in fact exercised the authority to review the applications of aggrieved parties for relocation assistance payments since the adoption of the Act in 1971. The interpretation of a statute by an agency entrusted with its administration is entitled to great weight in discerning the probable legislative intent. *Pringle v. N.J. Department of Civil Service*, 45 N.J. 329, 323-3 (1965); *Lill v. Director, Division of Alcohol Beverage Control*, 142 N.J. Super. 242, 250 (App. Div. 1976).

These procedural regulations of the Commissioner of Community

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Affairs were recently reviewed by the New Jersey Supreme Court in the context of an appeal dealing with reimbursement for relocation expenses. *Paterson Redevelopment Agency v. Max Schulman, et al.*, 78 N.J. 378 (1979). In its consideration of the questions of the defendant's failure to exhaust administrative remedies, the Supreme Court opined concerning the above cited regulations:

The regulations, in accordance with the mandates of the Administrative Procedure Act, further provided for grievance procedures including hearings before an examiner designated by the Commissioner. N.J.A.C. 5:11-2.16. These procedures were not followed by defendants.

It is clear from the foregoing that the proper procedure to be followed in relocation cases is for the claimant to present his demands, including any necessary substantiating documents, to the local agency. If the claimant is dissatisfied with the amounts granted, he should then request a hearing as provided in N.J.A.C. 5:11-2.16. Only after the hearing has taken place and a final adverse agency determination has been entered may the claimant request judicial intervention by appeal as of right to the Appellate Division. R. 2:2-3(a)(2).

It is thus clear that the authority of the Commissioner of Community Affairs to hear cases arising under the Relocation Assistance Act of 1971 has been reinforced by the Supreme Court's specific recognition of the propriety of the Commissioner's assertion of jurisdiction in this area.

In conclusion, you are advised that the Commissioner of Community Affairs has the jurisdiction to hear cases brought under the Relocation Assistance Act of 1971 where a municipality is the displacing agency.

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: DENNIS J. KRUMHOLZ  
*Deputy Attorney General*

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