cidentally of benefit to the applicant or objector. The discretionary hearing, if held, is designed to elicit views of objector institutions or others that might aid the Commissioner in determining whether the public interest will be served by approval or denial of the application.

It is also apparent both from the language of the branching statutes and judicial interpretation thereof, that a statutory right to a hearing is not available to either the applicant or an objector. The relevant statutory sections provide alternatively for Departmental investigation or hearing or both "as the Commissioner may determine to be advisable", N.J.S.A 17:9A-20A, N.J.S.A. 17:9A-22C, N.J.S.A 17:12B-26, and N.J.S.A. 17:12B-27.1(4); *In re Application of the Summit & Elizabeth Trust Co.,* 111 N.J. Super. 154, 164 (App. Div. 1970); *First National Bank of Whippany, supra.*

It is therefore clear that in accordance with the decision in *First National Bank of Whippany, supra,* and the branch banking statute a hearing on a branch banking application is neither required by constitutional right nor by statute. As a result, branch banking proceedings are not contested cases within the meaning of the Administrative Procedure Act and need not be conducted by administrative law judges.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MARK S. RATTNER
Deputy Attorney General

* It is noteworthy, however, that in any instance where the Commissioner requests and the Director of the Office of Administrative Law approves, an administrative law judge may be assigned to conduct such hearings. N.J.S.A 52:14F-5(o) provides the Director of the Office of Administrative Law shall "[a]ssign an administrative law judge or other personnel to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings, if so requested by the head of an agency and if the director deems appropriate".

March 16, 1979

ANGELO R. BIANCHI, *Commissioner*
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1979

Dear Commissioner Bianchi:

You have asked for an opinion as to whether the Commissioner of Banking has the authority to inquire into and/or investigate certain lending practices of a depository institution under the New Jersey Home Mortgage

Disclosure Act (Antiredlining Act), where such practices tend to have a disproportionate impact on certain neighborhoods in this State. Specifically, certain financial institutions in the Newark banking market limit mortgage loans to properties which are owner-occupied or are single-family dwellings. For example, one institution will accept mortgage applications only on 1 to 2 family owner-occupied residences. Another will accept applications on 1 to 4 family units but requires that these units be owner-occupied. The effect of these restrictive lending criteria is felt particularly hard in Essex County's urbanized areas. In Newark, based upon 1970 data, only 7.4% of the housing would qualify under a 1 family, owner/occupancy requirement. In Orange, only 15.6% of the housing would qualify under this requirement. In contrast, 92.8% of North Caldwell's housing units meet the 1 family, owner/occupancy requirement. The ultimate question is whether the Antiredlining statute applies where the "effect" of an institution's lending policy is to exclude from loan consideration significant portions of the housing in a given area merely because that area's general housing characteristics fail to meet the institution's lending criteria. It is our opinion that the Commissioner has the authority to find a violation of the Act when a depository institution's lending criteria acts to disproportionately exclude home financing in certain neighborhoods and such lending terms are unsupported by a reasonable analysis of the lending risks associated with applicants for given loans or the condition of the properties to secure those loans.

One of the major purposes of the Antiredlining Act is to "prohibit the arbitrary denial of mortgage loans on the basis of the location of the property to be mortgaged," N.J.S.A. 17:16F-1. In furtherance of this purpose is N.J.S.A. 17:16F-3 which provides, in pertinent part:

> No depository institution shall discriminate, on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with the applicant for a given loan or the condition of the property to secure it, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions, or provisions of any mortgage loan on real property located in the municipality in which a depository institution has a home or branch office, or in any municipality contiguous to such municipality, merely because such property is located in a specific neighborhood or geographical area.

If the Commissioner of Banking finds that a depositor institution's lending practices are in violation of the Act, he is vested with authority to order that institution to cease such unlawful practices, N.J.S.A. 17:16F-9. Prior to the issuance of a cease and desist order the depository institution will be afforded a hearing, N.J.A.C 3:1-9.11.

For present purposes, the relevant inquiry is whether the Act applies when the effect of an institution's lending criteria, although not explicitly based on geographical limits, is the disproportionate exclusion of properties in certain neighborhoods. Several principles provide a helpful frame of reference within which to discuss the issue. First, an administrative agency possesses only those powers expressly or impliedly granted

it by the Legislature, *Kingsley v. Hawthorne Fabrics Inc.*, 41 N.J. 521, 528 (1964). The agency may not act in excess of that legislative grant of authority. Thus, it must be asked what the Legislature intended by the use of the term "discriminate" in N.J.S.A. 17:16F-3. If discrimination based upon explicit geographic lending criteria must be shown, a lending practice which merely results in the exclusion of properties in certain neighborhoods will not be a violation of the Act. The second relevant principle derives from the fact that the Antiredlining statute is remedial in nature. It is designed to prohibit practices which the Legislature has viewed as destructive to the fabric of the State's urban centers, N.J.S.A. 17:16F-1. As remedial legislation, the act is entitled to a liberal construction which will further its essential purpose, *State v. Meinken,* 10 N.J. 348, 352 (1952).

A review of the statement accompanying Senate Bill No. 1091, which was enacted as N.J.S.A. 17:16F-1 *et seq.*, supports the view that lending policies discriminatory in effect are prohibited by N.J.S.A. 17:16F-3. A bill statement may be relied upon as evidence of the actual intent of the Legislature, *State v. Sanchez,* 149 N.J. Super. 381, 394 (Law Div. 1977). The statement on Senate Bill No. 1091 indicates that:

> The term redlining is used to refer *both* to outright denial of mortgage money *and varying the terms of the loan in a manner that clearly constitutes discrimination.* [Emphasis added.]

Several examples of varying the terms of the loan are discussed, including refusal to lend on properties older than a prescribed number of years, excessive down payments and charging higher interest rates than on properties located in other areas. None of these loan terms explicitly exclude properties based upon neighborhood, but the discussion of these lending devices indicate a legislative awareness that the lending practices of depository institutions may be neutral on their face and yet have a discriminatory impact. For example, a lending policy which refuses loans on all properties older than a prescribed number of years will, even if applied to all mortgage applications in an institution's lending area, impact disproportionately on urban centers. In the same manner, an owner-occupancy requirement or a single-family requirement, may operate to exclude a large percentage of residences from particular urban neighborhoods. The exclusion results "merely because such proper[ties] [are] located in a specific neighborhood" and the neighborhood's general physical characteristics fail to meet the institution's uniform lending criteria.

It would be inconsistent with the examples given in the bill statement, as well as with the remedial purpose of the statute, to interpret N.J.S.A. 17:16F-3 to apply only to cases where geographical criteria are clearly established. Where an institution's lending policy, even if uniformly applied, has a discriminatory impact on properties in given geographical areas, it reasonably may be assumed to have the implicit legislative purpose to grant the Commissioner of Banking the authority to inquire whether a violation of the Antiredlining Act has occurred. You are therefore advised that the Commissioner has the authority to find a depository institution in violation of the Antiredlining Act when that institution's

lending criteria for home financing have a disproportionate impact on certain neighborhoods and those lending criteria have not been proven by the lending institution at a hearing held by the Commissioner to be supported by a reasonable analysis of the risks associated with the applicants for given loans or the condition of the properties used to secure those loans.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: MARK S. RATTNER
Deputy Attorney General

April 23, 1979

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
Whittlesey Road
Trenton, New Jersey 08628

FORMAL OPINION NO. 8—1979

Dear Commissioner Fauver:

You have requested our opinion as to whether it is within the authority of a chief executive officer of a state correctional institution to restore commutation credits to an inmate when those credits have been previously forfeited by the inmate as a result of his flagrant misconduct. For the following reasons you are advised that, in the discretion of the chief executive officer, such commutation credits may be restored to the inmate.

N.J.S.A. 30:4-140 governs the allowance of commutation credits to inmates in state correctional institutions. This statute provides in pertinent part:

> For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional institution for a minimum-maximum term there shall be remitted to him from both the maximum and minimum term of his sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then time credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence. No time credits shall be calculated as provided for herein on time served by any person in custody between his arrest and the imposition of sentence. In case of any flagrant misconduct the