

ATTORNEY GENERAL

Thus, in *United States v. C.I.O.*, 335 U.S. 106, 68 S.Ct. 1349, 92 Law Ed. 1849 (1948), the Court held that the Corrupt Practices Act did not prohibit the publication of a union newspaper at the union's expense which contained a statement urging the election of a particular candidate and which was distributed to union members. On the other hand, in *United States v. International Union United Auto, etc., Workers*, 352 U.S. 567, 77 S.Ct. 529, 1 L.Ed. 2d 563 (1957), the Court held that the use of union funds to sponsor a commercial television broadcast designed to reach the general public to influence the electoral process constitutes a violation of the federal Corrupt Practices Act.

Enacting N.J.S.A. 19:34-15 three years after the 1907 federal Corrupt Practices Act, it is reasonable to assume that the New Jersey Legislature operated under the same objectives as did Congress.² We therefore conclude that N.J.S.A. 19:34-45 was not intended to prohibit the establishment of a separate political fund contributed to voluntarily by members of a political action committee with knowledge of the intended political use of the fund. It is further concluded, however, that a bank's corporate funds may not be used to establish, administer or solicit contributions for the political fund.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ERMINIE L. CONLEY
Assistant Attorney General

2. It is significant that following the lead of Congress, several states have recently amended their corrupt practices laws to specifically authorize the use of corporate funds to establish and maintain a political fund. See Pa. Stat. Ann. Tit. 25, §3225(c); Tex. Elec. code Ann., Art. 14.06(A)(C). See also N.Y. Elec. Law, Art. 14, §14-116(b).

August 2, 1979

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

FORMAL OPINION NO. 15—1979

Dear Commissioner Bianchi:

You have inquired whether, pursuant to the statutory provisions which establish the Office of Administrative Law, hearings held on applications for the issuance of a charter to a capital stock association¹ should be conducted by administrative law judges rather than by Departmental hearing officers. You are advised that such hearings should be conducted by administrative law judges under the provisions of that Act.

1. A capital stock association is any insured State savings and loan association as defined by N.J.S.A. 17:12B-244(a).

FORMAL OPINION

The hearings in question are those conducted upon application by a capital stock association for a charter pursuant to N.J.S.A. 17:9A-244 *et seq.* The hearing is mandated by N.J.S.A. 17:12B-16. Widespread notice of an application for a new charter is required by N.J.S.A. 17:12B-17. The notice must be published in a newspaper which circulates in the municipality in which the association proposes to operate. Additionally, a copy of the notice must be mailed to every association which has a principal or branch office within the county of the proposed principal office site. At the hearing, the Commissioner must afford an opportunity to be heard to any party so desiring, N.J.S.A. 17:12B-19. The Commissioner shall also make such independent examination or investigation as he deems necessary, N.J.S.A. 17:12B-19.²

Currently, hearings on charter applications are conducted by the Departmental hearing officer. At such hearings, the applicant and any objectors are accorded the opportunity to be heard, to introduce exhibits into evidence and to present and cross-examine witnesses, N.J.S.A. 3:1-2.13(a).

Pursuant to a recent amendment to the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*:

All hearings of a State agency required to be conducted as a *contested case* under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [N.J.S.A. 52:14B-10(c).] [Emphasis added.]

Therefore, the key inquiry is whether the Department's charter hearings represent "contested cases" as that term is defined in the Administrative Procedure Act. If so, they will be required to be conducted under the auspices of an administrative law judge. N.J.S.A. 52:14B-2(b) defines "contested case" as:

a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other *legal relations of specific parties are required by constitutional right or by statute* to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, *after opportunity for an agency hearing.* [Emphasis added.]

Thus, where by statute or constitutional law, a hearing is required before a State agency may determine the legal rights of "specific parties," the matter constitutes a "contested case" which must be heard by an administrative law judge. See *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191, 205 (App. Div. 1977), *certif. denied*, 75 N.J. 538 (1977).

2. The charter approval procedures for capital stock associations are quite similar to those prescribed for mutual associations, banks and savings banks, N.J.S.A. 17:12B-13 *et seq.*, N.J.S.A. 17:9A-10 *et seq.* Therefore, the conclusions reached herein are likewise applicable to those proceedings.

ATTORNEY GENERAL

Of primary importance, therefore, in this case is the fact that a hearing is mandated by statute, N.J.S.A. 17:12B-16, as a condition precedent to the approval of a charter for a savings and loan association, and the focus of charter hearings to a substantial degree is on the individual and specific aspects of the applicant's eligibility and capability, N.J.S.A. 17:12B-20. In drawing a distinction between a charter application of a bank or savings bank and a branch banking application, the Appellate Division in *In Re The Summit and Elizabeth Trust Co.*, 111 N.J. Super. 154, 164 (1970) stated in pertinent part:

The Agency inquiry as to . . . [branch applications] is less stringent and, indeed a formal hearing is not a prerequisite The Commissioner may act upon plenary and completely informative data supplied to him by the applicant and any objecting bank. The crucial findings to be made are whether the interests of the public will be served and whether conditions in that locality afford reasonable promise of successful operation, N.J.S.A. 17:9A-20. [Citations omitted.]³

In contrast to the approval of a branch application:

[T]he issuance of a bank charter must be preceded by application, hearing, notice, publication and findings as set forth in N.J.S.A. 17:9A-9, 10, 11. In addition to requisite findings as to public interest and probable success, there must be adequate findings as to such elements as capital structure, stock subscriptions, name, location, deposit liabilities, directorship and management.⁴ [*Summit and Elizabeth Trust Co.*, *supra*, 164-65.]

In sum, because these charter application hearings are required by statute and are held in order to determine the legal rights and privileges of "specific parties," it is clear that such hearings are contested cases within the meaning of the Administrative Procedure Act. You are, therefore, advised that these charter hearings should be conducted by an administrative law judge, unless the Commissioner deems it appropriate to himself act as the hearing officer.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MARK S. RATTNER
Deputy Attorney General

3. The characterization of a branching application for purposes of the Administrative Procedure Act was considered in *Formal Opinion No. 6*, dated March 12, 1979. Since those hearings were not required by statute nor mandated by constitutional right, *First National Bank of Whippany v. Trust Co. of Morris Cty.*, 76 N.J. Super. 1, 6 (App. Div. 1962), it was concluded that a branching hearing was not a contested case and need not be referred to an administrative law judge.

4. The requisite findings for approval of a charter for a State association are quite similar to those for approval of a charter for a bank or savings bank, *compare* N.J.S.A. 17:9A-11 with N.J.S.A. 17:12B-20 (mutual associations), N.J.S.A. 17:12B-249 (capital stock associations).