

FORMAL OPINION

provided by N.J.S.A. 30:4-140 on the full aggregated sentence required to be served in the state prison.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

December 20, 1979

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

FORMAL OPINION NO. 27—1979

Dear Dr. Finley:

You have asked whether regulations recently adopted by the Public Health Council of the Department of Health with respect to smoking in certain public places have been superseded by provisions of the State's new criminal code.

The Public Health Council, which consists of eight members appointed by the Governor, is empowered, among other functions, to adopt "such reasonable sanitary regulations *not inconsistent with* the provisions of this act or *the provisions of any other law of this State* as may be necessary properly to preserve and improve the public health in this State." (Emphasis added.) Such regulations are designated as the State Sanitary Code. N.J.S.A. 26:1A-7. The Sanitary Code "may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey," including, among other designated functions, "prohibiting nuisances hazardous to human health." *Ibid.*

In December 1978 a public hearing on proposed smoking regulations was conducted by former Judge Goldmann on behalf of the Council. Following the submission of an extensive Report and Recommendations, the Council in April 1979 adopted smoking regulations substantially as proposed in a notice published in the New Jersey Register in November 1978. N.J.A.C. 8:15-1.1 *et seq.* Essentially, the regulations which apply to certain restaurants, retail food stores, health care facilities, and places of public assembly or attendance, require the owner or operator of such establishments to restrict smoking to designated "smoking permitted" areas and to provide adequate mechanical means of ventilation of smoke in these areas. They are scheduled to go into effect on January 1, 1980.

The Sanitary Code regulations contain a specific reference to the provision of the new Code of Criminal Justice that imposes quasi-criminal

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penalties against persons who smoke in certain public places. N.J.A.C. 8:15-1.5(c). N.J.S.A. 2C:33-13 reads in full as follows:

a. Any person who smokes or carries lighted tobacco in or upon any bus or other conveyance, other than in the places provided, is a petty disorderly person.

b. Any person who smokes or carries lighted tobacco in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance under authority of R.S. 40:48-1 and 40:48-2 or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted, is guilty of a petty disorderly persons offense. Notwithstanding the provisions of 2C:43-3, the maximum fine which can be imposed for violation of this section is \$200.00.

c. *The provisions of this section shall supersede any other statute and any rule or regulation adopted pursuant to law.* [Emphasis added.]

This provision replaced a more narrow provision of Title 2A that prohibited smoking or carrying lighted tobacco only in buses or trolley cars and made violations punishable by a maximum fine of \$25. N.J.S.A. 2A:170-65.

The issue here is whether the subsection of N.J.S.A. 2C:33-13 that "supersedes any other statute and any rule or regulation adopted pursuant to law" serves to invalidate the Sanitary Code regulations in question. Obviously, this repealing clause cannot be read literally, for to do so would mean the obliteration of every other existing law and regulation. On the other hand, there can be no doubt from the language of this clause that it was intended to be far-reaching. Since the superseding clause of N.J.S.A. 2C:33-13 does not explicitly designate that "statutes, rules or regulations" intended to be repealed, it is appropriate in attempting to ascertain the precise scope of this clause to seek whatever guidance may be gleaned from the statute's legislative history. As the court stated in *Cath. Char., Dio. of Camden v. Pleasantville*, 109 N.J. Super. 475, 485 (App. Div. 1970), "It is . . . clear that when uncertainties or ambiguities exist it is appropriate for the court, in order to ascertain legislative intent, to examine the history of the enactments, including any statements attached to the bills which were enacted into law."

The legislative history of N.J.S.A. 2C:33-13 unequivocally establishes a legislative intent to supersede the Sanitary Code regulations at issue. A statement on the Assembly bill that culminated in N.J.S.A. 2C:33-13 states that its purpose is "to clarify that smoking in a public place is to be governed by the municipal ordinance or by the owner or person responsible for the operation of the public place." Any doubt left by this statement respecting the intent to preclude regulation of smoking in public places by government bodies other than municipalities is dispelled by the statement filed by the Senate Judiciary Committee. That statement avers that the purpose of N.J.S.A. 2C:33-13 is "to clarify that smoking in a public place is to be governed by the municipal ordinance or by the owner or

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person responsible for the operation of the public place and *not by rule or regulations of an executive agency. The amendment would preclude enforcement of smoking regulations by an executive agency.*" (Emphasis added.)

We are mindful of the significant public health objectives underlying adoption of the Sanitary Code smoking regulations. As noted at the outset, however, the very statute pursuant to which the regulations were adopted states that Code regulations promulgated by the Public Health Council must be consistent with State statutes. *See Borden's Farm Products v. Board of Health*, 36 N.J. Super. 104, 114 (Law Div. 1955). In view of the unequivocal evidence of legislative intent to preclude the Council from adopting or enforcing regulations respecting smoking in public places, it must be concluded that the Sanitary Code regulations in question are superseded by N.J.S.A. 2C:33-13.

For these reasons, it is our opinion that the regulations promulgated by the Public Health Council dealing with smoking in public places in N.J.A.C. 8:15-1.1 *et seq.* have been superseded by the Code of Criminal Justice. Accordingly, the regulations may not be implemented or enforced.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

January 10, 1980

JOSEPH P. LORDI, *Chairman*
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1980

Dear Chairman Lordi:

You have inquired with regard to the legality of a backgammon tournament which a casino hotel operator proposes to sponsor at its business premises. The hotel operator is currently undecided as to whether or not to charge a nominal admission fee to the tournament or to permit free participation by the contestants. We have concluded that the proposed backgammon tournament would not violate the criminal laws of New Jersey provided that no admission fee is charged, either directly or indirectly, for participation in the tournament.

The backgammon tournament format at issue is fairly standard and has been utilized at casinos throughout the world, including Las Vegas, Monte Carlo and Paradise Island in the Bahamas. Backgammon is a game in which a series of counters are moved over a board with the object of placing all the counters in a prescribed position. The movement of the