

ATTORNEY GENERAL

N.J.S.A. 2C:37-1(j). Provided that no such activity is permitted and that no admission fee is assessed either directly or indirectly such as by conditioning participation on the purchase of any goods or services, the proposed backgammon tournament will not contravene the criminal laws of New Jersey.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: EDWIN H. STIER
Assistant Attorney General

January 18, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1980

Dear Mr. Skokowski:

You have raised questions as to whether municipalities and counties are permitted to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds or to participate in commercially managed investment firms providing plans for deferred compensation. You are hereby advised that municipalities and counties are not authorized to enter into agreements with either non-profit or commercially-operated organizations which provide for the investment of deferred compensation funds.

Any municipality or county may set up a deferred compensation plan for its employees. N.J.S.A. 43:15B-1 *et seq.* A local unit which establishes such a plan must designate one or a group of its public officials or its governing body as the "named fiduciary" responsible for implementing the plan. The named fiduciary is empowered to take "any steps reasonably necessary to implement the plan *consistent with this act* (emphasis added)" and with the requirements of the Internal Revenue Service. N.J.S.A. 43:15B-3(e). N.J.S.A. 43:15B-3(a) requires that the employer (the local unit) shall invest all moneys from the plan which are not needed for immediate payment of benefits in one of three specific ways: interest-bearing securities in which savings banks of the State are authorized to invest their funds; deposits in interest-bearing accounts; or deposits in the State of New Jersey Cash Management Fund. N.J.S.A. 43:15B-3(b) further provides that if the State creates a deferred payment compensation plan, the local units may participate in that plan. (Such a plan was created

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through the enactment of L. 1978, c. 39, N.J.S.A. 52:18A-163 *et seq.*) However, N.J.S.A. 43:15B-1 *et seq.* contains no specific provision authorizing the local units to enter into agreements with organizations offering deferred compensation plans.

In fact, the legislative history of the act clearly indicates that the Legislature did not intend to permit such activity. When the act was first introduced on February 9, 1976, as A-1475, it authorized local units to invest deferred compensation funds in interest-bearing securities in which savings banks of the State were authorized to invest their funds or to make deposits in interest-bearing accounts. Additionally, the bill specifically authorized the investment of such funds in plans which involved either the purchase of a group annuity contract from an insurance company or

b. Entering into a trust and other agreements with a national non-profit organization offering a deferred compensation plan as a service to employers. [A-1475, §5b.]

Clearly, this version of the bill would have permitted the use of outside deferred compensation plans by local units as an alternative to investment in interest-bearing securities in which savings banks of the State might invest their funds, to deposits in interest-bearing accounts or to the purchase of group annuity contracts.

In April of 1977, a bill, S-3223, was introduced to create the State of New Jersey Cash Management Fund and to permit local units to deposit their moneys in the Fund instead of in approved banks or trust companies.* Subsequently, on June 27, 1977, the Senate amended A-1475. The amendment deleted section 5 of the bill, which permitted use of national non-profit deferred compensation plans, and added a new section 3 which permitted the local units to invest in the New Jersey Cash Management Fund or in any State deferred compensation plan which might be created in the future. Further, on December 1, 1977, the Senate also deleted from the bill a separate paragraph, originally part of §5, which permitted the employer to enter into an agreement with an entity designated by the employee to provide for the investment of amounts of deferred compensation. See Governor's comments to Assembly Bill No. 1475, December 1, 1977. These amendments clearly indicate that the Legislature intended to remove from the local units the option of using private deferred compensation plans or investment services and instead to limit the investment or deposit of unneeded deferred compensation funds by such units to other specific, statutorily delineated categories of investment.

Such an interpretation is supported by a comparison of N.J.S.A. 43:15B-1 *et seq.*, with the express language in N.J.S.A. 52:18A-163 *et seq.*, which established the New Jersey State Employees Deferred Compensation Board. In contrast to the provisions of N.J.S.A. 43:15B-1 *et seq.*, the latter statute explicitly provides that the New Jersey State Employees Deferred Compensation Board may contract.

* S-3223 was enacted and was signed into law on November 2, 1977, as L. 1977, c. 281. It established the State and New Jersey Cash Management Fund, N.J.S.A. 52:18A-90.4, and authorized local units to participate therein. N.J.S.A. 40A:5-14.

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[w]ith one or more private organizations for the administration of all or part of the [deferred compensation] plan, including the management and investment or either thereof of deferred and deducted salary funds [N.J.S.A. 52:18A-167(a)(2).]

The Board's decision to make such a contract is subject to the prior approval of the State Investment Council. *Id.* The statute also provides that such private organizations may not distribute information about any deferred compensation program or benefits without prior approval from the Division of Investment. N.J.S.A. 52:18A-167(d).

Thus, where the Legislature intended to authorize the use of private deferred compensation plans, it did so through an explicit, regulated scheme. N.J.S.A. 43:15B-1 *et seq.* lacks any such specific authorization for the use of private deferred compensation organizations. Further, since specific permissive language was actually deleted from the original bill, it is reasonable to conclude that the Legislature did not intend to permit local entities to participate in privately operated plans or to permit named fiduciaries of the local units to make agreements with non-profit entities for the investment of deferred compensation funds. Rather, the statutory scheme provides that local entities are to invest any deferred compensation funds, not immediately required for use, only in those types of investments which the Legislature has expressly described in the act.

In conclusion, you are advised that counties and municipalities are not authorized to participate in commercially managed deferred compensation plans or to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds. You are further advised, however, that such local units may participate in any deferred payment compensation plan established by the State for the State's employees and, through such a plan, in any deferred compensation plans administered and managed by private organizations with whom the New Jersey State Employees Deferred Compensation Board may contract.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: SUSAN L. REISNER
Deputy Attorney General

FORMAL OPINION

January 18, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

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Any municipality or county may set up a deferred compensation plan for its employees. N.J.S.A. 43:15B-1 *et seq.* A local unit which establishes such a plan must designate one or a group of its public officials or its governing body as the "named fiduciary" responsible for implementing the plan. The named fiduciary is empowered to take "any steps reasonably necessary to implement the plan *consistent with this act* (emphasis added)" and with the requirements of the Internal Revenue Service. N.J.S.A. 43:15B-3(e). N.J.S.A. 43:15B-3(a) requires that the employer (the local unit) shall invest all moneys from the plan which are not needed for immediate payment of benefits in one of three specific ways: interest-bearing securities in which savings banks of the State are authorized to invest their funds; deposits in interest-bearing accounts; or deposits in the State of New Jersey Cash Management Fund. N.J.S.A. 43:15B-3(b) further provides that if the State creates a deferred payment compensation plan, the local units may participate in that plan. (Such a plan was created through the enactment of L. 1978, c. 39, N.J.S.A. 52:18A-163 *et seq.*) However, N.J.S.A. 43:15B-1 *et seq.* contains no specific provision authorizing the local units to enter into agreements with organizations offering deferred compensation plans.

In fact, the legislative history of the act clearly indicates that the Legislature did not intend to permit such activity. When the act was first introduced on February 9, 1976, as A-1475, it authorized local units to invest deferred compensation funds in interest-bearing securities in which savings banks of the State were authorized to invest their funds or to make deposits in interest-bearing accounts. Additionally, the bill specifically authorized the investment of such funds in plans which involved either the purchase of a group annuity contract from an insurance company or

b. Entering into a trust and other agreements with a national non-profit organization offering a deferred compensation plan as a service to employers. [A-1475, §5b.]

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Clearly, this version of the bill would have permitted the use of outside deferred compensation plans by local units as an alternative to investment in interest-bearing securities in which savings banks of the State might invest their funds, to deposits in interest-bearing accounts or to the purchase of group annuity contracts.

In April of 1977, a bill, S-3223, was introduced to create the State of New Jersey Cash Management Fund and to permit local units to deposit their moneys in the Fund instead of in approved banks or trust companies.* Subsequently, on June 27, 1977, the Senate amended A-1475. The amendment deleted section 5 of the bill, which permitted use of national non-profit deferred compensation plans, and added a new section 3 which permitted the local units to invest in the New Jersey Cash Management Fund or in any State deferred compensation plan which might be created in the future. Further, on December 1, 1977, the Senate also deleted from the bill a separate paragraph, originally part of §5, which permitted the employer to enter into an agreement with an entity designated by the employee to provide for the investment of amounts of deferred compensation. See Governor's comments to Assembly Bill No. 1475, December 1, 1977. These amendments clearly indicate that the Legislature intended to remove from the local units the option of using private deferred compensation plans or investment services and instead to limit the investment or deposit of unneeded deferred compensation funds by such units to other specific, statutorily delineated categories of investment.

Such an interpretation is supported by a comparison of N.J.S.A. 43:15B-1 *et seq.*, with the express language in N.J.S.A. 52:18A-163 *et seq.*, which established the New Jersey State Employees Deferred Compensation Board. In contrast to the provisions of N.J.S.A. 43:15B-1 *et seq.*, the latter statute explicitly provides that the New Jersey State Employees Deferred Compensation Board may contract.

[w]ith one or more private organizations for the administration of all or part of the [deferred compensation] plan, including the management and investment or either thereof of deferred and deducted salary funds [N.J.S.A. 52:18A-167(a)(2).]

The Board's decision to make such a contract is subject to the prior approval of the State Investment Council. *Id.* The statute also provides that such private organizations may not distribute information about any deferred compensation program or benefits without prior approval from the Division of Investment. N.J.S.A. 52:18A-167(d).

Thus, where the Legislature intended to authorize the use of private deferred compensation plans, it did so through an explicit, regulated scheme. N.J.S.A. 43:15B-1 *et seq.* lacks any such specific authorization for the use of private deferred compensation organizations. Further, since specific permissive language was actually deleted from the original bill, it is reasonable to conclude that the Legislature did not intend to permit

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In conclusion, you are advised that counties and municipalities are not authorized to participate in commercially managed deferred compensation plans or to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds. You are further advised, however, that such local units may participate in any deferred payment compensation plan established by the State for the State's employees and, through such a plan, in any deferred compensation plans administered and managed by private organizations with whom the New Jersey State Employees Deferred Compensation Board may contract.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: SUSAN L. REISNER
Deputy Attorney General

January 25, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1980

Dear Commissioner English:

The Solid Waste Administration has requested an opinion interpreting the Solid Waste Management Act and the Solid Waste Utility Control Act of 1970, to determine whether solid waste management districts, acting pursuant to solid waste management planning, have the authority to require that solid waste generated within the districts be directed to specific waste disposal facilities. Please be advised that the planning districts have authority to formulate a solid waste management plan showing the destination of wastes generated within the districts, and that the New Jersey Department of Environmental Protection has final authority to approve and render operative such a plan. Similarly, the Board of Public Utilities Commissioners may designate a solid waste management district as a franchise area to be served by one or more persons engaged in solid waste disposal, and in this manner the B.P.U. may exercise control over the destination of the waste stream.

At the outset, it is important to recognize that environmentally sound