

FORMAL OPINION

January 31, 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. 4—1980

Dear Mr. Skokowski:

You have inquired as to whether amounts to be raised by a municipality to cover an anticipated deficit in the budget of a municipally owned or operated utility are to be considered as exempt from the municipality's cap under the Local Government Cap Law. For the reasons set forth below, you are advised that those amounts which a municipality may appropriate in anticipation of a deficit in its utility budgets for a forthcoming fiscal year are not exempt from a municipality's budget cap.

Municipalities are by statute authorized to establish or acquire and to own or operate various types of public utilities. N.J.S.A. 40:62-1 *et seq.* Further, they are authorized to establish rental or other charges for such services as may be provided by such utilities. N.J.S.A. 40:62-13; N.J.S.A. 40:62-77. The revenues generated by the operation of such utilities as well as the appropriations made for such operations are required to be set forth in a separate section of the budget of any municipality which owns or operates such a utility. N.J.S.A. 40A:4-33. Such appropriations are further required to be separated into at least three categories, specifically operations, interest and debt retirement, and deferred charges and statutory expenditures. N.J.S.A. 40A:4-34. Additionally, all moneys derived from the operation of such a utility, as well as any other moneys applicable to its support, are to be segregated and kept in a separate fund known as a "utility fund" and are, subject to N.J.S.A. 40A:4-35, to be applied only to the payment of the operating and upkeep costs and the debt service charges of the utility. N.J.S.A. 40A:4-62.

In the event that the operation of a municipally owned or operated public utility has resulted or will result in a deficit, then a municipality is required to include in its utility budget an appropriation sufficient to cover such a deficit. N.J.S.A. 40A:4-35. The purpose underlying this requirement would clearly appear to be a furtherance of the general policy of the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, that all local governing bodies operate on a "cash basis" and accordingly appropriate sufficient moneys in their annual budgets to meet all anticipated expenditures during the course or the fiscal year. N.J.S.A. 40A:4-2; N.J.S.A. 40A:4-3.

N.J.S.A. 40A:4-45.3(e) excludes from a municipality's budget cap any amounts appropriated to fund a preceding year's deficit. It provides as follows:

In the preparation of its budget a municipality shall limit any increase in said budget to 5% over the previous year's final appropriations subject to the following exemptions:

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- e. Amounts required for funding a *preceding year's* deficit; . . .  
[Emphasis supplied.]

As was noted in *Formal Opinion No. 3—1977*, p. 9, the apparent intent of the Legislature in providing for such an exclusion was to exempt from the spending limitation established by the Local Government Cap Law any amounts necessary to fund *deficits from preceding years* created by the failure of local governments to realize revenues anticipated for such years. Further, as was noted in that opinion, the exclusion created by N.J.S.A. 40A:4-45.3(e) serves to ensure that appropriations made to cover a preceding year's deficit which has resulted from a shortfall in the collection of anticipated revenues in the preceding year, whether for general municipal or municipal utility purposes, will not occasion cuts in other government services in the following year. *Formal Opinion No. 3—1977*, p. 9.

In construing a statute, it is clear that the language in the provision is to be given its ordinary and well-understood meaning unless an explicit indication exists to the contrary. *Service Armament Co. v. Hyland*, 70 N.J. 550 (1976); *Safeway Trails, Inc. v. Furman*, 41 N.J. 467 (1964), *cert. denied* 370 U.S. 14, 85 S. Ct. 144, 13 L. Ed. 2d 84. In reading N.J.S.A. 40A:4-45.3(e) in light of this principle, it is evident from the plain and ordinary meaning of the language in the provision that the Legislature intended that the exclusion set forth therein apply only to deficits which had arisen in a preceding fiscal year and not to deficits which are anticipated in the coming fiscal year. *Formal Opinion No. 3—1977* reflects this conclusion. Such a conclusion is also supported by the fact that where the Legislature has intended to encompass both existing and anticipated deficits in a statutory provision, it has done so explicitly in a manner which indicates that it intends to encompass both. *See* N.J.S.A. 40A:4-35. Further, whereas not excluding appropriations to cover a preceding year's deficit from a municipality's cap might well have the consequence of reducing the appropriations available for other necessary governmental services, such is not the case with regard to anticipated deficits since a governing body which owns or operates a public utility can for a forthcoming fiscal year increase the rental or other charges it makes for the services provided by the utility to ensure that the revenues available to the utility will meet the cost of such a utility. *See, e.g.*, N.J.S.A. 40:62-13; N.J.S.A. 40:62-77. A municipality may then, without being restricted under the Local Government Cap Law, to appropriate such revenues to offset anticipated costs in the operations of the utility. You are, therefore, advised that a municipality may not exclude from its budget cap any amounts appropriated to cover an anticipated deficit in the budget of a municipal owned or operated utility.

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

By: DANIEL P. REYNOLDS  
*Deputy Attorney General*