March 28, 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. 7—1980

Dear Mr. Skokowski:

A question has arisen with regard to whether payments made for municipal services provided to newly constructed redevelopment or housing projects undertaken pursuant to the Urban Renewal Corporation and Association Law of 1961, the Urban Renewal Nonprofit Corporation Law of 1965, or the New Jersey Housing Finance Agency Law may be excluded from the budget cap of a municipality. For the reasons set forth herein, you are advised that any revenue generated by such payments for services provided to redevelopment projects constructed pursuant to the Urban Renewal Corporation Law of 1961 and the Urban Renewal Nonprofit Corporation Law of 1965, which is in excess of the amount of revenue which was generated by the payment of taxes on improvements located on the property prior to the construction of such new projects would fall outside of a municipal budget cap. You are further advised, for the reasons set forth herein, that any revenue generated by such payments for services provided to housing projects constructed pursuant to the New Jersey Housing Finance Agency Law which is in excess of the amount of revenue which was generated by the payment of taxes on the property, and any improvements situated thereon, prior to the construction of such projects would also be outside of a municipal budget cap.

The Urban Renewal Corporation and Association Law of 1961, N.J.S.A. 40:55C-40 *et seq.*, and the Urban Renewal Nonprofit Corporation Law of 1965, N.J.S.A. 40:55C-77 *et seq.*, were enacted for the purpose of encouraging the investment of private capital, and the participation of private enterprise and civic minded citizens respectively, in the restoration and elimination of blighted areas in the State's municipalities. N.J.S.A. 40:55C-41; N.J.S.A. 40:55C-78. To accomplish these purposes, the two acts authorize municipalities to enter into special financial arrangements with urban renewal corporations, urban renewal associations, and urban renewal nonprofit corporations for the purpose of having such corporations or associations undertake projects for the redevelopment of such blighted areas. N.J.S.A. 40:55C-49 to 64; N.J.S.A. 40:55C-92 to 96. In order to enter into such special financial arrangements, such corporations must meet certain requirements set forth in the acts, N.J.S.A. 40:55C-54; N.J.S.A. 40:55C-55.1; N.J.S.A. 40:55C-88, and must also submit an application to the municipality for approval of the projects which they desire to undertake. N.J.S.A. 40:55C-58; N.J.S.A. 40:55C-91. Upon municipal approval of a project, the municipality then enters into a financial agreement with the corporation or association. N.J.S.A. 40:55C-59; N.J.S.A. 40:55C-92. In such agreements, the municipality agrees to exempt from

taxation any improvements constructed or acquired by such a corporation or association. N.J.S.A. 40:55C-59(b); N.J.S.A. 40:55C-92(b). The corporation or association agrees to undertake the approved project and, in the case of the Urban Renewal Corporation and Association Law, to limit the profits or dividends payable to the association or corporation, or, in the case of the Urban Renewal Nonprofit Corporation Law, to pay any profits to the municipality.

Further, the two acts specifically provide that improvements made by an urban renewal corporation or an urban renewal association pursuant to such an agreement are to be exempt from taxation for certain periods of time as set forth in the acts. N.J.S.A. 40:55C-65; N.J.S.A. 40:55C-97. In lieu of making normal tax payments, an urban renewal corporation or association is instead required to make payment to the municipality of *"an annual service charge for municipal services supplied to the project."* *Id.* The amount of such payments is to be a percentage of the annual gross revenues of the project or, alternatively, if such an amount cannot be calculated, a percentage of the total cost of the project. *Id.*

The New Jersey Housing Finance Agency Law, N.J.S.A. 55:14J-1 *et seq.*, contains similar provisions with regard to housing projects financed by the agency. N.J.S.A. 55:14J-30. The law provides that the governing body of any municipality in which such a housing project is to be located may provide that such project shall be exempt from real property taxation provided that the sponsor of the project shall enter into an agreement with the municipality *"to make payments to the municipality in lieu of taxes for municipal services."* N.J.S.A. 55:14J-30(b). Such agreements may provide for the payment by the sponsor to the municipality of up to 20% of the annual gross revenue from each project situated in the municipality. *Id.*

The Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.*, was enacted for the purpose of limiting the annual increase in spending by municipalities and counties without constraining these bodies to the point of rendering the provision of necessary governmental services impossible. N.J.S.A. 40A:4-45.1. To accomplish this purpose, the Legislature established an overall limitation on annual increases in spending by local governing bodies but also set forth certain specified exceptions to this limitation. N.J.S.A. 40A:4-45.3; N.J.S.A. 40A:4-45.4.

One of these exceptions, set forth at N.J.S.A. 40A:4-45.3(h), provides that a municipality may exclude from its budget cap the expenditure of amounts derived from new or increased service fees imposed by ordinance. The evident intent of this exception is to permit a municipality to expend the increase in income generated from new sources of revenue while not altering the basic restraint which the Local Government Cap Law places on spending supported by existing revenue sources. In this respect, this exception is similar in intent to the exception provided by N.J.S.A. 40A:4-45.3(a) which exempts from a municipality's budget cap the amount of new revenue generated by the increase in a municipality's valuations based solely on applying the municipality's preceding year's general tax rate to the assessed value of new construction or improvements. *See Formal Opinion No. 3-1977,* and *City of Clifton v. Laezza,* 149 N.J. Super. 97, 100 (App. Div. 1977). It is also clear that the exemption provided for the expenditure of revenues generated by new or increased service fees was

intended by the Legislature to encompass only the net increase in revenues derived from such new or increased fees and not to include the revenues being generated by fees already in existence.

Since payments made pursuant to N.J.S.A. 40:55C-65, N.J.S.A. 40:55C-97 and N.J.S.A. 55:14J-30(b) are expressly for the purpose of paying for municipal services provided to newly constructed redevelopment and housing projects, they clearly fall within both the language and the evident intent of N.J.S.A. 40A:4-45.3(h). Clearly, to the extent that payments made pursuant to N.J.S.A. 40:55C-65 and N.J.S.A. 40:55C-97 generate revenue for a municipality in excess of the amount of revenue which was generated by tax payments on any improvements located on the site of such projects prior to the construction of the new projects, they constitute new service fees which provide new sources of income for the municipality. Similarly, to the extent that payments made pursuant to N.J.S.A. 55:14J-30(b) generate revenue in excess of the amount of revenue generated by taxes paid on the property, and any improvements situated thereon, prior to the construction of such projects, they also constitute new service fees which provide new sources of revenue for a municipality. Furthermore, excluding the expenditure of such increased amounts of revenue derived from such payments from a municipality's budget cap would also be consistent with the overall purposes of the Local Government Cap Law. Since such an exclusion would only be equal to the amount of new revenue derived from payments made for services provided to newly constructed redevelopment or housing projects, it would not alter the basic restraint which the Local Government Cap Law imposes upon increases in spending and, in turn, the taxes required to support such spending. Accordingly, such an exclusion would not undermine the relief which the statute is intended to provide to the State's municipal taxpayers.

Alternatively, by not permitting the exclusion of such amounts from the cap limitation, the other purpose of the statute of not restraining municipalities to the point of rendering the provision of necessary governmental services impossible would be frustrated. Construction of redevelopment and housing projects undertaken pursuant to N.J.S.A. 40:55C-40 *et seq.*, N.J.S.A. 40:55C-77 *et seq.;* and N.J.S.A. 55:14J-1 *et seq.*, creates a need for additional municipal services. In fact, as noted, the explicit purpose of the payments to be made pursuant to N.J.S.A. 40:55C-65, N.J.S.A. 40:55C-97 and N.J.S.A. 55:14J-30(b) is to compensate the municipality for providing such services to such newly constructed projects. Were the additional amount of revenue generated by such payments made pursuant to these statutory provisions not excluded from a municipality's cap, the result would be that the municipality would have to provide additional services to such projects without the benefit of the increase in revenues which such projects generate for the municipality. Such a result would seem clearly contrary to the express purpose of the law as set forth in N.J.S.A. 40A:4-45.1 of not restraining municipalities to the point where they cannot provide necessary governmental services. Thus, in addition to clearly falling within the specific language of N.J.S.A. 40A:4-45.3(h), the exclusion of expenditures of the additional amount of revenue derived from such payments from a municipality's budget cap for municipal services provided to such projects would also be consistent with

the overall purposes of the statute.

In calculating the amount of such payments for municipal services which may be excluded from a municipality's spending limitation, it is evident, as noted above, that only the net increase in revenues generated by the payment of such fees may be excluded from the limitation. While the revenues which were generated by the improvements on property on which new redevelopment projects are constructed and the revenues which were generated by the property, and improvements situated thereon, on which new housing projects are constructed prior to the construction of such projects were real property taxes and not service fees, it is necessary and reasonable to treat such prior real property taxes as preexisting sources of revenue in calculating the net increase in revenues generated by such fees.* Such treatment is necessary in order to carry out both the clear intent of the specific exemption set forth in N.J.S.A. 40A:4-45.3(h) and the overall scheme of the Local Government Cap Law. Accordingly, in calculating the amount of such payments which may be excluded from a municipality's spending limitation, an appropriate adjustment must be made to deduct the amount of real property taxes so generated prior to the construction of the project from the amount of fees generated by the project to obtain the net increase in revenue which may be excluded from the municipality's spending limitation.

In conclusion, you are advised that the expenditure of revenue generated from payments made for municipal services provided to newly constructed redevelopment projects pursuant to the provisions of the Urban Renewal Corporation and Association Law and the Urban Renewal Nonprofit Corporation Law which is in excess of the amount of revenue which was generated by real property taxes on improvements located on the project site prior to the construction of such projects may be excluded from a municipality's budget cap. You are further advised that the expenditure of revenue generated from payments made for municipal services provided to newly constructed housing projects pursuant to the New Jersey Housing Finance Agency Law which is in excess of the amount of revenue which was generated by real property taxes on the property and any improvements located thereon prior to the construction of such projects may also be excluded from a municipality's budget cap.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

* The tax exemption provided by N.J.S.A. 40:55C-65 and N.J.S.A. 40:55C-97 applies only to the improvements constructed in a redevelopment project and not the underlying land which continues to be taxed in the same manner as other real property. Thus, in calculating the increase in revenues generated by the payment of service fees in lieu of taxes under these two provisions, the increase would be the amount by which such payments exceed any taxes which were paid on any improvements which may have been located on the site of such a project prior to the construction of such a project. In contrast, in the instance of a new housing

project which is exempt from taxation by virtue of N.J.S.A. 55:14J-30(b), both the land on which such a project is constructed and the improvements constructed thereon are exempt from taxation. Accordingly, in calculating the net increase in revenues generated by payments made in lieu of taxes pursuant to N.J.S.A. 55:14J-30(b), the increase would be the amount by which such payments exceed any taxes which were paid on the property and any improvements situated thereon prior to the construction of such a project.

April 1, 1980

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

FORMAL OPINION NO. 8—1980

Dear Commissioner English:

You have requested an opinion as to whether there is any statutory or legal impediment to purchasing property at a price in excess of the appraised value. You are hereby advised that there is no statutory impediment restricting the Commissioner from exercising reasonably based administrative discretion to purchase property at a price in excess of appraised value.

The Legislature has enacted three separate laws dealing with the acquisitions of property by the Commissioner of the Department of Environmental Protection with funds realized from the sale of "Green Acres Bonds". They are N.J.S.A. 13:8A-1; 19 and 35. Under all three bond issues, the Commissioner is authorized to utilize the proceeds of the sale of the bonds to acquire lands for recreation and conservation purposes. The acts further provide that the lands may be acquired by purchase or otherwise on such terms and conditions as the Commissioner shall determine. N.J.S.A. 13:8A-6; 27 and 40. The guidelines to be utilized by the Commissioner in acquiring property are set forth in N.J.S.A. 13:8A-23 and 39. They include inter alia, seeking a reasonable balance among all areas of the State for recreational and conservation facilities; limiting acquisition to predominantly open and natural lands, and avoiding acquisition of lands actively devoted to agriculture.

The Commissioner, in connection with the acquisition of lands by the State, is granted the authority to do all things necessary or useful and convenient including making arrangements for and directing engineering, inspection, legal, financial . . . and other professional services, estimates and advice; and prescribing rules and regulations to implement any provisions of the act. *See* N.J.S.A. 13:8A-16 and 53. As part of the Commissioner's authority to obtain estimates, we are informed two independent appraisals are obtained from a prequalified list of appraisers to estimate the fair market value of the property. The appraisers are required