

ATTORNEY GENERAL

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

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to notify the property owner and offer the property owner the opportunity to accompany the appraiser during his inspection of the property. The appraisals once completed are reviewed in accordance with the procedures as set forth in the Appraisal and Appraisal Review Manual of the Division of Right of Way at the Department of Transportation.

The appraisals and a certification by the Department of Transportation form the basis for negotiations with the owner of the property proposed to be acquired. Both the appraisals and the review express the opinions of the appraisers as to their estimate of fair market value. In most instances the appraisal has relied upon comparable sales to estimate market value. They are aids to the Commissioner in ascertaining just compensation to be paid for the property.

The authority of the Commissioner of Environmental Protection to acquire lands is similar to that granted by N.J.S.A. 27:7-22 to the Commissioner of Transportation. The Department of Transportation, through the exercise of executive discretion, has made provisions for the acquisition of property in excess of the estimates of just compensation. The Department of Transportation defines any settlement made or authorized by the responsible official which is in excess of the estimate of just compensation, as an administrative settlement. The Department requires that the rationale for the settlement be set forth in writing. The extent of the written explanation is a judgement determination, consistent with the situation, circumstances and amount of money involved.

Furthermore, the determination of how much the state will offer for a given piece of property always requires a judgment as to the likely outcome of condemnation proceedings with regard to that property in the event the state is forced to exercise its power of eminent domain. Those circumstances which lead to the conclusion that a condemnation award would likely be in excess of the state's appraised value would also warrant a voluntary acquisition in excess of that amount. The conclusion that such a possibility exists would be based on factors such as a rereview of all current appraisal information, examination of all current sales information, appraisal reports and other pertinent information supplied by the landowner. In all cases, therefore, an acquisition at a price in excess of the appraised value should be justified on its individual merits and properly documented.

In conclusion, therefore, broad authority has been vested in the Commissioner in the disbursement of public funds for the acquisition of property under the Green Acres statutes. It is our opinion there would be no statutory impediment to the Commissioner reasonably exercising her discretion based on adequate and documented justification to acquire property at a price in excess of the state's appraised valuation.

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

By: ROBERT P. GRABOWSKI  
*Deputy Attorney General*

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