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Finally, although the Act only requires disclosure statements where publicly advertised bidding is involved, we note that the Act does not prohibit the imposition of more extensive disclosure requirements than those mandated by the Act. The purpose of the disclosure statements is to make the members of the governing body aware of the real parties in interest with whom they are dealing and to identify "any real or potential conflicts of interest arising out of the awarding of public contracts." *Statement on the Bill, Assembly No. 22 (1976); George Harms Constr. Co. v. Bor. of Lincoln Pk., supra*, at 372. Clearly, a voluntary administrative extension of the disclosure requirement to include nonadvertised bidding should be encouraged as a means to further protect the integrity of the government's procurement process.

Very truly yours,  
JOHN J DEGNAN  
Attorney General

By: SUSAN L. REISNER  
*Deputy Attorney General*

May 1, 1980

MR. BARRY SKOKOWSKI  
*Acting Director*  
Div. of Local Government Services  
Department of Community Affairs  
363 West State Street  
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FORMAL OPINION NO. 10—1980

Dear Mr. Skokowski:

You have requested advice as to the proper construction of the provisions of N.J.S.A. 40A:4-46 which provide as follows:

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditures to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

Specifically, you have inquired as to whether the word "or" in the first sentence of N.J.S.A. 40A:4-46 is to be read disjunctively or conjunctively. Construing the term disjunctively would permit the making of an emergency appropriation by a local unit for either a purpose which is not foreseen at the time of the adoption of the local unit's budget or

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for a purpose for which adequate provision was not made in such a budget. Construing the term conjunctively would mean that an emergency appropriation could be made only if the purpose for which the appropriation was made was not foreseen at the time of the adoption of the local unit's budget and if adequate provision was not made for that purpose in the budget. For the reasons set forth herein, you are advised that the term "or" in N.J.S.A. 40A:4-46 should be read conjunctively and that an emergency appropriation can only be made if the purpose for which it is made was not foreseen at the time of the adoption of the local unit's budget and a pressing need for public expenditure exists.

In construing a statutory provision, it is essential that the construction rendered be consistent with, and not frustrate, the basic policy of the statute as a whole. *New Jersey Builders, Owners and Managers Ass'n. v. Blair*, 60 N.J. 330 (1972). N.J.S.A. 40A:4-46 is part of what is commonly known as the Local Budget Law. N.J.S.A. 40A:4-1 *et seq.* This statute governs preparation, adoption and implementation of the budgets of all local units, *i.e.*, municipalities and counties in the State of New Jersey. It prescribes the manner in which they are to be arranged and the manner in which such budgets may be modified following their initial adoption. It provides that all such budgets shall be prepared on a "cash basis." N.J.S.A. 40A:4-3. A "cash basis" budget is defined in the law as a budget which ensures that there will be sufficient cash collected to meet all debt service requirements, to pay for all necessary operations of the local unit for the fiscal year and to cover all mandatory payments required to be made during the year. N.J.S.A. 40A:4-2. The statute also provides that no moneys may be expended unless a proper appropriation is contained in the budget and that the expenditure is not in excess of that appropriation. N.J.S.A. 40A:4-57; *State v. Boncelet*, 107 N.J. Super. 444, 449-450 (App. Div. 1969). Further, that part of the Local Budget Law known as the Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.*, limits the amount by which a local governing body's budget may increase annually. As well, the statute specifically sets forth the procedures which must be followed by a local unit in adopting its annual budget. N.J.S.A. 40A:4-4 to 4-10. It requires that a public hearing be conducted following advertisement of the budget to ensure that the taxpayers of the local unit will have an opportunity to comment upon and present objections to the proposed budget. N.J.S.A. 40A:4-6, 7 and 8.

The purpose underlying these requirements is to ensure that a municipality, in carrying out its financial affairs, will make ends meet within its fiscal year and will not make expenditures which will depart from the amounts appropriated in the budget for that year. *State v. Boncelet, supra* at 450. By prescribing the manner in which local budgets are to be administered, the statute serves to inculcate sound business principles and practices into municipal economic administration as well as providing members of the taxpaying public with a better understanding of the financial affairs of local government. *Kotlikoff v. Tp. of Pennsauken*, 131 N.J. Super. 590 (Law Div. 1974).

It is clear, upon consideration of the above-noted provisions of the Local Budget Law and the policies they are intended to serve, that N.J.S.A. 40A:4-46 must be read to require that an emergency appropriation can

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only be adopted if an emergent situation arises which was not foreseen at the time of the adoption of the budget and for which adequate provisions do not exist in the budget. First, the "cash basis" budget requirement which underlines the entire Local Budget Law is explicitly intended to ensure that a county or a municipality make sufficient appropriations in its annual budget to provide for all necessary services for the coming year. N.J.S.A. 40A:4-2. Since tax bills are prepared on the basis of the size of such appropriations, N.J.S.A. 40A:4-17, it is essential that the appropriations be sufficient to cover an entire year. Further, this requirement serves to prevent deficit spending and the borrowing which generally ensues from emergency appropriations to meet current operations. To construe N.J.S.A. 40A:4-46 to include appropriations which should properly have been included in the local unit's annual budget would clearly serve to subvert this requirement.

Secondly, construing N.J.S.A. 40A:4-46 to encompass only sudden and unforeseen expenditures serves to protect the participation which the local unit's taxpayers are intended to have in the budget making process. The Local Budget Law requires that such taxpayers be given an opportunity to be heard concerning the manner in which the budget is made up. N.J.S.A. 40A:4-8. To permit emergency appropriations to be made after this process has been completed for purposes which should have been anticipated and provided for in the budget would undermine such public participation in the budget process. It would allow a local governing body to expend more for its basic operations than the taxpayers were advised it would during the budget adoption process.

Third, N.J.S.A. 40A:4-46 should not be interpreted to undermine the policy of the Local Government Cap Law. That law is intended to control the increase in the cost of local government and accordingly to place a limit on increases in the amounts appropriated for basic governmental services from one year to the next. N.J.S.A. 40A:4-45.1; *N.J. State P.B.A., Local 29 v. Town of Irvington*, 80 N.J. 272, 289-290 (1979). To permit the adoption of emergency appropriations to provide additional moneys above a local governing body's cap limitation to fund basic services for which appropriations could and should have been made in the annual budget adopted at the beginning of the year clearly would frustrate this purpose.

Thus, it is evident from a consideration of the legislative policies which underlie the Local Budget Law that N.J.S.A. 40A:4-46 was not intended to provide a means for making appropriations for which provision could have been made in the annual budget of a local governing unit. Rather, in enacting this provision, the Legislature clearly contemplated that only those expenditures which are necessitated by sudden, unanticipated and unforeseen circumstances for which adequate provision could not have been made in the annual budget would be included within its scope.

Moreover, a review of the specific language of N.J.S.A. 40A:4-46 clearly reinforces the conclusion that this is the proper construction. It is well established that, in ascertaining the intent of a statute, primary reference must be made to the language of the statute, *Lane v. Holderman*, 23 N.J. 304 (1957), and that such language must be read in accordance with its plain, ordinary and well-understood meaning. *Service Armanent Co. v. Hyland*, 70 N.J. 550 (1976); *Safeway Trails, Inc. v. Furman*, 41 N.J. 467,

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*cert. denied* 379 U.S. 14, 85 S. Ct. 144, 13 L. Ed. 2d 84. The term "emergency" is defined in *Webster's New Dictionary of the American Language, Second College Edition*, 1972, as a "sudden, generally unexpected occurrence or set of circumstances demanding immediate action." This definition indicates that the commonly understood meaning of the word is that of something sudden and unforeseen. Further, N.J.S.A. 40A:4-46 provides that such an appropriation shall be made to meet a "pressing need." Clearly, this contemplates something other than the types of expenditures which a local governing body would routinely make for its normal governmental operations.

Further, the courts of this State have construed the term "emergency" in a manner consistent with this definition. In *Scatuorchio v. Jersey City Incinerator Authority*, 14 N.J. 72, 87 (1953), the court noted, in construing the term "emergency" as used in R.S. 40:50-1, that it should be given its generally accepted meaning unless inconsistent with the manifest intent of the Legislature or unless a different meaning is expressly indicated. Further, the court went on to state that, in general parlance, the term "emergency" means a "sudden or unexpected occurrence or condition calling for immediate action." *Scatuorchio v. Jersey City Incinerator Authority*, *supra* at 88. Finding that the circumstances in the case indicated that the situation before the court was neither sudden nor unforeseeable, the court concluded that no true emergency existed. *Scatuorchio v. Jersey City Incinerator Authority*, *supra* at 90 to 93.

Similarly, in construing those statutory provisions relating to the making of emergency appropriations by boards of education under N.J.S.A. 18A:22-21, and its predecessor, R.S. 18:6-55, the courts have also held that the term "emergency" is to be read as "a sudden or unexpected occurrence or condition calling for immediate action." *Bd. of Ed. of Elizabeth v. Elizabeth*, 13 N.J. 589, 593 (1953); *Newark Teachers Assoc. v. Bd. of Education*, 108 N.J. Super. 34, 47 (Law Div. 1969). In each case, although the literal language of the statutes in question provided that an additional appropriation could be made where the appropriation made in the annual budget had been underestimated *or* where an appropriation was necessary to meet an emergency, *see* N.J.S.A. 18A:22-21, the courts held that an additional appropriation could be made after the adoption of an annual budget only in the event that an "emergency," as defined by the courts, existed and further noted that, in the orderly conduct of school affairs, budgeting must be an annual process except for real emergencies. *Bd. of Ed. of Elizabeth v. Elizabeth*, *supra* at 593-594; *Newark Teachers Assoc. v. Bd. of Education*, *supra* at 47.

Finally, with regard to judicial construction of the Local Budget Law itself, the courts have held that additional expenditures may be incurred by a local governing unit following the adoption of its budget in the event of "bona fide emergencies," *Home Owners Construction Co. v. Glen Rock*, 34 N.J. 305, 315 (1961), or where a judgement requiring expenditures is entered following the adoption of the unit's annual budget. *In re Salaries Prob. Off. Bergen County*, 58 N.J. 422 (1971). *See also Lyons v. Bayonne*, 101 N.J. L. 455 (S. Ct. 1925); *Murphy v. West New York*, 130 N.J.L. 341 (S. Ct. 1943) and *Mount Laurel Township v. Local Finance Board*, 166 N.J. Super. 254 (App. Div. 1978), *aff'd* 79 N.J. 397 (1979) in which the decisions

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reflect a judicial view that emergencies are sudden and unforeseen occurrences for which the making of appropriations in an annual budget could not have been anticipated.

Thus, it is clear that N.J.S.A. 40A:4-46 must be construed to require that an emergency appropriation may be made only for a purpose which was not foreseen at the time that the local governing body's budget was adopted. While the literal language of the provision may provide that such an appropriation can be made for a purpose which is not foreseen at the time of the adoption of its budget *or* for which adequate provision was not made in such a budget, it is well established that the words "and" and "or" are often used interchangeably and that "or" may be construed as the conjunctive "and" if to do so is consistent with the legislative intent of the statute in which it is used. *Red Bank Regional Ed. Ass'n. v. Red Bank Regional High School Bd. of Ed.*, 151 N.J. Super. 435 (App. Div. 1977), *aff'd* 78 N.J. 122 (1978); *State v. Holland*, 132 N.J. Super. 17 (App. Div. 1975). As indicated above, construing the word "or" in N.J.S.A. 40A:4-46 as "and" is clearly consistent with the overall legislative intent and policy of the Local Budget Law, with the commonly understood meaning of the language in N.J.S.A. 40A:4-46 and with the judicial decisions which have been rendered regarding N.J.S.A. 40A:4-46 and other similar statutes. For these reasons, you are hereby advised that an emergency appropriation pursuant to N.J.S.A. 40A:4-46 can only be made for a purpose which was not foreseen at the time of the adoption of a local unit's budget and for which adequate provision was not made therein.

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

By: DANIEL P. REYNOLDS  
*Deputy Attorney General*

May 28, 1980

WILLIAM H. FAUVER, *Commissioner*  
Department of Corrections  
P.O. Box 7387, Whittlesey Road  
Trenton, New Jersey 08628

FORMAL OPINION NO. 11—1980

Dear Commissioner Fauver:

You have asked for our advice as to whether to work credits and/or commutation credits should be awarded to sex offenders sentenced for offenses committed under Title 2A prior to its repeal by the Penal Code. You have also asked whether those sex offenders who are subsequently resentenced under the Penal Code may be granted work credits and/or commutation credits. In the event these credits are available, the further question raised is whether they should be provided from the date of the