

FORMAL OPINION

July 7, 1980

G. THOMAS RITI, *Director*
Division of Public Welfare
Department of Human Services
2525 Quakerbridge Road
Trenton, New Jersey

FORMAL OPINION NO. 15—1980

Dear Director Riti:

You have asked for our opinion as to whether a municipality organized under an optional form of government is empowered to abolish its local assistance board.

A resolution of your question requires an analysis of the Optional Municipal Charter Act (Faulkner Act) and the applicable provisions of the "General Public Assistance Law." Municipalities are required to:

provide public assistance to the persons eligible thereto, residing therein or otherwise when so provided by law, which shall be administered by a local assistance board according to law and in accordance with this Act and with such rules and regulations as may be promulgated by the Commissioner. [N.J.S.A. 44:8-114.]

The local assistance boards are composed of from three to five persons appointed by the chief executive of the municipality upon the approval of the governing body. N.J.S.A. 44:8-115.

These provisions of the General Public Assistance Law were enacted in 1947 (L.1947, c. 156), three years before the enactment of the Faulkner Act. (L.1950 c. 210). The issue to be determined is whether by the enactment of the Faulkner Act, municipalities have been given the power to administratively abolish or reorganize local assistance boards. The Faulkner Act provides for the adoption of certain optional plans of municipal government by the voters. N.J.S.A. 40:69A-1 *et seq.*, *Bucino v. Malone*, 12 N.J. 330 (1953).¹ Optional plans available to municipalities are various versions of Council-Manager plans, N.J.S.A. 40:69A-81 to 69A-114.5 and Mayor-Council plans, N.J.S.A. 40:69A-31 to 69A-80. The Act contains a number of provisions pertinent to the instant question. A starting point is N.J.S.A. 40:69A-30 which provides, in part, that:

[T]he general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this arti-

1. In 1979, 87 of the 567 New Jersey municipalities were governed under the Faulkner Act, *Stop-Pay-Hikes v. Town Council of Irvington*, 166 N.J. Super. 197, 206 (Law Div. 1979), *aff'd* 170 N.J. Super. 393 (App. Div. 1979).

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cle . . . All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

Among the powers granted to the municipal council under a Council-Manager form of government is the authority to:

continue or create, and determine and define the powers and duties of such executive and administrative departments, boards and offices, in addition to those provided for herein, as it may deem necessary for the proper and efficient conduct of the affairs of the municipality. [N.J.S.A. 40:69A-90.]

Moreover, this same statute further provides that "(a)ny department, board or office so continued or created may at any time be abolished by the municipal council." N.J.S.A. 40:69A-90.

Under a Mayor-Council form of government, the council is empowered to establish "a department of administration and . . . other departments, not exceeding 9 in number." N.J.S.A. 40:69A-43. The statute further provides that "(a)ll of the administrative functions, powers and duties of the municipality, other than those vested in the office of the municipal clerk, shall be allocated and assigned among and within such departments." N.J.S.A. 40:69A-43. The only limitation on municipal authority which appears in the statute is a requirement that municipalities with a Mayor-Council government and having a population over 250,000 must establish a board of alcoholic beverage control. N.J.S.A. 40:69A-43(e). The statute clearly limits this restriction on municipal authority to the creation of an alcoholic beverage control board.

In addition, N.J.S.A. 40:69A-26 provides that, upon adoption of one of the optional forms of government, a "municipality shall thereafter be governed by the plan adopted, by the provisions of this act common to optional plans and by all applicable provisions of *general law*." A general law is defined, in part, as:

any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities [N.J.S.A. 40:69A-28.]

The issue in the present situation is whether the organization of a local assistance board set forth by statute is encompassed as a general law binding on all municipalities.

It is a familiar rule in the interpretation of statutes that the determinative factor is legislative intent. *Clifton v. Zweir*, 36 N.J. 309, 322 (1962); *Mentus v. Irvington*, 79 N.J. Super. 465, 472 (Law Div. 1963). "[T]his intent must be our only guide." 79 N.J. Super. at 472. The history of the Faulkner Act provides a persuasive indication of the legislative purpose. In the *Final Report*, of a commission which drafted the legislation it was stated:

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[T]he Commission has sought to provide sufficient flexibility in the several plans so that each municipality could decide for itself how it wished to organize its local administration, within the general principle that each administrative department should be headed by a single executive. *This would not permit the past practice of quasi-independent boards in many fields where they have been common*, but the plans allow the operation of general laws in those fields in which boards or commissions are essential to carry out particular functions or discharge special trusts. These exceptions include, for example boards of education, boards of health and boards of zoning adjustment." [*Final Report of the Commission on Municipal Government*, at p. 13 (1949).] [Emphasis added.]

It is significant that the Commission did not include a local assistance board among those enumerated as essential to carry out a particular function. Moreover, the nature of the boards mentioned in the *Report* is significantly different from that of a local assistance board. Boards of zoning adjustment, for example, have been referred to as "quasi-independent" boards. *Mentus v. Irvington, supra*. Boards of education and boards of health are frequently involved in making policy determinations for the municipality. A local assistance board, in contrast, is involved solely in carrying out administrative decisions. The statute provides that local public assistance "shall be administered by a local assistance board according to law and in accordance with this act and with such rules and regulations as may be promulgated by the Commissioner." N.J.S.A. 44:8-114. Policy is set by the Division of Public Welfare through regulations issued by the Commissioner of Human Services and binding upon the municipalities. *State v. Malone*, 164 N.J. Super. 47 (Ch. Div. 1978). Clearly, the supervision of local public assistance programs by the Division at the State Level obviates the need for an independent policy making body in a municipality.

The legislative purpose behind the enactment of the Faulkner Act was to allow municipalities to abolish independent boards. In *Myers v. Cedar Grove Tp.*, 36 N.J. 51, 59 (1961) the Court stated:

[T]he idea of diminishing the power of the new governing body by extending the number of separate and independent bodies is incompatible with the statutory scheme for the centralization of sweeping legislative and administrative authority in the Council and Manager. [36 N.J. at 50.]

Also, *Am. Fed. State, Cty. Mun. Emp. v. Hudson Welf. Bd.*, 141 N.J. Super. 25 (Ch. Div. 1976) provides compelling support for the proposition that Faulkner Act municipalities are empowered to abolish their local assistance boards. The court held that a county, organized under the Optional County Charter Act, was authorized to abolish an independent county welfare board mandated by statute and incorporate the board and its functions within one of the county's administrative departments. *Id.* at 35. The court reached this conclusion after finding that "the clear expressed intent of the Legislature and the meaning of the act is to give

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the new county governments created under the law the sweeping power to restructure their form as they see fit consistent with the Constitution of New Jersey and general law." *Id.* at 32. Since "(i)t is obvious that the Faulkner Act was used as the model for the Optional County Charter Law," *Citizens for Charter Change, Essex Cty. v. Caputo*, 136 N.J. Super. 424, 439 (App. Div. 1975), *certif. den.* 74 N.J. 268 (1975), it is reasonable to conclude that the Legislature intended the Faulkner Act to permit a municipality to abolish and reorganize its local welfare agency.²

It is therefore our opinion that municipalities governed by an optional form of government may reorganize or abolish their local assistance board.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BARBARA A. HARNED
Deputy Attorney General

2. Although Faulkner Act municipalities are empowered to abolish or reorganize local assistance boards, municipalities are required to provide general assistance in conformity with applicable provisions of general law found in Title 44 and in the regulations of the Division of Welfare. As noted in *Am. Fed. State, Cty. Mun. Emp. v. Hudson Welf. Bd.*, "(m)andated services must continue [even though] how they are to be administered is to be a decision of the elected . . . officials." 141 N.J. Super. at 32-33. *See also, State v. Malone, supra.*

July 11, 1980

JOHN R. JAMIESON, *Deputy Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

FORMAL OPINION NO. 16—1980

Dear Mr. Jamieson:

You have inquired whether the Department of Transportation may accept interest free federal loans and in turn lend the borrowed federal funds to public and private employers for the acquisition of vanpool vehicles consistent with the Constitution and the Commissioner's statutory powers. Your inquiry presents the following three issues which will be discussed separately:

- I. Does the Department's borrowing of federal funds violate the Debt Limitation Clause of the New Jersey Constitution?
- II. Does the Department's lending of the borrowed federal funds violate the constitutional provisions banning a loan of the credit of the State or appropriation of money for a private purpose?