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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.<sup>2</sup>

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?

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- III. In connection with a program to defray the acquisition cost of vanpool vehicles, does the Commissioner of Transportation have the statutory power to accept federal loans and to lend the funds to public and private employers?

Section 126 of the Federal-Aid Highway Act of 1978, 23 U.S.C. §146, authorizes the U.S. Secretary of Transportation, using Federal-aid funds, to make grants and loans to States and other governmental bodies in order to financially assist eligible ridesharing projects, including defraying the acquisition costs of vanpool vehicles. The federal act, however, limits federal assistance for the cost of acquiring vanpool vehicles to loans, and not grants. The federal loans amount to 75 percent of the acquisition costs. Current federal regulations, as amended by the 1978 Act, provide that federal loans may be made "as long as appropriate provision is made for repayment of this cost within a period of less than four years." 23 C.F.R. §656.7(3) (1976).

As part of its vanpool assistance program, the New Jersey Department of Transportation would accept the interest free federal loans and obligate itself to repay the federal loans within four years. The Department would then lend the borrowed funds to counties, municipalities, governmental or quasi-governmental agencies, and private corporations or individuals in the amount of 75 percent of the acquisition cost of the vanpool vehicle.

By executed agreement, the vanpooler would agree to repay the loan within four years. The Department would retain the vehicle's certificate of title in its possession until the loan has been fully repaid. The certificate of title would indicate that the Department is the secured party with regard to that vehicle. The agreement with the recipient of the loan would state that the primary purpose of the vanpool project is to utilize vanpool vehicles to transport specific employees, between their homes or appointed pick up areas and their place of employment, and for employment related trips during the work day in order to reduce fuel consumption, traffic congestion, parking difficulties, and pollution. Other use would be permitted only upon written determination by the Department that such use is not inconsistent with the general objectives of the vanpool project. Utilization of the vanpool vehicle for illegal purposes, or on a regular basis for other than passenger transportation, would be cause for termination of the agreement and all balances of the loan would become immediately due. The recipient would also agree to comply with all applicable state and federal statutes and obligations relating to vanpool project operations during the term of the contract. Finally, the agreement would provide that the Department is not obligated to use any funds other than those provided by the federal government for the vanpool program in fulfilling any of the terms or conditions of the contract.

### I

The first question presented by your inquiry is whether the Department's receipt of the federal funds in the form of loans violates the Debt Limitation Clause of the State Constitution. The Debt Limitation Clause of our Constitution provides as follows:

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The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. *This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States.* Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God. [*N.J. Const. Art. 8, §2, ¶3.*] [Emphasis added.]

*Formal Opinion No. 23—1975* considered the applicability of the Debt Limitation Clause to loans from the federal government. The Commissioner of Transportation had inquired whether the Commuter Operating Agency could accept federal loans for purposes generally authorized by the Agency's enabling legislation. After reviewing the history of the sentence which exempts federal funds from the Debt Limitation Clause, the opinion concluded that the receipt of federal loans by the Agency was consistent with the constitutional mandate. The opinion stated:

[T]he monies made available in the present legislation would be loans and not grants and would not be treated the same as general funds of the State. It is clear that all such funds would continue to be an obligation of the State to the Federal Government until repaid, and the basic agreement is thus between the two governments rather than between the State and a third party. [F.O. No. 23-1975.]

Any federal money deposited with this State, whether as grants or loans, is therefore unaffected by the Debt Limitation Clause. In the matter at hand, the Department would be accepting interest free federal loans and would be obligated to repay the principal within four years. Please be advised that the Department's receipt of the federal loans falls within the federal funds exemption of the Debt Limitation Clause and is therefore constitutionally permissible.

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II

The second question presented by your inquiry is whether the State's subsequent lending of the borrowed federal funds to public and private employers for the acquisition of vanpool vehicles violates the constitutional provisions banning a loan of the credit of the State or an appropriation of money for private purpose. The pertinent constitutional provisions are as follows:

The credit of the State shall not be directly or indirectly loaned in any case. . . . [*N.J. Const.* Art. 8, §3, ¶1.]

No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever. . . . [*N.J. Const.* Art. 8, §3 ¶3.]

In *Roe v. Kervick*, 42 N.J. 191 (1964), the New Jersey Supreme Court discussed the factors which determine whether a statutory program of public financial assistance violates the constitutional ban on loan or appropriation of public money. The court stated that, in order for a program to be constitutional, the financial assistance must be primarily for a public purpose; the contractual consideration must be primarily for a public purpose; the contractual consideration must be intimately associated with executing the public purpose and must not be merely the obligation to repay the loan; the paramount factor in the contract between the State and the recipient must be the accomplishment of the public purpose; and any private advantage is merely incidental and subordinate. *Id.*, at 218. The Court also stated that there must be a reasonable measure of control by the public agency by means of contract, statute and regulation such that the recipient represents "the controlled means by which the government accomplished a proper objective" *Id.*, at 219, 222. *See also Bayonne v. Palmer*, 41 N.J. 520 (1966).

In construing the meaning of "public purpose," the Court, in *Roe v. Kervick*, *supra*, stated that:

Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. . . . To be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. [*Id.*, at 207.]

The Court also recognized that "the modern trend of judicial thought is to expand and construe liberally the meaning of public purpose." *Id.*, at 226.

In the matter at hand, the Department would accept interest free federal loans, and then lend the funds to public and private employers in amounts of 75 percent of the acquisition cost of the vanpool vehicles. To pass constitutional muster, such assistance must be primarily for a public purpose. Congress has declared it "to be national policy that special effort should be made to promote commuter modes of transportation which conserve energy, reduce pollution and reduce traffic congestion" and

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has directed the U.S. Secretary of Transportation to assist in the establishment of vanpool programs. 23 U.S.C. §146 (notes). The Department initiated its vanpool loan program in response to the federal legislation.

Based upon the dynamic concept of public purpose and upon the legislative findings, the lending of the borrowed federal funds herein to assist in the acquisition of vanpool vehicles by public and private employers primarily serves a public purpose. In addition, there is the required measure of control to ensure that the public purpose is accomplished. The loan agreement provides that the primary purpose of the vanpool vehicle is to transport specified employees to and from work and for employment related trips during the work day. Use of the vehicle which is inconsistent with the general objectives of the vanpool project is cause for termination of the agreement.

Please be advised that the Department's lending of borrowed federal funds does not violate the constitutional prohibition against loaning the state's credit or appropriating money for a private purpose.

### III

Although the Department's program is consistent with the Constitution, the final question presented by your inquiry is whether the Commissioner of Transportation has the statutory authority to accept interest free federal loans in connection with a departmental program to lend the borrowed federal funds to employers to defray the acquisition costs of the employers' vanpool vehicles.

In the "Transportation Act of 1966," N.J.S.A. 27:1A-1, *et seq.*, the Legislature established the Department of Transportation as a principal department in the executive branch of the State government. The Legislature intended the act:

to establish the means whereby the full resources of the State can be used and applied in a coordinated and integrated matter [sic] to solve and assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and *implement* comprehensive plans and *programs for all modes of transportation development in the State*; and to coordinate the transportation activities of State agencies, State-created public authorities, and other public agencies with transportation responsibility within the State. [N.J.S.A. 27:1A-1.] [Emphasis added.]

As head of the Department of Transportation, the Commissioner has been delegated extensive powers and functions in the area of all transportation modes. N.J.S.A. 27:1A-5. The Commissioner has also been given a broad legislative mandate to "(d)o whatever may be necessary or desirable to effectuate the purposes of this Title (Title 27 Highways)." N.J.S.A. 27:7-21(i). In addition, N.J.S.A. 27:8-2 authorizes the Commissioner " . . . to receive and apply any money received from the federal government for road work to any work he shall have authority to do." N.J.S.A. 27:7-1 defines road "work" to include "all other things and

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services necessary or convenient for the performance of the duties imposed by this title (Title 27 Highways).” Moreover, it is well settled that the statutory powers of the Commissioner are to be liberally construed. *Township of Hopewell, et al v. Goldberg, et al*, 100 N.J. Super. 589 (App. Div. 1968), *certif. denied*, 52 N.J. 500 (1968); *State v. Maas & Waldstein Co.*, 83 N.J. Super. 211 (App. Div. 1964). In *Township of Hopewell, et al v. Goldberg, et al, supra*, the court stated:

Our Legislature has clearly indicated its intent that New Jersey participate in the Federal aid highway program. It has empowered the Highway Commissioner to perform whatever acts are required by Federal Statute to qualify the State for Federal highway aid . . . The powers granted the Commissioner under the various State statutes must be construed liberally so as to carry out the basic purpose of providing adequate highway facilities throughout the State. Participation in the Federal highway aid program is clearly within the scope of the statutes. [101 N.J. Super. 589, 595 (App. Div. 1968).]

The Department initiated its program to assist employers interested in acquiring vanpool vehicles as a result of federal highway legislation. Section 126 of the Federal-Aid Highway Act of 1978 provides:

*In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary may approve for Federal financial assistance from funds apportioned under sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title, projects designed to encourage the use of carpools and vanpools. (As used hereinafter in this section, the term “carpool” includes a vanpool.) Such a project may include, but is not limited to, such measures as providing carpool opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing facilities for use as preferential parking for carpools. [23 U.S.C. §146(a).] [Emphasis added.]*

In the interest of conserving energy and reducing pollution and traffic congestion, the federal legislation directs the Secretary of Transportation to assist both public and private employers who are interested in establishing carpooling and vanpooling programs. See §126(d)-(h) of Pub. L. 95-599, 23 U.S.C. §146 (notes). The Secretary is authorized to make grants and loans in amounts not exceeding 75 percent of the cost of eligible projects. The Act provides, however, that federal financial assistance in connection with the acquisition costs of vanpool vehicles is limited to loans. These funds are available to New Jersey only through the Department of Transportation, which is the State agency designated to receive federal-aid highway funds. See 23 U.S.C. §117.

Initiated as a result of the federal legislation, the Department’s vanpool loan program is in furtherance of one of the broad purposes of the

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Department—the implementation of programs for all modes of transportation development in the State. The program is intended to reduce traffic congestion on highways and to enhance the use of highways. Utilizing federal funds in the form of loans, the program assists employers in defraying the acquisition costs of vanpool vehicles. Although not regularly available to the public, the primary purpose of the vehicle is to transport eight to fifteen participating employees between their homes or appointed pick up areas and their place of employment. In light of the purposes of the program and the liberal construction to be given to the powers of the Commissioner, the Department's vanpool loan program is in furtherance of the purposes of the Department and falls within the statutory powers of the Commissioner.

In responding to your inquiry, the impact, if any, of the New Jersey Public Transportation Act of 1979, L. 1979, c. 150, on the power of the Commissioner of Transportation to engage in the vanpool loan program must also be considered. In addition to amending the powers of the Commissioner, N.J.S.A. 27:1A-5, the recent legislation created the New Jersey Transit Corporation to provide public transportation services. N.J.S.A. 27:25-1 *et seq.*, The Act, however, defines "public transportation services" to include "paratransit services," N.J.S.A. 27:25-3(e), which are in turn defined to include:

any service, other than motorbus regular route service and charter services, including, but not limited to, dial-a-ride, nonregular route, jitney or community minibus, and shared-ride services such as *vanpools*, limousines or taxicabs *which are regularly available to the public. Paratransit services shall not include limousine or taxicab service reserved for the private and exclusive use of individual passengers.* [N.J.S.A. 27:25-3(d).] [Emphasis added.]

Since the Department's vanpool loan program herein is essentially a program to assist employers to establish non-profit vanpools exclusively for employees and does not contemplate vanpooling which is regularly available to the public, the power of the Commissioner to engage in this program is unaffected by the New Jersey Public Transportation Act of 1979.

In conclusion, please be advised that the Department has the statutory authority to accept the interest free federal loans and in turn to lend the funds to public and private employers to defray the acquisition costs of vanpool vehicles.

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

By: JOHN J. REILLY  
*Deputy Attorney General*

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