

ATTORNEY GENERAL

October 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. 21—1980

Dear Mr. Skokowski:

A question has arisen as to whether moneys received by municipalities in the form of Urban Aid are to be appropriated within the spending caps of such municipalities under the Local Government Cap Law or whether, alternatively, such moneys are to be treated as a modification to be excluded from the statute's limitation. For the reasons set forth below, you are advised that appropriations of Urban Aid moneys are to be treated as a modification under the statute. You are further advised that, in calculating a municipality's permissible spending increase under the Local Government Cap Law, appropriations of Urban Aid in a municipality's budget for a preceding year are to be deducted from the municipality's final appropriations for that year to derive the base upon which the increase is calculated for the current year.

The Local Government Cap Law was enacted for the express purpose of limiting the spiraling cost of local government. N.J.S.A. 40A:4-45.1; *N.J. State P.B.A., Local 29 v. Town of Irvington*, 80 N.J. 271, 281 (1979). To accomplish this purpose, the statute limits municipalities having a municipal purposes tax levy in excess of \$0.10 per \$100. from increasing the final appropriations of their municipal budgets by more than five percent over the previous year's appropriations. N.J.S.A. 40A:4-45.2; *N.J. State P.B.A., Local 29 v. Town of Irvington, supra* at 281. However, the statute also provides for a number of exceptions from, or modifications to, this limitation. N.J.S.A. 40A:4-45.3. These modifications are intended to provide certain flexibility to municipalities in complying with the statute's limitation, see, for example, N.J.S.A. 40A:4-45.3(i), to avoid imposing constraints upon municipalities to the point where it would be impossible to provide necessary services to their residents, see N.J.S.A. 40A:4-45.1, *N.J. State P.B.A., Local 29 v. Town of Irvington, supra* at 283, and N.J.S.A. 40A:4-45.3(g), and to prevent certain other public interests, such as the ability to market bonds, from being jeopardized. See N.J.S.A. 40A:4-45.3(d) and N.J.S.A. 40A:4-45.3(j).

One of the exceptions set forth in the statute provides for the exclusion from the statute's spending limitation of

programs funded wholly or in part by Federal or State funds in which the financial share of the municipality is not required to increase the final appropriations by more than 5%. . . . [N.J.S.A. 40A:4-45.3(b).]

The purpose of this exception was reviewed in *Formal Opinion No. 3-1977* as being to exclude from the statute's spending limitation all expenditures

## FORMAL OPINION

of federal or state aid money as well as all local matching expenditures necessary to secure federal or state aid for municipal governments. *See also* Attorney General's *F.O. 5—1977*. Accordingly, the appropriation and expenditure of state aid moneys by a municipality subject to the statute's spending limitation would be excluded from the spending limits pursuant to N.J.S.A. 40A:4-45.3(b).

In 1978, legislation was enacted for the purpose of providing state aid to certain municipalities to enable such municipalities to maintain and upgrade municipal services and to offset local property taxes. L. 1978, c. 14. N.J.S.A. 52:27D-178 *et seq.* Under the statute, a sum is annually appropriated by the Legislature for apportionment among qualifying municipalities. N.J.S.A. 52:27D-179. Such moneys, which are commonly referred to as "Urban Aid," may then be expended by these municipalities pursuant to the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.* N.J.S.A. 52:27D-181.

There can be no doubt that, consistent with the intent of N.J.S.A. 40A:4-45.3(b), moneys received by municipalities as Urban Aid are clearly "state aid" moneys. Consequently, the appropriation and expenditure of such moneys are to be excluded from the statute's spending limitation and should be treated as a modification for the purposes of the implementation of that law.

It should be noted that the treatment of Urban Aid moneys as a modification to a municipal spending limit requires that such moneys be deducted from a municipality's final appropriations for the preceding year in the calculation of the municipality's permissible cap increase for a current fiscal year. As stated in *Attorney General's Formal Opinion No. 3—1977*, a municipality should use a specific formula in the calculation of its permissible cap increase. A municipality should subtract from its final appropriations for a previous year those appropriations which qualified as modifications during that year. This will yield the base upon which a municipality calculates its permissible spending increase for the current fiscal year. Modifications must be considered as exclusions both in the computation of the base from the previous year's appropriations and in the determination of the amount of appropriations which must be included within the spending limitation for the forthcoming fiscal year. To do otherwise would mean that there would be no point of comparison between the two years. In sum, appropriations of moneys received as Urban Aid under Laws of 1978, c. 14, should be treated as a modification in the computation of the base figure upon which a municipality's spending increase is calculated and in the determination of those appropriations which must be made within its permissible spending limitation for the current fiscal year.

That this is the proper manner in which to treat Urban Aid moneys under the Local Government Cap Law is further evident upon consideration of the consequences of treating such moneys as being included within the Statute's spending limitation. In a case where the amount of Urban Aid is included within this limitation, it would inflate a municipality's cap base. In turn, the amount by which the municipality may increase its overall expenditures for the coming fiscal year would be proportionately inflated. The residents of the municipality would consequently, through

ATTORNEY GENERAL

the payment of municipal taxes, be required, contrary to the clear intent of the statute, to support spending increases in excess of the 5% limit established by the statute. These consequences further demonstrate that the appropriation of Urban Aid moneys must be treated as a modification under the Local Government Cap Law.

In conclusion, you are advised that appropriations of Urban Aid moneys received pursuant to L. 1978, c. 14 should be treated as a modification under the Local Government Cap Law. You are further advised that, in the calculation of a municipality's permissible spending increase, the appropriation of Urban Aid in a municipal budget for a preceding year should be deducted from the final appropriations in that year to derive a base amount from which a permissible spending increase for a current year is determined.\*

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

By: DANIEL P. REYNOLDS  
*Deputy Attorney General*

\* It is provided in the 1981 State Appropriations Act that in 1980 municipal budgets appropriations of municipal aid moneys by qualifying municipalities, or line item moneys contained in the Act for municipalities that no longer qualify, may be treated as an exception to the spending limitation. It is also provided that the treatment of such moneys as an exception to this spending limitation shall not alter the amount upon which the five percent annual increase is calculated in 1980 budgets for such municipalities. In the preparation of 1981 municipal budgets, however, municipalities should be governed in their determination of appropriate spending limits by the conclusions set forth in this opinion.

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October 31, 1980

T. EDWARD HOLLANDER  
*Chancellor*  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 22—1980

Dear Chancellor Hollander:

For the past several years, this office has expressed its concern over the increasing use of corporate entities formed and utilized by some of the state colleges to carry out various functions of the institutions. We have been informed that state colleges have formed corporations which operate student centers and campus pubs, manage dormitories and engage in other functions normally controlled by the college administration. As a general rule, these corporations have been set up by college personnel,