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 municpal 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.

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,

are managed by a board of directors, dominated and controlled by college employees, utilize both college facilities and office space and are funded to varying degrees with state money. Nonetheless, these corporations do not comply with any of the rules and regulations which state colleges are subjected to by statute, such as bidding laws, civil service requirements and treasury regulations concerning state funds. For the following reasons, you are hereby advised that such activities are improper and may not continue absent statutory authorization.

It is clear that the college corporations are instrumentalities of the state. The corporations are controlled by college officials, have the use of state facilities, expend state funds and effectuate state functions. Courts in various jurisdictions have uniformly held under similar circumstances that such entities are in fact instrumentalities and components of the colleges which created them. For example, in *Brown v. Wichita State University,* 540 P. 2d 66 (Kan. 1975), *mod.* 547 P. 2d 1015, (1976), the court held that a corporation created by the college and controlled by it must be "considered a mere instrumentality of the University," *Id.* at 76. In *DeBonis v. Hudson Valley Community College,* 389 N.Y.S. 2nd 647 (1977), the court utilized the same analysis in concluding that a purportedly "independent" corporation controlled by the college was in actuality an arm of the state which accordingly must comply with New York's public bidding law. *See also Shriver v. Athletic Council of Kansas State University,* 564 P. 2d 451 (Kan. 1977); *Good v. Associated Students of the University of Washington,* 542 P. 2d 762 (Wash. 1975). Accordingly, the college corporations at issue are clearly state entities which are subject to all general statutory and regulatory requirements imposed upon the colleges which created them, including the fiscal, contractual and budgetary requirements mandated by N.J.S.A. 18A:64-6(e), 18A:64-6(k), and 18:A:64-18.

Moreover, even if the corporations were structured so as to be truly independent of the colleges, their present operation at the colleges would remain improper. It is a settled principle of law that a statutory body may not delegate its essential managerial prerogatives to a private body. *Group Health Insurance Co. v. Howell,* 40 N.J. 436 (1963), *aff'd after remand,* 43 N.J. 104 (1964). Pursuant to N.J.S.A. 18A:64-2 and N.J.S.A. 18A:64-6, it is the college Board of Trustees which is statutorily required to exercise supervision and control over the institution. Clearly the Legislature intended that the trustees would manage and administer the colleges themselves or through their respective presidents and other officers and employees. The Legislature has given no indication that the boards or their officers and employees may authorize purportedly private, independent, non-profit corporations to assume any significant responsibilities traditionally associated with the colleges. *See N.J. Dept. of Transportation v. Brzoska,* 139 N.J. Super. 510 (App. Div. 1976); *Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education* 78 N.J. 144 (1978).

Finally, it should be noted that even if a corporation could be deemed truly independent of its parent college, and was engaged in a function which may be legitimately contracted out to a private concern, college transactions with that entity would necessarily entail compliance with statutory requirements concerning contracts with private entities. For ex-

ample, if the college determined that it did not desire to operate a campus cafeteria service itself, there would not be any authority for the college to award the contract unilaterally to the purportedly independent college corporation. Rather, the college would be required to enter into such a contract only after compliance with applicable competitive bidding statutes. *See* N.J.S.A. 52:34-6, *et seq.*

In conclusion, you are hereby advised that state colleges may not use independent corporate entities to carry out college functions unless all statutory and administrative requirements imposed on state agencies are satisfied. Therefore, the following interim steps must immediately be taken:

1. All corporate employees must be advised that the corporations are in actuality components of the colleges and that the functions and duties of the corporations will be brought within the control of the college adminstration;
2. The Department of Civil Service must be provided a list of names and job functions of corporation employees so that appropriate college job titles can be created;
3. Corporate purchases must utilize the procedures set forth in the applicable state bidding laws;
4. Certified audits of corporate accounts must be forwarded to the Chancellor and the State Treasurer; and
5. The Legislature must be advised of the status of college corporate accounts prior to submission of budget requests.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General

November 17, 1980

BARRY SKOKOWSKI, *Acting Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 23—1980

Dear Mr. Skokowski:

You have raised a question with us concerning the manner in which the proceeds of the sale of municipal assets are to be treated under the Local Government Cap Law. Your question is whether such proceeds are to be treated in the same manner as all other modifications under the statute, that is, as a modification to the statute's spending limitation both in the year in which such proceeds are appropriated and in the year subsequent to such appropriation. For the reasons which are set forth in