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

Formal Opinion No. 3—1977, you are advised that the amount of such proceeds are to be treated in the same manner as are other modifications under the statute, that is, as a modification both in the year in which such proceeds are appropriated in a municipality's budget and in the following year in calculating the municipality's CAP base.

The manner in which appropriations which qualify as modifications should be treated under the law was exhaustively reviewed in Attorney General's *Formal Opinion No. 3—1977.* The answer to your question is readily apparent to a reader of that opinion and we need not repeat it extensively here. Suffice it to say that it was stated in that opinion that a municipality in calculating its permissible spending increase should use a specific formula. A municipality should subtract from its final appropriations for the previous year those appropriations which qualified as modifications during that year under one or more of the provisions of N.J.S.A. 40A:4-45.3. In this manner a municipality derives a base upon which it calculates its permissible spending increase for the coming fiscal year. This spending increase is computed by multiplying the CAP base by 5%. The CAP base and the allowable increase are added together to yield the amount a municipality may expend within its spending limit.

It has therefore always been clear under *Formal Opinion No. 3— 1977* that appropriations which fall within one of the modifications set forth in N.J.S.A. 40A:4-45.3 should be treated as a modification both in the year in which such appropriations are made and in the calculation of a municipality's CAP base in the following year. Since in the present situation the proceeds of the sale of a municipality's assets have been provided as an exception to the statute's spending limitation, N.J.S.A. 40A:4-45.3(h), the proceeds of a sale should be treated as a modification to the statute's spending limit in the manner set forth in the formal opinion. To do otherwise, i.e., to allow the amount of such proceeds to become part of a municipality's CAP base in a subsequent year, would permanently expand the base and allow for a permanent increase in municipal expenditures in excess of an amount contemplated by the Legislature.

In conclusion, you are advised that consistent with the reasoning set forth in *Formal Opinion No. 3—1977* the proceeds of the sale of a municipality's assets should be treated as a modification both in the year in which the proceeds are appropriated in a municipality's budget and in the calculation of the municipality's CAP base for the subsequent year.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

* We understand that the Division may not have treated such sales in accordance with *Formal Opinion No 3—1977* over the past three years and that to alter that position now may cause substantial disruption in such municipalities which have relied upon the Division's tolerance of their erroneous treatment of such sales. That is regrettable and we would expect that they may look to the Legislature for redress.