

FORMAL OPINION

December 8, 1980

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

FORMAL OPINION NO. 26—1980

Dear Mr. Skokowski:

You have requested us to provide further advice with regard to those circumstances which are necessary to warrant the adoption of an emergency appropriation by a local governmental unit. The pertinent statute is N.J.S.A. 40A:4-46 which provides as follows:

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

In *Formal Opinion No. 10—1980* (hereinafter *Formal Opinion No. 10*), you were advised that an emergency appropriation made pursuant to N.J.S.A. 40A:4-46 could only be made to meet expenditures which were necessitated by sudden, unanticipated and unforeseen circumstances for which adequate provision was not made in a municipality's budget. This conclusion was reached after an analysis of the basic intent and policies underlying the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, of the language of N.J.S.A. 40A:4-46 itself and of the manner in which the language set forth therein has been construed by the courts. In *Formal Opinion No. 10* it was further concluded that the word "or" in the first sentence of N.J.S.A. 40A:4-46 should properly be read as meaning "and" in order to be consistent with the legislative intent.

Questions have now arisen as to the conclusions reached in that Opinion and specifically as to the conclusion with regard to the proper construction of the term "or." After consideration of the questions raised, it is our opinion that the term "or" need not be read to mean "and" in order to effectuate the legislative intent of N.J.S.A. 40A:4-46. Rather, the word "or" can properly be accorded its commonly understood and generally accepted meaning as a disjunctive, and not a conjunctive, term. However, reading the term in this manner does not alter the overall conclusion of *Formal Opinion No. 10* that N.J.S.A. 40A:4-46 requires that an emergency appropriation may only be made to meet an immediate need for expenditure which results from emergent, that is, from sudden, unexpected or unanticipated, circumstances.

It was noted in *Formal Opinion No. 10* that the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, of which N.J.S.A. 40A:4-46 is an integral part,

ATTORNEY GENERAL

requires that municipal and county budgets be prepared on a "cash basis." A "cash basis" budget is defined in the statute as a budget which ensures that there will be sufficient cash collected to meet all debt service requirements, to pay all necessary operations of the local unit and to cover all mandatory payments required by law during the local governing body's fiscal year. N.J.S.A. 40A:4-2. Since tax bills are prepared on the basis of the amount of such appropriations, N.J.S.A. 40A:4-17, it is essential that the appropriations be sufficient to cover an entire year. Further, to ensure public participation in the process of preparing such a budget and permit public comment upon the amounts to be expended for public services during the course of the year, the law requires advertisement of the budget and a public hearing with regard to same prior to its final adoption. N.J.S.A. 40A:4-6, 7 and 8. These requirements are intended to ensure that a local governing body will not make expenditures which will exceed the amounts appropriated in the budget for that year. *State v. Boncelet*, 107 N.J. Super. 444, 450 (App. Div. 1969).

It was accordingly reasoned that the emergency appropriation process provided for by N.J.S.A. 40A:4-46 was not intended merely to provide a means for the making of supplemental or additional appropriations which a local governing body chose not to make in its annual budget. Such a construction would undermine the very purpose of requiring the adoption of a cash basis budget as well as subverting the public participation for which the Local Budget Law provides. Rather, the intent and policies of that statute clearly require that appropriations made pursuant to N.J.S.A. 40A:4-46 be made to meet expenditures necessitated by emergencies, that is, by sudden and unanticipated circumstances requiring immediate responsive action.

It was further noted in *Formal Opinion No. 10* that such a conclusion was supported upon consideration of the specific language in N.J.S.A. 40A:4-46. As noted, the commonly understood meaning of the term "emergency" is a "sudden, generally unexpected occurrence or set of circumstances demanding immediate action." *Webster's New Dictionary of the American Language, Second College Edition*, 1972. It was noted that the courts of this State have construed the term "emergency" in this manner. *Scatuorchio v. Jersey City Incinerator Authority*, 14 N.J. 72, 87-93 (1953); *Bd. of Ed. of Elizabeth v. Elizabeth*, 13 N.J. 589, 593-594 (1953); *Mount Laurel Township v. Local Finance Board*, 166 N.J. Super. 254, 256-257 (App. Div. 1978), *aff'd* 79 N.J. 397 (1979); *Newark Teachers Assoc. v. Bd. of Education*, 108 N.J. Super. 34, 47 (Law Div. 1969); *Lyons v. Bayonne*, 101 N.J.L. 455-457 (S. Ct. 1925). Thus, the very language of N.J.S.A. 40A:4-46, i.e., the use of the term "emergency" to define and describe the type of appropriation permitted to be made under that provision, indicates that the provision was intended to authorize appropriations to meet expenditures necessitated by sudden and unanticipated circumstances requiring immediate action. Therefore, *Formal Opinion No. 10* concluded that the term "or" in the first sentence of N.J.S.A. 40A:4-46 should be read as meaning "and", since to do so would be consistent with the overall intent of the provision.

However, it is clear upon further consideration that reading the word "or" as meaning "and" is neither required nor necessary in order to

## FORMAL OPINION

preserve the basic intent of the provision. Construing "or" in the first sentence of the statutory section as meaning the disjunctive "or" would mean either that an emergency appropriation could be made for a purpose which was not foreseen at the time of the adoption of a local governing body's budget or that an emergency appropriation could be made for a purpose for which adequate provision was not made in such a budget. In either case, the types of appropriations which could properly be made would nevertheless be limited to appropriations made to deal with "emergencies," that is, with sudden and unanticipated occurrences or circumstances requiring immediate action.

An emergency appropriation could thus be made for a purpose which was not foreseen at the time of the adoption of a local budget, such as the reconstruction of a municipal road or bridge which had collapsed, provided that circumstances of an emergent nature created the need to make such an appropriation. Alternatively, an emergency appropriation could be made for a purpose which was foreseen at the time of the adoption of a local budget but for which adequate provision was not made. An example would be an instance where a municipality made appropriations for fire protection in its budget but experienced an unexpectedly large number of fires or a fire of an unexpectedly great magnitude during the course of the year which in turn caused the municipality's fire protection appropriation to be expended at a more rapid rate than the municipality had anticipated. In these situations, however, the circumstances creating the need for the emergency appropriation would have to be emergent, that is, sudden and unanticipated.

For these reasons, you are hereby advised that *Formal Opinion No. 10—1980* is modified to the extent it is now our opinion that a local government unit may make an emergency appropriation either for a purpose which was not foreseen at the time of the adoption of its budget or, in the alternative, for a purpose for which adequate provision was not made therein. You are further advised, however, that, consistent with the advice given in that Opinion, an emergency appropriation made pursuant to N.J.S.A. 40A:4-46 may only be adopted to meet expenditures necessitated by sudden, unanticipated and unexpected circumstances which require immediate action.

Very truly yours,  
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