small loans. For all of the reasons stated above, it is also our opinion that an increase in the interest rate during the first 3 years of each of these loans would likewise be prohibited. On the other hand, the statute provides that the interest rate to be charged on a bank advance loan may be increased from time to time provided the notice requirements are satisfied. It is clear that where the Legislature intended to allow for increases in the interest rate during the entire term of the loan, it stated its intent in unmistakable terms.

July 8, 1982

G. THOMAS RITI, *Director*
Division of Public Welfare
3525 Quakerbridge Road
Trenton, New Jersey 08619

FORMAL OPINION NO. 4—1982

Dear Director Riti:

A question has arisen with regard to the proper construction of certain amendments to the Local Government Cap Law as such amendments pertain to the financing of municipal and county welfare programs. More specifically, the question relates to the types of municipal and county expenditures which would be encompassed by the provisions of Section 1(l) and Section 2(g) of L. 1981, c. 56 and which, as a consequence, could be excluded from the limitations established by the Local Government Cap Law upon increases in spending by local government units. For the reasons set forth below, you are advised that L. 1981, c. 56 would encompass those expenditures of Federal or State funds for administrative or other purposes made by a municipality or county for welfare programs funded wholly or in part by such funds, as well as those expenditures for administrative or other purposes made by a municipality or county as part of a welfare program in order to provide matching funds upon which the receipt of Federal or State funds is conditioned.

The Local Government Cap Law, L. 1976, c. 68, N.J.S.A. 40A:4-45.1 *et seq.*, was enacted in 1976 for the purpose of controlling the spiraling costs of local government in the State of New Jersey. In 1981, the Legislature enacted several amendments to the statute. L. 1981, c. 56; L. 1981, c. 61; L. 1981, c. 64. Included among these enactments were a number of amendments to those provisions of the Local Government Cap Law which set forth the exceptions to the spending limitations set forth in the statute. L. 1981, c. 56, Sections 1 and 2. Among the amendments to the provisions pertaining to such exceptions were those set forth at Section 1(l) and Section 2(g) of L. 1981, c. 56.

The first of these provisions, Section 1(l) was enacted as a substitute for that part of N.J.S.A. 40A:4-45.3(b) which was deleted in the course of enactment of L. 1981, c. 56. As initially enacted in 1976, N.J.S.A. 40A:4-45.3(b) had provided for the exclusion from a municipality's spending limitation of the following:

> b. Capital expenditures funded by any source other than the local property tax, *and 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%;* [Emphasis supplied.]

In enacting L. 1981, c. 56, the Legislature deleted that part of N.J.S.A. 40A:4-45.3(b) which followed the words "local property tax" and inserted as a separate subparagraph in N.J.S.A. 40A:4-45.3(1), a parallel provision which provides for the exclusion from a municipal spending limitation of the following:

> 1. Programs funded wholly or in part by Federal or State funds and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures; . . .

In addition to making this change in N.J.S.A. 40A:4-45.3, the Legislature also determined to establish a new exemption for similar county expenditures. Unlike the provisions of N.J.S.A. 40A:4-45.3(b) pertaining to municipalities prior to its amendment by L. 1981, c. 56, under the Local Government Cap Law as initially enacted in 1976 there was no authorization for counties to exclude from their spending limitation any amounts raised in their tax levies to provide matching funds for Federal or State aid. The Legislature therefore, in enacting L. 1981, c. 56, included Section 2(g) which provides for the exclusion from the statutory limitation on increases in a county tax levy of the following:

> d. That portion of the county tax levy which represents funding to participate in any Federal or State aid program and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures: . . .

The question to be addressed concerns the proper construction of these two provisions as they pertain to expenditures made to support the operations of municipal and county welfare programs. In resolving this question, reference must be made both to the construction accorded to the Local Government Cap Law, and in particular to N.J.S.A. 40A:4-45.3(b), prior to the enactment of L. 1981, c. 56 and to the legislative intent evidenced during the enactment of the amendment.

In *Formal Opinion No. 3-1977,* the Attorney General addressed the proper interpretation of the language of N.J.S.A. 40A:4-45.3(b) as that provision existed prior to the amendment by L. 1981, c. 56. In particular, the Opinion discussed the construction to be accorded to that part of N.J.S.A. 40A:4-45.3(b) which pertained to "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%;". The Attorney General advised that this provision was intended to exclude from the statute's spending limitation upon municipalities all expenditures made by municipalities for programs funded either wholly by Federal or State funds or partly by Federal or State funds and partly

by local matching funds upon which receipt of Federal or State funds was conditioned. *Id.* In reaching this conclusion, the opinion noted that N.J.S.A. 40A:4-45.3(b) represented an underlying legislative policy to encourage and enable local governments to participate fully in these types of programs free of the spending restrictions set forth in the statute. *Id.* Thus, it was concluded that the intent of this provision was to exclude from the spending limitation all expenditures of Federal and State aid money as well as all local matching expenditures necessary to secure Federal or State aid for municipal governments.

In *Formal Opinion No. 5-1977,* an inquiry was made as to whether county and municipal shares of public welfare assistance could be excluded from the statute's spending limitation. It was concluded that municipal expenditures made to match and secure available Federal and State aid funds could be excluded from the municipal spending limitation under the provisions of N.J.S.A. 40A:4-45.3(b). It also noted, however, that no similar exclusion existed at that time with regard to comparable expenditures by counties. *Id.* Thus, it was opined that N.J.S.A. 40A:4-45.3(b) encompassed only municipal expenditures of Federal or State aid money and municipal expenditures made to match and secure Federal or State aid for municipal governments.

In enacting L. 1981, c. 56, it is evident that the Legislature intended that the exemption provided under Section 1(1) for programs funded wholly or in part by Federal or State funds and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures, was intended to be interpreted in the same manner as N.J.S.A. 40A:4-45.3(b) had been interpreted in *Formal Opinion No. 3-1977.* First, in enacting Section 1(1) of L. 1981, c. 56, the Legislature utilized the same language, *i.e.,* "[P]rograms funded wholly or in part by Federal or State funds . . . ." Further, the Senate County and Municipal Government Committee Statement concerning Senate Bill No. 734, the bill which was enacted as L. 1981, c. 56, explicitly indicated that the legislation was intended to provide for the exemption of "expenditures funded wholly or in part by Federal or State funds, or for which reimbursement is provided by Federal, State or other funds, *as such exemption is currently being interpreted pursuant to Attorney General's Formal Opinion No. 3-1977* . . . ." (Emphasis supplied.) This statement clearly indicates that the interpretation set forth in *Formal Opinion No. 3-1977,* with regard to the exemption from the statute's spending limitation on municipalities for programs funded wholly or in part by Federal or State funds and for expenditures for which reimbursement is provided by Federal, State or other funds, was to be continued in the implementation of the Section 1(1) of L. 1981, c. 56.

Turning to the question of the appropriate construction of Section 2(g) of L. 1981, c. 56, that provision creates an exemption from the spending limitation upon counties similar to that provided by Section 1(1) for municipalities. As noted above, the Local Government Cap Law, as initially enacted, did not contain any authorization for counties to exclude from their spending limitation those amounts which they were required to expend in order to obtain Federal or State aid funds. *Formal Opinion No. 5-1977.* In particular, it was noted that, under the statute as it then

existed, counties, could not exclude from their spending limitation those expenditures made by counties as a condition for participation in federally funded public assistance programs.

It would seem evident that, in enacting Section 2(g) of L. 1981, c. 56, the Legislature intended to provide an exemption from the spending limitation on counties, similar to that which already had existed for municipalities, for those amounts expended by counties as matching shares in order to participate in federally funded and State funded programs. Section 2(g) of L. 1981, c. 56 exempts from the limitation upon increases in a county's tax levy "[T]hat portion of the county tax levy which represents funding to participate in any Federal or State aid program . . . ." This language would clearly seem to contemplate those appropriations made by a county from its tax levy which would be necessary to fund its share of and to consequently participate in any Federal or State aid programs. Further, the language of the Senate County and Municipal Government Committee Statement to Senate Bill No. 734 indicates, as noted above, a clear legislative intent both to provide an exemption under the Local Government Cap Law for local government expenditures funded wholly or in part by Federal or State funds or for which reimbursement is provided by Federal, State or other funds and to have the exemption so provided interpreted in the same manner as *Formal Opinion No. 3-1977* had interpreted the exemption previously provided for municipalities.

In light of this clear statement of legislative intent, it is evident that Sections 1(l) and 2(g) of L. 1981, c. 56, are intended to exclude from the statutory limitation on increases in municipal appropriations and county tax levies those expenditures made by municipalities and counties of Federal or State aid dollars, those expenditures for which such bodies are entitled to receive reimbursement from Federal, State or other funds, and those expenditures made by such bodies for the purpose of providing matching funds for available Federal or State aid monies. Accordingly, in the administration of a municipal or county welfare program, a municipality or county may properly exclude from its spending limitation any Federal or State monies it might expend for which it is entitled to receive reimbursement from Federal or State funds. Such monies would, by way of example, include those amounts of State funds which a municipality would receive from the State for provision of public assistance within the municipality pursuant to N.J.S.A. 44:8-108 *et seq,* and those amounts of Federal funds which a county would receive for expenditures made pursuant to 42 U.S.C.A. 603(a)(1) and (3) and N.J.S.A. 44:10-5 for the provision of aid to families with dependent children and for the proper and efficient administration of that aid program.

A county or municipality may likewise exclude from its spending limitation any county or municipal funds appropriated and expended for the purpose of matching available Federal or State funds where the availability of such funds is conditioned upon the appropriation and expenditure of such matching funds. By way of example of such types of matching funds, these amounts would include those monies which a county would appropriate pursuant to N.J.S.A. 44:10-5 to provide matching dollars for those Federal and State funds available under 42 U.S.C.A. 603(a)(1) and N.J.S.A. 44:10-5 to provide aid to families with dependent

children as well as those amounts which a county would appropriate to provide matching dollars for those Federal funds available under 42 U.S.C.A. 603(a)(3) and N.J.S.A. 44:10-5 to meet the administrative costs for that program.

By the same token, however, a municipality or county would not be authorized to exclude from its spending limitations those amounts which it might expend for the support of such programs where the monies expended are not either Federal or State funds, reimbursible from such funds or expended to match Federal or State funds the receipt of which is conditioned upon the expenditure by the local unit of matching funds. To conclude otherwise would be to ignore the manner in which N.J.S.A. 40A:4-45.3(b), as it existed prior to L. 1981, c. 56, had previously been interpreted in *Formal Opinion No. 3-1977* and the explicit indication of legislative intent in the Senate County and Municipal Government Committee Statement to Senate Bill No. 734 that the amendments effected to the Local Government Cap Law through the enactment of L. 1981, c. 56 were intended to be interpreted in the same manner. An example of the type of expenditures which would not fall within N.J.S.A. 40A:4-45.3(1) or N.J.S.A. 40A:4-45.4(g) would be those municipal expenditures made to meet the cost of administering public assistance within a municipality pursuant to N.J.S.A. 44:8-137. Such expenditures do not involve Federal or State funds, are not reimbursible from any such funds and are not made to match any Federal or State funds available for this purpose. Rather, such costs are borne solely by the municipality. N.J.S.A. 44:8-137.

In conclusion, you are, therefore, advised that municipalities and counties may exclude from their spending limitations under the Local Government Cap Law those expenditures made for programs funded entirely by Federal or State funds, those expenditures for which reimbursement from Federal or State funds is available and those expenditures which are made to provide matching funds upon which the receipt of Federal or State funds is conditioned.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General
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Deputy Attorney General