

ATTORNEY GENERAL

681; *EEOC v. County of Santa Barbara*, 666 F.2d 373, 376 (9th Cir. 1982).

You are therefore advised that the requirement of statutes that appointees to the uniformed law enforcement and firefighting services shall be no older than 35 are invalid and unenforceable under the ADEA.³ A maximum hiring age may be validly adopted in an amended format only when it can be shown that all or substantially all of the persons above a prescribed maximum hiring age are unable to perform the duties of the position or that it is impossible to assess the fitness of individual applicants over the prescribed age on an individual basis.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

3. The ADEA by its terms protects only persons between the ages of 40 to 70 against discrimination in employment. The New Jersey statutory scheme establishes a maximum hiring age for the uniformed services at 35. It would be unreasonable though to assume that the legislature intended a maximum hiring age to apply for persons between 35 and 40 when persons up to 30 years over the age of 40 are not subject to a comparable limitation. A statute should be interpreted sensibly and not to reach an anomalous or irrational result. *Suter v. San Angelo Foundry & Mach. Co.*, 81 N.J. 150 (1979); *Federal Paper Bd. Co., Inc. v. Borough of Bogota*, 129 N.J. Super. 308 (App. Div. 1974). Moreover, a statute may be deemed to be severable only where the offensive portion can be excised without impairing the principal object of the statute as a whole. *110-112 Van Wagenen Avenue Co. v. Julian*, 101 N.J. Super. 230, 235 (App. Div. 1968). In the instant situation, the application of maximum hiring ages to a limited group of persons between the ages of 35 to 40 would not only be unreasonable but also inconsistent with the apparent purpose of the statute to prohibit the appointment of *all* persons of whatever age over 35.

November 15, 1984

HONORABLE MICHAEL M. HORN
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION NO. 2—1984

Dear Treasurer Horn:

It has been brought to our attention that Public Question Number 2 ("The Human Services Facilities Construction Bond Act"), which was presented on the ballot and approved by the people at the General Election held on November 6, 1984, contained language concerning the refinancing of bonds authorized by the Act which does not appear in section 22 of Senate Bill No. 2095, The Human Services Facilities Construction Bond Act of 1984. The question is raised whether the Issuing Officials may lawfully issue bonds pursuant to the provision of the Bond Act. For the following reasons, it is our opinion that the inclusion of additional wording on the ballot concerning the refinancing of bonds authorized by the Act

FORMAL OPINION

constitutes an immaterial deviation from the substantive objective of the Bond Act and the Issuing Officials may lawfully and properly issue the bonds.

On September 13, 1984, the Legislature passed Senate Bill No. 2095, the Human Services Facilities Construction Bond Act of 1984 (hereinafter referred to as the Bond Act or Act). The Act authorized the creation of a debt of the State of New Jersey through the issuance of bonds as direct obligations of the State in the sum of \$60 million for the purpose of capital expenditures for the cost of construction of human services facilities. Specifically, it authorized capital expenditures for renovation and improvement of human services facilities; for the maintenance of physical plant accreditation standards; to upgrade solid waste facilities at human services institutions; for grants to establish alternative residential facilities for de-institutionalized individuals, and for the replacement, rehabilitation, repair and improvement of human services facilities. The Act contained the usual provisions with respect to the issuance of State bonds. It provided that the bonds shall be serial bonds, term bonds, or a combination thereof, which shall be subject to redemption prior to maturity and which shall mature and be paid not later than 35 years from the date of issuance. It also authorized the Issuing Officials to issue refunding bonds and in an amount not to exceed the amount necessary to effectuate the refinancing of all or any bonds issued pursuant to the Act, for the purpose of refinancing any bonds issued pursuant to the Act, subject to the enactment of legislation providing for the issuance of refunding bonds in accordance with and under the authorization of N.J. Const. (1947), Art. 8, Sec. 2, par. 3.

Of significance is the following provision contained in Section 22 of the Act:

For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1984, be submitted to the people. To inform the people of the contents of this act, it shall be the duty of the Secretary of State, after this section takes effect, and at least 15 days prior to the election, to cause this act to be published in at least 10 newspapers published in the State and to notify the clerk of each county of this State of the passage of this act, and the clerks respectively, in accordance with the instructions of the Secretary of State, shall cause to be printed on each of the ballots, the following: . . .

HUMAN SERVICES FACILITIES CONSTRUCTION BOND ISSUE

Should the 'New Jersey Human Services Facilities Construction Bond Act of 1984,' which authorizes the State to issue bonds in the amount of \$60,000,000.00 for the planning, construction, reconstruction, development, erection, acquisition, extension, improvement, rehabilitation, and equipping of human services facilities, *[and in a principal amount sufficient to refinance all or any of these bonds if it will result in a present value savings,]*

ATTORNEY GENERAL

and providing the ways and means to pay for the principal and interest on these bonds, be approved?

INTERPRETIVE STATEMENT

Approval of this act will authorize the sale of \$60,000,000.00 in bonds to be used (1) to bring human services facilities into compliance with Life Safety Code requirements; (2) to maintain physical plant accreditation standards; (3) to upgrade solid waste facilities at human services institutions; (4) to provide grants to establish alternative residential facilities for deinstitutionalized individuals; **and** (5) to replace, rehabilitate, repair and improve human services facilities* [; (6) and provide bonds in a sufficient amount to refinance all or any of these bonds if it will result in a present value savings]*. (Emphasis in original).

The Act explained that the matter enclosed in brackets above [thus] was not enacted and was to be omitted in the law.

Pursuant to section 22 of the Act, the Secretary of State certified to the county clerks of the respective counties that there should appear on the ballot to be voted upon by the voters of the entire State at the General Election to be held on November 6, 1984, as Public Question No. 2, the question and interpretive statement appearing in the Act. The question and interpretive statement published on the ballot used at the election were identical to that set forth in the Act, except that the material contained within the brackets, dealing with how the bonds might be refinanced, was not deleted from, and therefore remained included in, the question and interpretive statement appearing on the ballot with the brackets themselves having been removed from the text. The question so published and stated in the official ballot was also contained in the General Election Sample Ballots distributed to voters in advance of the General Election. The Act was approved by a wide majority of the voters in the General Election of November 6, 1984. In view of the fact that the question and interpretive statement published on the official ballot for the General Election contained information concerning the possible refinancing of the bonds, which had been deleted from the question and interpretive statement stated in the Act, the precise issue is whether bonds may be issued by the State of New Jersey under and pursuant to the Act.

It is significant to note that the Act specifically contained a provision (Section 19) authorizing the Issuing Officials to issue refunding bonds and in an amount necessary to effectuate the refinancing of all or any bonds issued pursuant to the Act, at any time and from time to time, for the purpose of refinancing any bond issue pursuant to the Act, subject to the enactment of legislation providing for the issuance of refunding bonds in accordance with and under the authorization provided by N.J. Const. (1947), Art. 8, Sec. 2, par. 3. The Act further provided that such refunding bonds would constitute direct obligations of the State of New Jersey, and the faith and credit of the State would be pledged for the payment of the principal thereof and the interest thereon. Thus, the information included in the question on the ballot stating that the bonds would be issued "in

FORMAL OPINION

a principal amount sufficient to refinance all or any of these bonds if it will result in a present value savings," and the information incorporated in the interpretive statement stating that approval of the Act "will . . . provide bonds in a sufficient amount to refinance all or any of these bonds if it will result in a present value savings" was not substantially different from the refinancing provisions actually contained in Section 19 of the Act.

More importantly, voter approval of the wording on the ballot authorizing the creation of a debt for the purpose of refinancing all or a portion of any outstanding bonds was not even required. Pursuant to an amendment to Art. 8, §2, ¶3, of the State Constitution, approved at the General Election of November 8, 1983, no voter approval is required for any law authorizing the creation of a debt in an amount for the refinancing of all or a portion of any outstanding debts of the state. The wording on the ballot concerning the possible refinancing of bonds which had in fact been deleted by the legislature from the question and interpretive statement in the Act was superfluous. It did not in any way materially alter the substantive object of the Act specifying the principal amount of bonds to be issued and the several purposes to which the proceeds of such bonds would be applied.

The great weight of authority recognizes that the inclusion of information in a question or interpretive statement concerning the technical or financial details of a bond issue, which is in excess of, and not required by, the statute authorizing the placement of the question on the ballot, is unlikely to affect in a meaningful way the choice of the electorate. Consequently, courts have regarded the incorporation of such information as an insubstantial irregularity that does not vitiate the validity of the election. *E.g.*, *Knappenberger v. Hughes*, 35 N.E. 2d 317 (Ill. Sup. Ct. 1941); *Anselmi v. Rock Springs*, 80 P. 2d 419 (Wyo. Sup. Ct. 1938); *Allison v. Phoenix*, 33 P. 2d 927 (Az. Sup. Ct. 1934). Thus, in *Anselmi v. Rock Springs*, *supra*, the public question placed on the ballot included a provision that the bonds to be issued by the City of Rock Springs, Wyoming, would be issued in an amount not exceeding 2% of the assessed valuation of the city, when computed together with outstanding general bonds. In actuality, the total bond indebtedness of the city at the time of the election was already nearly 4% of the assessed valuation and would be approximately 5-1/2% when computed together with the proposed bonds. Nevertheless, the court approved the bonds. In doing so, the court noted that Wyoming Law did not require that a statement of the city's total indebtedness be included in the question placed on the ballot. Under these circumstances, the information included in the ballot was treated as surplusage which, even though incorrect, was found to be an insignificant irregularity which did not cast doubt on the validity of the election. 80 P. 2d at 424-425. Similarly, in *Knappenberger v. Hughes*, *supra*, the statute providing that a question be placed on the ballot concerning whether or not an Illinois banking act should be amended did not require or provide that an explanatory statement of the question be included on the ballot. However, the Secretary of State added an interpretive statement on the ballot explaining the purpose of the proposed amendment. In rejecting the contention that the election was rendered invalid because the ballot was not in the form

ATTORNEY GENERAL

prescribed by the General Assembly, the court held that although the Secretary of State "overstepped his authority in having [the unnecessary information] placed on the ballot . . . the error was on the side of giving the voters more information and, if not stated so as to mislead them, it affords no ground for declaring the election void." 35 N.E. 2d at 320. Likewise, in *Smith v. Calhoun Community Unit School Dist. No. 40*, 157 N.E. 2d 59 (Ill. Sup. Ct. 1959), the Illinois Supreme Court considered the validity of school bonds to be issued by two counties. A special election for the purpose of submitting the bond issue question to the voters was called for by a resolution adopted by the two counties. The question, as set forth in the resolution, included information specifying the maturity dates of the bonds. However, when the question appeared on the ballot, one of the maturity dates was omitted from the question. As in *Anselmi v. Rock Springs, supra*, the Illinois School Code did not require that information pertaining to the maturity dates of school bonds be set forth in public questions concerning such bond issues. In approving the bonds, the court stated:

It is well settled that an official ballot will not be vitiated by the incorporation of information beyond that required by the statute. When such additional information is incorporated in the ballot, the test is whether it would tend to confuse or misinform a voter so as to affect his free choice There is nothing misleading about the official ballot used in this election. [157 N.E. 2d at 63; citations omitted.]

Furthermore, even in instances where there have been mistakes, misstatements or omissions concerning financial provisions of proposed bond issues which appear in the ballot itself, bond statutes so approved by the voters have not been declared invalid; such irregularities do not have the tendency to mislead, deceive or confuse the people and are not considered substantial. *E.g., Dunlap v. Williamson*, 369 P. 2d 631 (Okla. Sup. Ct. 1962); *State v. Maxwell*, 60 N.E. 2d 183 (Ohio Sup. Ct. 1945); *San Diego County v. Hammond*, 59 P. 2d 478 (Cal. Sup. Ct. 1936). Where the ballot itself correctly sets forth the essential provisions of the bond proposition to be passed upon by the electorate (as in the present situation involving the Human Services Facilities Construction Bond Act (1984)), a misstatement, irregularity or omission of an insubstantial nature in a public question appearing on the election ballot will not suffice to vitiate the law authorizing the proposed bonds. *State v. McGlynn*, 135 N.E. 2d 632 (Ohio Ct. of App. 1955).

In *Formal Opinion No. 6-1964*, issued on December 29, 1964, a question was raised as to the significance of differences between the Higher Education Construction Bond Act of 1964 as enacted and as published by the Secretary of State. The Attorney General concluded that there was no legal defect with respect to the publication because it constituted substantial compliance with the provisions of the Bond Act. It was reasoned that where the differences pertained to technical changes and minor alterations in phraseology and where the published act fully set forth the specific amount of indebtedness incurred for higher education

FORMAL OPINION

purposes, those differences did not materially alter the substantive provisions of that Bond Act. Similarly, in the instant situation, the differences between the Bond Act and the wording presented on the ballot dealing with refinancing have no tendency to mislead, deceive or confuse the public with respect to the basic legislative object to incur a debt in the amount of \$60 million for improvements to human services facilities.

Decisions which have declared bond acts invalid because of defects in election notices or in the statement of the public questions submitted usually have involved instances where particular provisions or terms of proposed bonds have been in conflict with specific statutory requirements, *Mann v. City of Artesia*, 76 P. 2d 941 (N.M. Sup. Ct. 1938), or where general provisions have been construed by state courts to require the inclusion of the subject matter omitted. *People v. Chicago, Rock Island & Pacific R. Co.*, 128 N.E. 2d 710 (Ill. Sup. Ct. 1955).

New Jersey decisions pertaining to elections in general clearly support the conclusion that the Bond Act has been lawfully adopted. In *Sharrock v. Keansburg*, 15 N.J. Super. 11 (App. Div. 1951) it was contended that an election should be invalidated because of the failure of the county clerk to cause to be printed on the ballot the explanatory statement of the public question in the exact verbiage appearing in the pertinent section of the statute. The court noted that the explanatory statement printed on the ballot "displayed more clarity of expression than the one contained in the statute" and found that the variance in language was clearly insubstantial, stating:

[I]f it is evident that notwithstanding the dereliction of duty of the officer there was a fair election and an honest return and no violation of such matters as the recognized inherent and inviolable rights of the voters, the courts in the public interest have frequently ignored the harmless irregularity.

....
The right of suffrage in a government of and by a free people must always be regarded with jealous solicitude. To overthrow the expressed will of a large number of voters for no fault of their own and solely because of some harmless irregularity would in many cases defeat the paramount object of the election laws [15 N.J. Super. at 18-19].

It has thus been recognized by the New Jersey courts that technical irregularities in election procedures cannot serve to invalidate the results of an otherwise fair election and thus frustrate the expressed will of the electorate. In *Wene v. Meyner*, 13 N.J. 185, 196 (1953), this essential policy was aptly expressed.

Where, as here, there is an unwitting omission of a formal requirement otherwise supplied in substance, the ballots are invulnerable; the overturning of the result in such circumstances would frustrate the will of the voters for errors and omissions of form not related to the merits; and this would do violence to

ATTORNEY GENERAL

the legislative will. In this regard, acts and omissions by the district board mandatory before election may for reasons of policy be deemed directory after the election, if it indubitably appears that the election result was not thereby prejudiced. The question is essentially one of fairness in the election. An election is not vitiated by the defaults of election officers not involving malconduct or fraud, unless it be shown that thereby the free expression of the popular will in all human likelihood has been thwarted.

The text of Public Question No. 2 on the official ballot contained all of the information set forth in Section 22 of Senate Bill No. 2095. Thus, the statement contained the question to be voted upon as well as the interpretive statement appearing in the Act. The incorporation on the ballot of additional information concerning how the bonds might be refinanced was merely superfluous. Because the Act already specifically set forth the manner in which the bonds could be refinanced, the inclusion of this information was not misleading; but rather a harmless irregularity. If anything, the voters were given more information than was necessary under the Act and, significantly, voter approval for such refinancing was not required pursuant to Art. 8, Sec. 2, par. 3. It is thus clear that the inclusion of the information on the ballot which had been deleted from the Act concerning the refinancing of bonds did not constitute a material deviation from the substantive objective of the Bond Act. For these reasons, it is our opinion the Human Services Facilities Construction Bond Act of 1984 was duly and validly approved by the people at the General Election. The Issuing Officials may lawfully issue bonds in accordance with the provisions of the Human Services Facilities Construction Bond Act of 1984.

Very truly yours,
MICHAEL R. COLE
Acting Attorney General
