



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY

ROBERT J. DEL TUCCO
ATTORNEY GENERAL

February 19, 1991

Barry Skokowski, Sr.
Deputy Commissioner and
Chairman, Local Finance Board
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08625

Re: FORMAL OPINION NO. 1 (1991)

Scope of the Local Finance Board's authority
to grant additional exceptions under N.J.S.A.
40A:4-45.3(d) of the Local Government Cap Law.

Dear Mr. Skokowski:

You have requested advice regarding the authority of the Local Finance Board to grant additional exceptions to the spending limitation imposed upon annual increases in municipal spending as a result of recent amendments which were made to the Local Government Cap Law by virtue of the enactment of L. 1990, c. 89. For the reasons set forth below, you are advised that the Board's authority in this regard is limited to granting exemptions only for unanticipated and extraordinary expenses.

The Local Government Cap Law was initially enacted in 1976, L. 1976, c. 68 (C.40A:4-45.1 et seq.), to control increases in the costs of local government and consequently limit the property tax burdens on the homeowners of the State. N.J.S.A. 40A:4-45.1; N.J. State P.B.A., Local 29 v. Town of Irvington, 80 N.J. 271, 283 (1979). At the same time, the Legislature recognized that local government could not be constrained to the point that it would be impossible to provide necessary services to its residents. N.J.S.A. 40A:4-45.1; N.J. State P.B.A. Local 29 v. Town of

Irvington, 80 N.J. at 283. In light of these two conflicting policies, the Legislature initially enacted the Cap Law on an experimental basis, N.J.S.A. 40A:4-45.1, and further provided for exceptions to the overall limitation upon increases in local government spending imposed by the Law. N.J.S.A. 40A:4-45.3; N.J.S.A. 40A:4-45.4. The Law has been reenacted on a number of occasions, L. 1978, c. 155; L. 1982, c. 225; L. 1986, c. 203; L. 1989, c. 338, and has also been amended several times to provide for various additional exceptions to the overall spending limitation which the Law imposes upon municipal and county spending. See, for example, L. 1980, c. 66; L. 1981, c. 56; L. 1983, c. 49; L. 1985, c. 22.

The Cap Law was most recently amended in June of 1990. L.1990, c.89. In its amendments, the Legislature eliminated a significant number of the exceptions which had been established to the statute's overall spending limitation since the Law first went into effect in 1977. Among the exceptions which the Legislature eliminated were exemptions for appropriations for solid waste purposes, for insurance purposes and for the purchase of certain types of police equipment. The Legislature balanced the deletion of these exceptions with the enactment of a limited number of new exceptions to the spending limitation imposed under the Law. Your request for advice pertains to a particular exception enacted by the Legislature in this regard - N.J.S.A. 40A:4-45.3d.

N.J.S.A. 40A:4-45.3d provides as follows:
In addition to the exceptions to the limit on increases in final appropriations for any budget year, listed in section 3 of P.L.1976, c.68 (C.40A:4-45.3), the Local Finance Board shall have the authority to grant additional exceptions, applicable to all municipalities and only effective for the local budget year in which the exception is granted, upon a finding of extraordinary circumstances that result in an unanticipated increase in expenditures for a service essential to the health, safety and welfare of the residents of the State. (Emphasis supplied).

You have requested advice as to the nature and extent of the authority of the Local Finance Board to grant additional exceptions under this provision. In providing such advice, it is necessary to consider both the specific language utilized by the Legislature in enacting N.J.S.A. 40A:4-45.3d and the overall purpose which the Local Government Cap Law is intended to serve. In reviewing any legislative enactment, the primary focus must be to give proper effect to the specific language which the Legislature has chosen to employ in enacting such legislation. State v.

Butler, 89 N.J. 220 (1982). In the absence of an explicit indication that statutory language is intended to have a special meaning, such language must be construed and given effect in accordance with its plain and commonly understood meaning. Levin v. Parsippany-Troy Hills, 82 N.J. 174, 182 (1980). Additionally, statutory language must be read in light of the overall statutory context in which it appears, State v. Brown, 22 N.J. 405 (1956); Petition of Sheffield Farms Co., 22 N.J. 548 (1956), and in a manner which will further the overall purpose of the legislation of which it is a part. Central Const. Co. v. Horn, 179 N.J. Super. 95 (App. Div. 1981).

As noted above, the primary purpose of the Law is to control annual increases in local government spending. N.J.S.A. 40A:4-45.1; N.J. State P.B.A., Local 29 v. Town of Irvington, 80 N.J. at 283. Accordingly, to the extent that the Local Finance Board may grant additional exceptions under N.J.S.A. 40A:4-45.3d, it must, in doing so, be mindful of this overall purpose of the Law. Moreover, the specific language which the Legislature has chosen to employ in enacting N.J.S.A. 40A:4-45.3d also reflects a legislative intent to circumscribe the Board's authority to grant additional exceptions to the statute's overall spending limitation. The provision explicitly requires that the Board grant such additional exceptions only upon "a finding of extraordinary circumstances that result in an unanticipated increase in expenditures for a service essential to the health, safety and welfare of the residents of the State." (Emphasis supplied). N.J.S.A. 40A:4-45.3d further provides that any additional exceptions which the Board may authorize pursuant thereto shall only be effective for one budget year. It is accordingly clear that the Legislature intended to limit the extent to which additional exceptions to the Cap Law's overall spending limitation could be authorized under N.J.S.A. 40A:4-45.3d to situations which were unusual in nature and not likely to recur.

Consideration of the specific terms utilized by the Legislature in enacting N.J.S.A. 40A:4-45.3d -- "extraordinary circumstances" and "unanticipated increases" -- supports this conclusion. The Legislature has not defined these terms for the purposes of the Local Government Cap Law. In the absence of any indication that such terms are intended to have a special meaning, they must accordingly be afforded their plain, ordinary and commonly understood meaning. Levin v. Parsippany-Troy Hills, 82 N.J. at 182. In ascertaining such meaning, reference may appropriately be made to the commonly accepted definition of the term "extraordinary". This term is defined to mean "more than ordinary: not of the ordinary order or pattern ... going beyond what is usual, regular, common, or customary: not following the general pattern or norm ... exceptional to a very marked extent: most unusual: far from com-

mon...." Webster's Third New International Dictionary, Unabridged, 1976. Therefore, in utilizing the term "extraordinary", it is apparent that the Legislature intended that the "circumstances" to which N.J.S.A. 40A:4-45.3d refers are to be unusual or uncommon circumstances which differ significantly from the types of circumstances with which municipal governments are normally accustomed to dealing.

Similarly, in affording the term "unanticipated increase" its common and well understood meaning, it is also appropriate to refer to the accepted definition of this term. The term "unanticipated" is defined to mean "not anticipated; unexpected; unforeseen". Webster's Third New International Dictionary, Unabridged, 1976. Giving effect to the commonly understood meaning of this term, it is accordingly evident that the Legislature intended that exceptions should only be granted under N.J.S.A. 40A:4-45.3d where unusual circumstances, i.e. circumstances with which local governments are ordinarily not required to deal and which they ordinarily would not be able to foresee or anticipate, create a need to increase expenditures for essential public services.

The legislative history of the provision, as well as the manner in which courts have construed the term "extraordinary" for other purposes, also support such a construction of N.J.S.A. 40A:4-45.3d. Both the Statement of the Sponsor of Assembly Bill No. 3601, the bill eventually enacted as L.1989, c.89, and the Statement of the Assembly County Government Committee with regard to that bill state that the authority of the Local Finance Board to grant additional exceptions under the bill was to be conditioned upon the Board making "a finding of extraordinary circumstances causing an unanticipated rise in expenses for services necessary to the health, safety and welfare of the State's residents". These Statements reinforce the notion that the authority of the Board to act under N.J.S.A. 40A:4-45.3d is to be limited to instances in which "extraordinary circumstances" exist which have caused an "unanticipated" rise or increase in the cost of providing certain services to the residents of the State.

Moreover, in considering what would constitute "extraordinary" circumstances or occurrences, the courts have also indicated that the term "extraordinary" contemplates circumstances or occurrences which do not exist or arise in the normal or ordinary course of affairs. By way of example, the United States Supreme Court, in considering what constituted "extraordinary circumstances," indicated that "extraordinary circumstances" are, by their very nature, impossible to anticipate. Kugler v. Helfant, 421 U.S. 117, 124, 95 S.Ct. 1524, 1531, 44 L.Ed.2d 15 (1975). Similarly, in Lauter v. Hedden Const. Co., 83 N.J.L. 617, 619 (E. & A. 1912), the court, in considering whether certain circumstances

would constitute an "extraordinary occurrence", indicated that an "extraordinary occurrence" would be something which would not occur under normal conditions or be expected or anticipated to occur in the normal course of affairs.

Accordingly, in considering the type of finding which the Local Finance Board must make under N.J.S.A. 40A:4-45.3d in order to grant an additional exception to the Cap Law's spending limitation, it is evident that the Board must first determine that circumstances have arisen which are uncommon, unusual and exceptional in character and, second, that the existence of such circumstances has caused an increase in the need to incur expenditures which could not have reasonably been anticipated by municipal governing bodies and municipal officials. Such determinations are essentially administrative and factual, rather than legal, in nature. It is the Board's responsibility, utilizing its recognized expertise in the financial affairs of local government, Morris Cty v. Skokowski, 86 N.J. 419, 424 (1981); City of Atlantic City v. Laezza, 80 N.J. 255, 265 (1979), to determine whether a particular set of circumstances would be "extraordinary," and, further, whether such circumstances would have caused the need for an "unanticipated" increase in municipal expenditures for a particular public service. The determinations to be made by the Board in this regard will, of course, have to be made on a case-by-case basis upon consideration of the particular facts and circumstances before the Board.

By way of example, however, it would be unreasonable under the statute to exempt regular increases in solid waste costs or health insurance premiums which have been, or could foreseeably have been, anticipated. On the other hand, dramatic increases in spot oil market prices due to unanticipated events which are passed on to municipal governments would, as a general matter, meet the standard set forth in the statute for an additional exemption. Between these two extremes, a wide variety of situations may arise; each particular set of circumstances will have to be reviewed to determine whether, in light of the principles set forth in this opinion, an additional exception should be granted.

In sum, it is therefore clear, for the reasons set forth above, that the Legislature did not intend to authorize the Local Finance Board to grant exceptions merely because the spending limitation imposed by the Law would require local governing bodies to make difficult choices in the formulation of their annual budgets. Rather, giving proper effect to the words "extraordinary circumstances" and "unanticipated increase", it is evident that the Legislature intended that the Board would be able to afford some measure of relief to local governing bodies only when unusual or "extraordinary" circumstances arose in such a manner as to create a need for "unanticipated" increases in local government spending,

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