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DEPARTMENT OF LAW AND PUBLIC SAFETY

ROBERT J. DEL TUFO
ATTORNEY GENERAL

August 28, 1990

Barry Skokowski, Sr.
Deputy Commissioner and Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street - CN 800
Trenton, New Jersey 08625

Re: FORMAL OPINION NO. 1 (1990):

Authority of Director of Local Government Services
to Disapprove a County Budget That Does Not Provide
for an Appropriation to Meet Foreseen Obligations.

Dear Mr. Skokowski:

You have asked if the Director of Local Government Services may approve a county budget where the county proposes funding certain court-ordered county jail improvements outside of the budget process through a "special emergency appropriation" pursuant to N.J.S.A. 40A:4-55.13. For the reasons that follow, you are advised that the Director may not approve a county budget under that provision where he determines that the budget does not provide for an appropriation to meet obligations known or foreseen at the time the budget was prepared.

Your inquiry arises out of the following circumstances: Essex County has been operating, we are informed, under a temporary budget approved in January 1990. The final budget submitted for the Director's approval does not provide for any appropriation to meet current fiscal year anticipated costs of certain court-ordered jail improvements. The court order, which was signed by the parties, including the County on January 2, 1990, and by the court on January 5, 1990, requires the County to make certain capital improvements to county jails and to provide for certain operating costs for counseling and other inmate services at those jails. Instead of including these costs in the proposed final budget, the County proposes to pay for them with a special emergency appropriation under N.J.S.A. 40A:4-55.13 to be financed by

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borrowing money through the issuance of three-year notes as provided for in N.J.S.A. 40A:4-55.16.

The Local Budget Law, N.J.S.A. 40A:4-1 et seq., regulates the budget-making process for all counties and municipalities in this State. It contains several provisions by which a county can provide for meeting emergency government needs. Fundamentally, N.J.S.A. 40A:4-46 provides in pertinent part that a county "may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof." Thus, under its express terms, an emergency must be unforeseen and it must occur after adoption of the final budget. Essex County has not sought to utilize this statutory provision as justification to fund its court-ordered obligations at issue here. Rather, the County argues that its obligations under the court order may be financed through a special emergency appropriation authorized pursuant to N.J.S.A. 40A:4-55.13. That statutory provision states in its entirety that:

A local unit may by resolution make special emergency appropriations after the adoption of the budget, for costs arising from a public exigency caused by civil disturbances.

If this provision is applicable, the County would be able to borrow money to pay for its court-imposed obligations in the form of three-year notes. N.J.S.A. 40A:4-55.14 and 55.16. Hence, the issues presented in this case are whether the events which led to the obligations to be funded by a special emergency appropriation must occur after final budget approval or whether a special emergency appropriation can be used at any time during the fiscal year so long as it is used to fund the costs caused by a civil disturbance.

It is well-established that the primary goal of all statutory construction is to give effect to the legislative intention. Alexander v. NJ Power & Light Co., 21 N.J. 373 (1956). Accordingly, each word of a statute is presumed to have been placed there by the Legislature for a reason. Albert F. Ruhl Co. v.

*As noted, the second requirement of the statute is that the special emergency appropriation must be in response to "civil disturbances." It is unnecessary for us to resolve whether the costs of funding the court-ordered remedial correctional measures here were caused by a civil disturbance within the meaning of the statute if it is determined that the civil disturbance must occur after the budget is adopted in order to invoke the statutory provision.

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Board of Trustees of Schools for Indus. Ed., 85 N.J. Super. 4, 13 (Law Div. 1964). Further, the particular words of a statute must be made responsive to the internal sense of the legislation as a whole. Wollen v Fort Lee, 27 N.J. 408, 418 (1958).

The paramount purpose of the Local Budget Law is to require local governments to follow sound business principles in their budgetary practices, and its aim is to insure that anticipated revenues equal expenditures. Morris Cty. v. Skokowski, 86 N.J. 419, 423 (1981). In construing the provisions of N.J.S.A. 40A:4-46, the New Jersey Supreme Court has noted that the propriety of a post-budget emergency appropriation would depend upon whether there had been a failure to make adequate provision in the budget for the costs at issue, and whether the failure occurred "despite a bona fide effort to include whatever items should reasonably have been inserted in the budget in reasonable amounts." Passaic v. Local Finance Bd., Commun. Aff., Etc., 88 N.J. 293, 300 (1982). In considering what would constitute a bona fide effort, the Court cited the requirement that budgets be prepared on a "cash basis", N.J.S.A. 40A:4-3, and noted that "[m]unicipal financing is formulated on a pay-as-you-go principle. To permit the unbridled use of supplemental emergency funding subverts that tenet and could effectively constitute deficit financing."* Passaic, 88 N.J. at 300-01.

The emergency appropriation which may be made pursuant to N.J.S.A. 40A:4-55.13 can only be made "after the budget is adopted." Clearly, this means that the costs which may be funded by an emergency appropriation could not have been foreseen or could not have been provided for in full despite a bona fide effort to do so at the time the budget was adopted. Had the Legislature intended a different result, there would have been no reason to require that the special emergency appropriation be made "after the budget is adopted."

This view is consistent with the Supreme Court's approach in Passaic, supra. There the Court concluded that an emergency appropriation is only available to a local governing body where the need is unforeseen at budget-making time or where the failure to provide in full for an anticipated need occurred despite a bona fide effort to structure a reasonable budget. Id., 88 N.J. at 302-03. Planning for an emergency appropriation during the budget

*Such a funding mechanism could, in certain circumstances, be seen as an evasion of the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., which limits the amount by which the budget may be increased annually. We are not suggesting, however, that the restrictions of the Cap Law are an issue in this matter.

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process, as is being done in this case, is inconsistent with making a bona fide effort to structure a reasonable budget. Clearly then, it must be concluded that costs which are known at the time of budget preparation should be included during that process. In this case, the County signed a consent order in January 1990 and thus knew it was obligated to incur the expenses involved here at a time when it was operating under a temporary budget and in the midst of planning for its final budget. It would be unreasonable to conclude under these circumstances that these expenses were unforeseen.

The County advances the argument that since N.J.S.A. 40A:4-55.13 does not include the word "unforeseen," when compared with the language of N.J.S.A. 40A:4-46, the Legislature must have intended a county to use a special emergency appropriation to fund the costs of a civil disturbance, regardless of when the disturbance occurred. To the contrary, any reasoned interpretation of the statute must conclude that the Legislature's true design was to address only true emergency situations, i.e. those incapable of being provided for in any reasonable planning process. Therefore, in our view, the County places undue reliance on the absence of one word from the text to the detriment of the fair import of the entire provision.*

Having concluded that the County may resort to emergency appropriations only when the costs intended to be funded by such appropriations result from true emergencies occurring after completion of the budget process, it is necessary to turn briefly

*There are other provisions in the Local Budget Law which may permit "special emergency appropriations" for costs that could be reasonably foreseen at the time of the adoption of a final budget. See N.J.S.A. 40A:4-53 (preparation of tax maps, etc.); N.J.S.A. 40A:4-55.8 (expenses of county colleges in anticipation of aid). None of the expenses at issue here are sought to be financed under these provisions which, in any event, must be seen as limited legislative modifications to the recognized general rule that a budget encompass all foreseeable expenses at the time of its adoption in order to ensure responsible spending practices by the local government entity. Passaic, supra. Parenthetically, we note that the Supreme Court was comfortable in applying an "unforeseeability" test under N.J.S.A. 40A:4-46, and by extension of reasoning here to N.J.S.A. 40A:4-55.13, while recognizing that unforeseeability is not a predicate to the use of a "special emergency appropriation" to fund significant governmental expenses under N.J.S.A. 40A:4-53. Passaic, 88 N.J. at 298. In short, the Legislature has done no more than exercise its right to establish different alternatives for different circumstances.

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to the obligations of the Director of the Division of Local Government Services. The Local Budget Law requires the Director to examine the annual budgets of all municipalities and counties and to determine, among other things, whether each of those budgets complies with the requirements of law and the regulations of the local government board. N.J.S.A. 40A:4-76 to -77. No budget may be adopted by a local governing body unless the Director has certified his prior approval. N.J.S.A. 40A:4-10. If the Director finds that the budget does not meet all requirements of law and of the regulations of the local government board, he is required to "refuse to approve it." N.J.S.A. 40A:4-78. The Budget Law prohibits any county or municipality from expending any money or incurring any liability in the absence of an appropriation for the particular expenditure or liability. N.J.S.A. 40A:4-57; Trainor v. Burlington Cty. Freeholder Bd., 200 N.J. Super. 288, 301-02 (Law Div. 1984). It also requires that annual budgets be adopted "on a cash basis unless otherwise permitted by law." N.J.S.A. 40A:4-3. Therefore, when a special emergency appropriation under N.J.S.A. 40A:4-55.13 or under N.J.S.A. 40A:4-46 is not available to the County to meet its fiscal needs that are known and can be provided for in the final budget, the Director is not empowered to approve a final budget that relies on such budget approaches.*

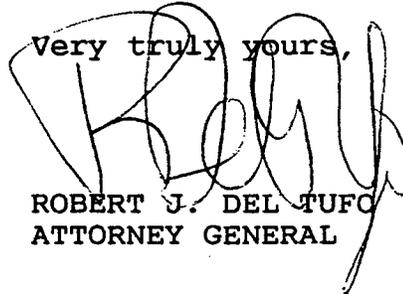
*To the extent the County must satisfy its court-imposed obligation by making capital improvements to county jails, it may be possible for it to proceed in part under the Local Bond Law, N.J.S.A. 40A:2-1 et seq., by adopting a bond ordinance to issue debt for any capital improvement or property which it may lawfully make or acquire, or for any other purpose for which a county is authorized by law to make an appropriation, provided that the purpose does not constitute a current expense and provided further that the purpose has a period of usefulness of not less than five years. N.J.S.A. 40A:2-3; N.J.S.A. 40A:2-21. Although we have not been asked to consider the propriety of this option in the context of your inquiry and we express no opinion in that regard, we note that the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., provides that a county may construct, repair, alter, enlarge, rebuild, refurnish or rehabilitate any building or other capital improvement for any county public purpose. N.J.S.A. 40A:12-3. This approach, however, may be of little practical utility here since it appears the majority of costs associated with the implementation of the consent order are for operating expenses and not capital improvements, and further, that the capital improvements may have already been made and paid for, thereby casting strong doubt on the use of bonds as a source of financing.

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In sum, you are advised that the Director may not approve the proposed Essex County budget under N.J.S.A. 40A:4-78, in the circumstances of this particular inquiry, on the ground that the budget does not meet all requirements of law where it fails to provide for an appropriation to address known liabilities or expenditures imposed by court order as required by N.J.S.A. 40A:4-55.13.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Del Tufo', written over the typed name below.

ROBERT J. DEL TUFO
ATTORNEY GENERAL