References for Section 4.1.1

AUTHORITY TO ESTABLISH A PROGRAM AND ENTER INTO AN AGREEMENT

Volume 1

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July 21, 2008

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Re: 06-0099. Are Legislative Changes Necessary to the Radiation Protection Act in Order for New Jersey to Become an Agreement State?

Dear Director Hoagland:

You have requested advice on whether legislative changes to the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. ("Act") are necessary in order for New Jersey to become an Agreement State. For the reasons set forth below, you are advised that the New Jersey Department of Environmental Protection ("NJDEP") has been granted all of the necessary authorities to comply with the requirements for "Agreement State" status which were raised in your request for advice.

The Agreement State program was established by the Atomic Energy Act ("AEA"), 42 U.S.C. 2021(b). The AEA authorizes the United States Nuclear Regulatory Commission ("NRC") "to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission... with respect to any one or more of the following materials within the State: (1) byproduct materials; (2) source materials and (3) special nuclear materials in quantities not sufficient to form a critical mass." Id. The NRC grants this Agreement State status when NRC cedes to a state its authority over any of these three

types of nuclear materials used or possessed within the borders of that same state. You have indicated that New Jersey is seeking to have the NRC cede this program to the State with one exception, byproduct from mill tailings waste.

In materials subsequently submitted to this office, NJDEP indicated that this originally broad request for advice should now be interpreted as asking us to specifically address NRC's eight questions/comments which were raised after its review of New Jersey's statutory authorities. These questions/comments can be summarized as mandating an explanation of the NJDEP's authority to create, organize and operate the program and to perform seven (7) specific requisite functions.

In our opinion, the Act and other legislation and supporting case law authorize NJDEP to respond affirmatively to NRC's eight questions/comments which will allow the NRC to grant New Jersey Agreement State status. Each question or comment is analyzed and answered below.

NRC Comment:

1. NEW JERSEY STATUTES DO NOT DIRECTLY ESTABLISH A RADIOACTIVE MATERIAL PROGRAM OR DETAIL ITS STRUCTURE.

The Radiation Protection Act ("Act") is the primary statute addressing radiation protection. Even though there is no provision in the Act expressly creating a radioactive material program or detailing its structure, in our opinion, NJDEP does have the authority to create, organize and operate such a program.

In N.J.S.A. 26:2D-9, NJDEP is defined as the department of state government designated throughout the Act as the empowered agency for radiation protection. N.J.S.A. 26:2D-3 creates a Commission on Radiation Protection ("Commission"), within the NJDEP, comprised of members with specified scientific training as well as representatives of the Commissioners of the Departments of Environmental Protection, Health and Senior Services and Labor and Workforce Development. This Commission is organized in accordance with N.J.S.A. 26:2D-6. Its duties include: promulgating rules "to prohibit and prevent unnecessary radiation;" reviewing policies and programs of the NJDEP "as developed under the authority of this act;" making recommendations to the NJDEP on its policies and programs; and, providing technical advice and assistance to the DEP. N.J.S.A. 26:2D-8. These advisory roles of the Commission, and the Act's reference to NJDEP's programs, indicate that NJDEP is

authorized to have a program of radiation protection.

The NJDEP is directed by N.J.S.A. 26:2D-9 to perform 13 duties. The 7 most important of the 13 duties for the purposes of answering NRC's first question may be summarized in paraphrase as:

1. Administer the Act and regulations of the Commission;

2. Develop policies and programs for the evaluation of radiation hazards;

3. Register sources of radiation and require specified records to be kept as set forth by the Commission;

4. Review specifications and plans for the design and shielding of radiation sources according to Commission rules;

5. Enter and inspect any building to determine compliance with any Commission rule or order of the DEP, investigate actual and suspected sources of radiation, and inspect any records;

6. Subject to Commission rules, require, issue, renew, suspend and revoke licenses for construction, operation and maintenance of sources of radiation; including byproduct materials, source materials and special nuclear materials in quantities not sufficient to form critical mass.

7. Issue orders for the implementation of the Act or any Commission regulation.
[Id.] [emphasis added].

These seven critical paragraphs spell out the essential powers needed to create, organize and operate a program of radiation protection.

Paragraph (a) of N.J.S.A. 26:2D-9 calls for NJDEP to administer the Act and the regulations of the Commission. No other department of State government is granted this authority. The Commission (in the NJDEP) has the statutory authority, as explained

above, to adopt regulations.[1] These powers help set the boundaries of the area being regulated.

Paragraph (h) mandates NJDEP to require registration of sources of radiation and records concerning sources of radiation to be kept. Pursuant to Paragraph (i), NJDEP "shall" "review plans and specifications of the design and shielding for radiation resources submitted...for the purpose of determining possible radiation hazards." Paragraph (k) gives the Department the power, in accord with the rules of the Commission, to license for construction, operation and maintenance of sources of radiation including those that are the subject of this application.

Compelling registration and controlling licensing are significant powers to manage the regulated community when it is required as it is in NJDEP's program. Both of these powers assure that all potential members of the regulatory community are known to NJDEP and that all members and potential members of the regulatory community comply with the requirements of the program and orders of the NJDEP.

The power to enter and inspect found in Paragraph (j) allows NJDEP to assure compliance with the regulations and orders as well as to investigate suspected sources of radiation. Finally, Paragraph (m) empowers NJDEP to issue Orders for the implementation and enforcement of the Act and any regulation promulgated under the Act. This is an exercise of control over the operations of the regulatory community. In our opinion, these statutory powers granted to NJDEP are the primary powers needed for the operation of any regulatory program.

This conclusion is strengthened by reference to N.J.S.A. 26:2D-9.1, which authorizes the Governor to enter into agreements "with the Federal Government providing for the discontinuance by the Federal Government and assumption by the State of the authority, in the interest of the protection of the public from radiation hazards, to regulate sources of radiation including by-product material, source materials and special nuclear materials in quantities not sufficient to form a critical mass." The same

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[1] As a matter of practice, the Commissioner of NJDEP signs the regulations before they are sent for publication in the New Jersey Register. NJDEP staff, which is also staff to the Commission, has input into the content of regulations.

provision goes on to state that the "regulatory authority assumed by the State by virtue of such agreements shall be exercised by the Department [of Environmental Protection]." Id. This provision therefore addresses the specific authorization for which you seek advice.

There should be no remaining question that NJDEP has been granted statutory authority to assume the NRC's radioactive material program. If any doubt persists, however, it should be satisfied by application of the well-established principle that an administrative agency holds implied, as well as express, powers. In New Jersey, when there is a grant of authority to a state department, the courts liberally interpret that grant to enable a department to perform its statutory mission. See N.J. State League of Municipalities v. Dept. of Community Affairs, 158 N.J. 211, 223 (1999); Silverman v. Berkson, 141 N.J. 412, 417, cert. denied 516 U.S. 775 (1995). The court will read the legislation so as to confer incidental powers which are necessary to effectuate express powers granted, as long as those incidental powers are not contrary to the purpose of the legislation. See, N.J. Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978), Cammarata v. Essex County Park Comm'rs, 26 N.J. 404, 411 (1958). These incidental powers are viewed as within the contemplation of the Legislature. The courts' liberal construction of implied powers is especially evident where the primary goal of the statute is to protect the public.

> An agency charged with implementation of a statutory program to assure health and safety of the public must have the ability to achieve the statutory purpose, even when there is no express grant of power.
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> [Schedule of Rates for Barnert Mem. Hospital, 92 N.J. 31, 39 (1983)].

Additionally, rules implementing an agency's express and implied authority to regulate are viewed with a presumption of validity. N.J. League of Municipalities, supra at 222, citing In Re Township of Warren, 132 N.J. 1, 26 (1993).

Here, the legislative goal of the Act is "to prohibit and prevent unnecessary radiation." N.J.S.A. 26:2D-7. N.J.S.A. 26:2D-10 also states: "All sources of radiation shall be shielded, transported, handled, used and kept in such manner as to prevent all users thereof and all persons within effective range thereof from

being exposed to unnecessary radiation." NJDEP's mission, under the Act, is to accomplish the goals of preventing unnecessary radiation which may cause physical harm to the public and of ensuring that both the employees who handle and use radioactive materials and those persons in the effective range of the radiation are adequately protected. NJDEP's goals, at the direction of the statute, are related to the health and safety of the New Jersey population. Therefore, not only would NJDEP's powers to achieve its mission be subject to the usual liberal interpretation by the courts but the goals of protecting health and safety in the area of radiation will further imply to the courts that they should find implied powers that are necessary to accomplish the mission.

Based on all of the above, in our opinion, NJDEP has the authority to create, organize and operate a radiation materials and protection program through the express and implied powers granted by the Act.

NRC Comment:

2. IN REGARD TO THE NEW JERSEY RULEMAKING PROCESS, THE NEW JERSEY STATUTES IN N.J.S.A. 26:2D ARE VERY GENERIC AND DO NOT PROVIDE ANY SPECIFIC PROCEDURES, REQUIREMENTS OR PROVISIONS RELATING TO PUBLIC PARTICIPATION.

While the Act itself does not contain specific provisions regarding administrative procedures or public safeguards, such provisions are contained in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. ("APA"), which details all procedural rulemaking requirements for all departments and agencies in this state including NJDEP. N.J.S.A. 52:14B-2(a). The APA defines the term "rule" as a "statement of general applicability and continuing effect that implements or interprets law or policy or describes the organization, procedure or practice requirements of any agency." N.J.S.A. 52:14B-2(e). See also, Metromedia v. Division of Taxation, 97 N.J. 313 (1984).

In the APA, the Legislature has specifically called for direct participation of the public and explained the goal of the statute which it said should:

> Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. [N.J.S.A. 52:14B-4(a)(3)].

It has been held by New Jersey courts that the purpose of the procedures in the APA is to give interested parties and members of the general public an opportunity to be heard. The courts have pointed out that this is not just a matter of fairness but also can provide regulators with knowledge of unknown aspects of the rulemaking. In re Protest of Coastal Permit Rules, 354 N.J. Super. 293, 354 (App. Div. 2002); Federal Pacific Elec. Co. v. Dept. of Environmental Protection, 334 N.J. Super. 323, 340-41 (App. Div. 2000).

Before the rulemaking process formally begins, there are opportunities provided to the public to be involved in the rulemaking process. N.J.S.A. 52:14B-4(f) allows any interested person to petition for an adoption of a new rule or an amendment or repeal of an existing rule. If this is done, there must be an agency response to the petition within 60 days. Id. NJDEP's specific procedural rules on petitions for rulemaking are found at N.J.A.C. 7:1D-1.1. Since the Commission is part of NJDEP and not independent of it, NJDEP procedural regulations on rulemaking apply to it. Also, a notice of interest may be published in the New Jersey Register to solicit the views of interested parties on a rulemaking prior to formal proposal. Solicitation of viewpoints by affected parties by NJDEP may be achieved through informal conferences or consultations, the appointment of committees consisting of interested experts, affected parties or the general public. N.J.S.A. 52:14B-4(e).

Prior to adoption, amendment or repeal of any rule, the department or agency promulgating the rule must give the public at least 30 days prior published notice of the potential adoption of the rule. N.J.S.A. 52:14B-4(a)(1). This public notice must include: the proposed rule, a summary of the rule; an explanation of the purpose and effect of the rule; statutory authority that supports the rule's adoption; a description of the rule's economic and social impacts; a regulatory flexibility analysis of small business impacts; a job impact statement; a smart growth impact statement; an agricultural impact statement; and a federal rules analysis (comparison to a federal agency's rule to determine the comparative stringency of New Jersey's rule). N.J.S.A. 52:14B-

4(a)(2) and N.J.A.C. 1:30-5.1(c). All of these components of the notice help provide information to the public in order to allow it to intelligently analyze the value of the proposed rule and the potential problems that would result from adoption of the rule.

The methods of notice mandated by N.J.S.A. 52:14B-4(a) include publication in the New Jersey Register, dissemination to the media, individual notice to persons who have made timely requests for advance notice of rulemaking procedures in the subject field and notice placed on NJDEP's Webpage. Id. NJDEP, in its practice and procedure rules, has restated those mandates. N.J.A.C. 7:1D-5.3(a)(1-4).

NJDEP regulations require that there shall be public notice in at least one newspaper with a distribution area most likely to inform persons affected by the rule or interested in it. At least one of the following methods of notice is also used: (1) mailing to a distribution list of interested parties maintained by the program responsible for the rule; (2) posting in common locations on State owned property where interested persons are likely to see the notice; (3) publication in a trade industry, government or professional publication that would likely reach interested parties; or (4) distribution at a meeting of a pertinent advisory board or council. N.J.A.C. 7:1D-5.3(a)(1-4).

Additionally, a public hearing on the rule is required when it is requested by a governmental agency or a committee of the Legislature, or if there is sufficient public interest. N.J.S.A. 52:14B-4(a)(3). The request for the hearing must be made within the 30-day notice period, and at least 15 days' notice must be given of the date and place of the hearing. Id. Each department must adopt within its own rules of practice a definition of what constitutes "sufficient public interest". Id. If there is a public hearing, a verbatim record of the hearing must be maintained. N.J.S.A. 52:14B-4(g).

NJDEP, in conjunction with the Commission, will hold a public hearing based on public interest if three requirements are met.

1. There is a demonstrated public interest in the rule, which is defined by NJDEP as: (a) interest relating to a rule which is either complex or significantly changing the program; (b) the request for the hearing must encompass a broad range of interest; and, (c) a notice of public hearing must not have been included in the proposal in the New Jersey Register notice or in any subsequent

notice.

2. The hearing must be likely to raise new issues, information, data or findings. N.J.A.C. 7:1D-5.2(d)(2). The delay in the rulemaking process, caused by holding the public hearing, will not likely adversely affect public health, safety or welfare, or the environment. N.J.A.C. 7:1D-5.2(d)(3). NJDEP's rule on public hearings allows discretion to provide a public hearing whenever the Commissioner thinks it appropriate. N.J.A.C. 7:1D-5.2(a), as well as whenever required by statute, N.J.A.C. 7:1D-5.2(b), and in any of the already detailed three situations mandated by the Legislature, N.J.A.C. 7:1D-5.2(c).

It is also possible for the 30-day public comment period to be extended to 60 days when sufficient public interest is demonstrated. N.J.S.A. 52:14B-4(a)(3). The head of each department is required, in its rules of practice, to adopt definite standards for the determination of when "sufficient public interest" is exhibited for this purpose. Id. The NJDEP rule regarding granting an extension of the comment period is virtually identical to that for granting a public hearing.

All comments received by an agency, here the Commission, whether through regular submission, submission in an extension period or submission during a public hearing, must be considered by the agency and must be reflected in a document prepared by that department. This document must list all written or oral submissions along with that department's responses to these comments. N.J.S.A. 52:14B-4(a)(4). As shown above, while the Act does not contain provisions regarding public participation, the APA, its implementing regulations and NJDEP's implementing regulations are very explicit regarding public participation. They provide multiple avenues for the public to participate and multiple mandates for a department to provide detailed information to the public regarding the proposed regulations. They also provide specific and sufficient procedural requirements and provisions relating to public participation.

NRC Comment:

3. IF LICENSEES ARE PERMITTED TO BE ON THE COMMISSION FOR RADIATION PROTECTION AND PARTICIPATE IN THE RULE OR REGULATIONS FORMULATION AND PROMULGATION, A "CONFLICT OF INTEREST PROGRAM OR POLICY MUST BE IN PLACE."

New Jersey's statutory requirements to preclude conflicts of interest are found at N.J.S.A. 52:13D-12 et seq., the Conflicts

of Interest Law ("COIL"). In N.J.S.A. 52:13D-12, the Legislature explained its reasons for passing the COIL.

> (a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
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> (b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them.

Before examining the provisions of the COIL, it is important to understand the statutory definition of a "Special State officer or employee." A "Special State officer or employee" is a person:

> holding an office or employment in a state agency...for which...no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement whether per diem or per annum is authorized or provided by law...
> [N.J.S.A. 52:13D-13(e)].

The members of the Commission are all volunteers without payment, receiving only reimbursement for necessarily incurred expenses. N.J.S.A. 26:2D-5. Therefore, Commission members qualify as special State officers subject to the COIL.

The COIL places many restrictions on special State officers. N.J.S.A. 52:13D-14 strictly prohibits any special State officer from accepting gifts of any value. A State officer is not allowed to appear, represent or negotiate for any person or entity other than the State person or entity in any negotiation for sale of State property. N.J.S.A. 52:13D-15. Similarly, N.J.S.A. 52:BD-16 prohibits a special State officer from singularly, or through an entity of which he has an interest, representing a party other than the State in any cause, proceeding, application or other matter pending before the particular office, commission, authority, fund

or system of which he is a part. N.J.S.A. 52:13D-23(e)(2) states that no special State officer should engage in any business, profession, trade or occupation which is subject to licensing or regulation by the entity which he serves without first notifying the State Ethics Commission ("SEC").

Any Special State officer found violating these statutory prohibitions will be fined not less than $500 or more than $10,000. The special State officer may be suspended from office for up to a period of one year. If there is a willful or continuous disregard of this statute, the special State officer may be permanently removed from office and may be barred from holding any public office for a period of up to five (5) years. There may also be an order for restitution, demotion, censure or reprimand. N.J.S.A. 52:13D-21(e). Those remedies are in addition to all other criminal and civil penalties. N.J.S.A. 52:13D-21(j).

In the licensing context or other conflict of interest situation (as opposed to a situation as to which there is a statutory prohibition), there is a procedure required by the SEC for recusal. A person is to disqualify himself or is disqualified from a matter because of that conflict under the State Ethics Code if he has:

> 1. Any financial interests, direct or indirect, that is incompatible with the discharge of his or her duties as a Department employee; or
>
> 2. Any personal interest, direct or indirect, that is incompatible with the discharge of his or her duties as a Department employee.
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> [New Jersey Uniform Ethics Code, Section. IX, Par. 3 and 4. (September, 2006)].

The COIL also established the SEC. N.J.S.A. 52:13D-21. It was empowered by the Legislature to promulgate a uniform code of ethics for all special State officers, State officers and employees. N.J.S.A. 52:13D-23(a)(2) and N.J.S.A. 52:13D-21(f). The SEC enforces the COIL. It may also render advisory opinions as to whether a given set of facts would constitute violations. N.J.S.A. 52:13D-21(g). It also has the authority to render advisory opinions in specific conflict situations. The SEC is advised by the Attorney General. N.J.S.A. 52:13D-21(d).

Pursuant to the COIL, the head of every agency or department may promulgate individual codes of ethics which may go beyond the uniform ethics code provisions. N.J.S.A. 52:13D-23(a). These departmental codes are to be formulated with attention to the particular needs and problems of the agency or department to which said code will apply. N.J.S.A. 52:13D(a)(1). Therefore, there are three (3) levels of requirements for ethical conduct by the special State officer: the statute; the SEC code of ethics and the specific department code.

As in the COIL, the NJDEP ethics code defines "department employee" to mean "a state officer or a special State officer or employee holding an office or employment in the Department." Provisions regarding when an ethical conflict exists are virtually identical to those of the SEC. The Commission members are subject to this same code. NJDEP Ethics Code, Sec. IV.

Advice on the propriety of participation in a matter may be sought from the NJDEP Ethics Liaison Office, the SEC or the Office of Legal Affairs in NJDEP. NJDEP Ethics Code XV(d). If it is found that there is a potential ethical conflict, there will be a written memorandum issued which includes the effect of that recusal on the NJDEP employee. However, if there is a public meeting which requires a public record to be kept, a written memorandum is not required. At that public meeting, the special State officer must place his recusal and the reason for such recusal on the record prior to any discussion of the matter. NJDEP Ethics Code, Section XV (g)(i)(g)(2).

The special State officer must be screened and may not participate in any manner in developing, considering or voting on the matter from which he has been recused. Id. Meeting materials involving a matter from which the special State officer must recuse himself will not be distributed to that special State officer. Section XV (g)(1). Further, the standard practice is that the special State officer leaves the room at a non-public portion of the meeting while the matter in question is under discussion.

In our opinion, the COIL, SEC regulations and the NJDEP code of ethics provide a strict system to eliminate conflicts of interest by Commission members as well as employees in the DEP.

NRC Comment:

4. NEW JERSEY STATUTES SHOULD AUTHORIZE THE USE OF LICENSE CONDITIONS TO ADDRESS MATTERS UNIQUE TO THE LICENSE. THE LAW SHOULD ALLOW LICENSE CONDITIONS TO IMPOSE ADDITIONAL REQUIREMENTS WHEN NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY.

The Act grants authority to NJDEP to require, issue, renew, amend, suspend and revoke licenses. N.J.S.A. 26:2D-9(k). Although the power to place conditions on licenses is not mentioned specifically, the power to amend licenses (subject to codes, rules and regulations of the Commission), along with the evident legislative design to authorize DEP to take steps to accommodate assumption by the State of portions of the federal program, may reasonably be read as authorizing NJDEP to establish conditions on licenses. Case law in similar circumstances has also interpreted the power to license to include the power to add conditions to a license.

In Lyons Farm Tavern, Inc. v. Board of Alcoholic Beverage Control, City of Newark, 68 N.J. 44 (1975), a tavern owner was appealing from the agency's placement of conditions, which were outside the usual regulatory requirements, on the license being transferred to him. While not specifically referenced in the statute or regulations, the Court noted that "The conditions are germane to the statutory scheme and are not arbitrary and capricious." Id. at 52. In Lyons, the Court said that the only question left was whether the condition will serve the good of the public. Id. at 53. Due to the fact that this question could also be answered affirmatively, the conditions on the license were upheld by the Court. Ibid.

In McGovern v. Hoffman, 73 N.J. Super 200, certif. denied 37 N.J. 230 (1962), the Office of Milk Industry imposed conditions on a license where, but there was a specific statute that said that a conditional license could be issued. However, the McGovern court noted that if an agency is authorized to issue a license and revoke it, the power to place conditions on a license lies between the two extremes and can be construed to be an implied grant of authority to issue a conditional license. Id. at 204. The court used the public interest analysis and the examination of the power of the Office of Milk Industry over the industry to further infer that such conditional licenses can be sanctioned by the courts. Id. at 205. This is the same approach used by the Supreme Court in Lyons.

There are no specific statutory provisions limiting the statutory power of NJDEP to place conditions on a license. To the contrary, the language granting NJDEP the authority to assume portions of the federal radiation program implies that NJDEP may meet the requirements necessary to be authorized as an Agreement State. N.J.S.A. 26:2D-9.1. The restrictions on NJDEP in placing conditions on a license are limited to those applied to any discretionary action of State government. The decision must neither be contrary to the statute and regulations, nor constitute an abuse of NJDEP's discretion by being arbitrary or capricious, It must also be supported by the evidence (as noted in Lyons). See, In re Musiak, 143 N.J. 206, 216 (1996). (For further discussion of this requirement, see our discussion of NRC Comment 6).

Since NJDEP would be requiring these nuclear license conditions in unique situations to protect the public, these conditions would advance the statutory mission and be germane to the statutory scheme. Therefore, under the specific authority of N.J.S.A. 26:2D-9(k) and the implied authority of N.J.S.A. 26:2D-9.1 and under the principles articulated in the Lyons and McGovern cases, it is our opinion, subject to the conditions set forth above, that NJDEP would be authorized under State law to use license conditions to deal with matters unique to the licensee when it is necessary to protect public health or safety.

NRC Comment:

5. THE NEW JERSEY STATUTES DO NOT CLEARLY PROVIDE GENERAL AUTHORITY TO MAKE IT UNLAWFUL TO USE, POSSESS, TRANSFER, DISPOSE OF OR ACQUIRE RADIOACTIVE MATERIAL WITHOUT A LICENSE OR TO VIOLATE A LICENSE PROVISION.

The prohibition on possession of radioactive material without a license is set forth in N.J.S.A. 26:2D-9 (h) and (k) which state, when read together, that NJDEP "shall require" registration of sources of radiation and shall have power to license for construction, operation or maintenance of sources of radiation. Also, NJDEP may embargo any material, machine, appliance, apparatus, or device which it finds or has probable cause to believe is a radiation hazard. N.J.S.A. 26:2D-11.1. This embargo warns all persons "not to use, remove or dispose of such article by sale or otherwise until permission for use, removal or disposal is given." Id. Additionally, transportation and storage for transportation of listed radioactive materials require a certificate of handling from DEP. N.J.S.A. 26:2D-8. Also, in N.J.S.A. 26:2D-23.1,

transportation is sometimes limited by the conjunction of the type of material and the population density of the area through which it is traveling.

By virtue of these sections of the Act, the Legislature granted NJDEP the general power to control radioactive material from its generation to the period of disposal. These basic provisions allowing NJDEP to control various stages of the possession of radioactive material manifest the Legislature's desire to grant the NJDEP powers that will allow it to reach the legislative goal of protecting the public from the ill-effects of radiation. (See our discussion of Comment 1.)

Manufacturing, producing, transferring, distributing or arranging for distribution, selling, leasing, receiving, acquiring, owning, possessing, or using naturally occurring or accelerator produced radiation materials without a specific State license is also made unlawful by N.J.A.C. 7:28-4.1(b). Violating any of these statutory provisions, regulations, or any NJDEP orders implementing the Act is made unlawful by N.J.S.A. 26:21-13,-15 and -23. NJDEP may enforce the Act, implementing regulations or its orders by bringing a civil action in Superior Court for an injunction. N.J.S.A. 26:2D-13. This request to the court may be dealt with in a summary manner. Any person who violates the Act, a rule, a NJDEP order or removes or disposes of an article under embargo shall be subject to a penalty of not more than $2,500 per day. Any continuing action constitutes a separate and distinct offenses. Id. Additionally, the Act does not impair any existing civil or criminal remedy for any prohibited action. N.J.S.A. 26:2D-15.

Based upon the above, it is our opinion that the statutory provisions of the Act, as fully implemented by the regulations, make it unlawful to use, possess, transfer, dispose of or acquire radioactive material without a license.

NRC Comment:

6. THE NEW JERSEY STATUTES SHOULD PERMIT EXEMPTIONS FROM LICENSING REQUIREMENTS IF THE EXEMPTIONS DO NOT ADVERSELY AFFECT PUBLIC HEALTH AND SAFETY AND SHOULD ALSO INCLUDE EXEMPTIONS FROM THE REQUIREMENT TO OBTAIN A LICENSE. FOUR SPECIFIC EXEMPTIONS SHOULD BE ADDRESSED BY STATUTE OR REGULATION.

The Commission has the authority to create exemptions from licensing requirements through its regulations. As explained in

detail in our response to Comment 1, the grant of power from the Legislature will be liberally construed to allow NJDEP to fulfill the intent of the Legislature. See, N.J. State League of Municipalities, supra 158 N.J. at 223. As noted previously, NJDEP is given the power at N.J.S.A. 26:2D-9(k) to issue and amend licenses subject to regulations of the Commission. This licensing power includes the power to "require, issue, renew, amend, suspend and revoke licenses" for construction, operation or maintenance of sources of radiation including byproduct materials, source materials and special nuclear materials in quantities not sufficient to form a critical mass. Regulations may also provide for recognition of other State or federal licenses subject to the State's regulatory requirements. Ibid.

N.J.S.A. 26:2D-9(k) grants NJDEP power to license. However, the Act gives no details regarding how or when such licensing would be required. As explained in our discussion of NRC Comment Number 1, there is wide latitude in the implementation of Legislative authority through an agency's regulations. N.J.S.A. 26:2D-9(k) specifically cites the exercise of this authority, subject to the Commission's regulations. Therefore, exemptions may be created by the Commission if they are not contrary to the exact language or intent of the statute. Communication Workers of America v. Clymer, 292 N.J. Super. 138, 147-150 (Law Div. 1996). Of course, such exemptions must also be reasonable, not arbitrary or capricious and based on evidence, just as in the case of license provisions. See In re Musick, 143 N.J. 206, 216 (1996).

The four specific exemptions from licensure which the NRC has listed in the authorization requirements for Agreement State status are:

1. Prime contractors working for the U.S. Department of Energy at U.S. Government-owned or controlled sites;

2. Prime contractors researching, developing, manufacturing, storing, testing, or transporting atomic weapons or components;

3. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and,

4. Any other prime contractor (or

subcontractor) of the Department of Energy or the Nuclear Regulatory Commission when the State and the Commission jointly determine:

a. that the terms of the contract provide adequate assurance that the contractor can accomplish the work without undue risk to public health and safety; and

b. that the law authorizes the exemptions.
[NRC, STP Procedure Approval, Processing an Agreement, at 14 (2001) (SA-700)].

Regarding the first three exemptions, the Radiation Protection and Discharge Prevention Programs personnel in NJDEP have provided us the information that contractors working for the NRC and the Department of Energy are subject to contractual requirements that are deemed necessary to protect public health and safety. Compliance with these contractual provisions would be monitored by whichever of these federal agency is party to the contract.

In our opinion, under these conditions, there is a sufficient basis for promulgating a rule providing for an exemption from licensure in these three circumstances. These exemptions would still allow for achievement of the intent of the Act to prevent exposure to unnecessary radiation. N.J.S.A. 26:2D-10. This is because regulatory restrictions would be placed on the contractor's work through the contract provisions. Due to the fact that New Jersey is going to run the federal program, the regulatory restrictions are the same whether the NRC or NJDEP imposes them. These restrictions will also be monitored by an agency, with at least an equivalent knowledge of NJDEP personnel in protecting workers and other exposed persons from the dangers of excess radiation.

Additionally, the Act specifically provides for the recognition of federal licenses. N.J.S.A. 26:2D-9(k). While not involving a federal license, this situation is analogous because a federal contract is drafted in accord with federal radiation protection regulations that are applicable and then there is monitoring for compliance with the contract. Also, N.J.S.A. 26:2D-

9.2 allows NJDEP to enter into agreements, with the approval of the Governor, with the federal government for inspection on a cooperative basis.

The fourth exemption required for authorization, set forth above, is for federal subcontractors and contractors, who fall outside the three situations first listed. They are to be subject to a joint NRC-State process of determining whether the work can safely be done. In our opinion, there is authority to promulgate a rule establishing this exemption. Granting an exemption would be based upon three guidelines: first, that the contract provide adequate insurance that the work can be accomplished without undue risk to public health and safety; second, the fact that the NRC is retaining some authority in this situation, and; third, the authority granted to NJDEP in N.J.S.A. 26:2D-9.1 to enter into agreements with the federal government. Consistent with state laws requiring regulation for waivers from licensure, there should be regulatory criteria which would set out the factors that would be used to decide whether the exemption or waiver should be granted. The criteria need not be detailed. See SMB Associates v. NJDEP, 137 N.J. 58, 60 (1994). See also, In Re Six Month Extension, 372 N.J. Super. 61, 69 (App. Div. 2004).

Therefore, in our opinion, there is legal authority to create, by regulations, the four regulatory exemptions which NRC requirements for recurring status recognition as an Agreement State. Any exemptions or waivers not specifically detailed can be granted if there is sufficiently clear criteria to guide the decision by NJDEP.

NRC Comment:

7. WHILE INSPECTIONS OF PROPERTY ARE PROVIDED FOR IN THE NEW JERSEY STATUTES, THEY DO NOT CLARIFY THAT SUCH INSPECTIONS MAY TAKE PLACE AT ALL REASONABLE TIMES.

NJDEP has general authority to "enter and inspect a building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance and non-compliance with any codes, rules or regulations of the Department." N.J.S.A. 13:1D-9(d). In addition, the Act has a similar provision to allow the NJDEP to:

> Enter and inspect any building or place for the purpose of investigating an actual or suspected source of radiation and ascertaining compliance with this act or any rule, regulation or order promulgated or issued pursuant thereto and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard. [N.J.S.A. 26:2D-9(j)].

Neither of these provisions includes the phrase "at all reasonable times." But, as discussed more fully below, this authority may reasonably be read to allow such inspections at all reasonable times.

While there is no case law interpreting the Act's provision on entry and inspection specifically, there is case law that interprets the phrase "enter and inspect" to include "at all reasonable times." In In the Matter of NJDEP Certification Approving Vineland Chemical Company, 177 N.J. Super. 304 (App. Div. 1981), Vineland Chemical Company received a permit from NJDEP to construct and operate an industrial wastewater treatment facility. Vineland challenged a condition in the permit allowing NJDEP the right to enter. The court conducted an extensive analysis of the federal case law allowing warrantless administrative searches when a pervasively regulated industry is involved, citing U.S. v. Biswell, 406 U.S. 311 (1972). The Vineland court set forth the evolution of New Jersey case law which adopted the conclusion of federal courts on warrantless searches.

The Vineland court stated that acceptance of a license constitutes implied consent to supervision and inspection. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., which was the pertinent statute in the Vineland case, contained a provision granting NJDEP the right to enter and inspect without a warrant "at all reasonable times." N.J.S.A. 58:10A-6. The court concluded that even if there were not a direct reference to "at all reasonable times," such a phrase could be incorporated into license provisions in order to allow NJDEP to implement its statutory mission to protect the public from water pollution.

In another case outside the environmental area, a New Jersey court upheld a warrantless, unscheduled inspection of a regulated auto-body repair facility to help preclude disassembly of stolen autos. The court quoted the United States Supreme Court in

United States v. Biswell, supra at 316, which had explained that if inspections are to be effective and serve as a credible deterrent, unannounced and frequent inspections are essential. State v. Bromwell, 251 N.J. Super. 85, 95 (Law Div. 1991).

A third case warrants mention. State v. Bonaccurso, 227 N.J. Super. 159 (Law Div. 1988) arose from a violation of the Water Pollution Control Act by a meat packing plant. There, the defendants challenged the validity of the inspection under the authority of the Water Pollution Control Act because the inspected plant did not require a NJDEP permit for discharge to water and the inspection was without notice. The inspector was looking for the source of the pollution in a nearby small stream. Defendants maintained that they were not subject to regulation by NJDEP and, therefore, the search should not have been conducted without a warrant. The court upheld the warrantless search as valid because the Legislature had announced, in the Water Pollution Control Act, its intent to "restore, enhance, and maintain the chemical, physical and biological integrity of its waters", (N.J.S.A. 58:10A-2), making the waters of the State subject to pervasive regulatory protections. As for the protest that the inspection was without notice, the court noted that "implicit in the statutory right of entry is a requirement that the entry be reasonable in terms of its time, place and manner." Id. at 170 (emphasis added).

In our opinion, the phrase "enter and inspect" should be interpreted here to allow inspections by DEP "at all reasonable times."

NRC Comment:

8. IF THE STATE PLANS TO REQUEST LOW-LEVEL RADIOACTIVE WASTE AUTHORITY, THE NEW JERSEY STATUTES MUST AUTHORIZE APPROPRIATE RESTRICTIONS ON LAND OWNERSHIP AND USE OF SITES UTILIZED FOR DISPOSAL OF LOW LEVEL RADIOACTIVE WASTE FOR AN INDEFINITE PERIOD AFTER CLOSURE OF SITE.

New Jersey is a party to the Atlantic Interstate Low-Level Radioactive Waste Management Compact, pursuant to the Regional Low Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq.. This allows New Jersey to dispose of low-level radioactive waste at Barnwell, South Carolina, for at least 35 years. Under the compact, South Carolina is responsible for any restriction of land use after the disposal site is closed. There are no disposal sites in New Jersey.

Conclusion

In our opinion, based on the above analysis of state law, the New Jersey Department of Environmental Protection, in conjunction with its Commission on Radiation Protection, has the legal authority to comply with the eight requirements on which you sought clarification in your letter. No legislative changes are necessary.

Sincerely yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Valerie Anne Gray
Valerie Anne Gray
Deputy Attorney General

VAG:mcp
F:vag:opinion - Assumption of federal radiation program

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*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS
CHAPTER 14B. ADMINISTRATIVE PROCEDURE AND REGULATORY FLEXIBILITY

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:14B-1 (2008)

§ 52:14B-1. Short title

This act shall be known and may be cited as the "Administrative Procedure Act."

HISTORY: L. 1968, c. 410, § 1, eff. Sept. 1, 1969.

NOTES:

Cross References:

Disclosure of juvenile information; penalties for disclosure, see *2A:4A-60*.

Rules, regulations, see *2A:17-56.9b*.

Rules, regulations, see *2A:17-56.25*.

Rules, regulations, see *2A:17-56.36*.

Regulations, see *2A:17-56.66*.

Rules and regulations, see *2A:18-61.12*.

Rules, regulations, see *2A:18-61.59*.

Monitoring of alcoholic beverage liability insurance market, see *2A:22A-7*.

Hearing by umpire; witnesses; subpoena; factual, legal contentions, see *2A:23A-11*.

Remittitur for administrative or other proceedings; retention of jurisdiction; temporary equitable relief, see *2A:35A-8*.

Recording of final administrative order on judgment docket., see *2A:58-10*.

Athletic officials' immunity, see *2A:62A-6*.

Rules, regulations, see *2A:62A-34*.

Registration of sex offenders; definition; requirements; penalties, see *2C:7-2*.

Rules, regulations concerning weapons prohibitions and domestic violence, see *2C:25-21.1*.

Regulations, see *2C:40-14*.

Defendant liable for cost of psychological evaluation; rules, regulations, see *2C:44-6.1*.

Rules, regulations, see *2C:46-1.2*.

Rules, regulations, see *2C:58-2.6*.

KeepSafe program established, see *2C:58-17*.

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Rules and regulations, see *4:4-20.10*.

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656. *N.J.A.C. 16:47-7.3*, CHAPTER 47. STATE HIGHWAY ACCESS MANAGEMENT CODE, Decision.

657. *N.J.A.C. 16:47-8.1*, CHAPTER 47. STATE HIGHWAY ACCESS MANAGEMENT CODE, Procedure.

658. *N.J.A.C. 16:47-8.4*, CHAPTER 47. STATE HIGHWAY ACCESS MANAGEMENT CODE, State Development and Redevelopment Plan.

659. *N.J.A.C. 16:49-1.3*, CHAPTER 49. TRANSPORTATION OF HAZARDOUS MATERIALS, General requirements.

660. *N.J.A.C. 16:50-9.4*, CHAPTER 50. SMART MOVES PROGRAM, Appeals.

661. *N.J.A.C. 16:50-12.1*, CHAPTER 50. SMART MOVES PROGRAM, Standards.

662. *N.J.A.C. 16:53B-1.5*, CHAPTER 53B. JURISDICTIONAL ASSIGNMENTS FOR RAILROAD OVERHEAD BRIDGES, Hearings and procedures.

663. *N.J.A.C. 16:53B-1.6*, CHAPTER 53B. JURISDICTIONAL ASSIGNMENTS FOR RAILROAD OVERHEAD BRIDGES, Railroad responsibilities.

664. *N.J.A.C. 16:54, Appx. A*, CHAPTER 54. LICENSING OF AERONAUTICAL FACILITIES, APPENDIX A.

665. *N.J.A.C. 16:55-1.6*, CHAPTER 55. LICENSING OF AERONAUTICAL ACTIVITIES, Liability.

666. *N.J.A.C. 16:62-6.4*, CHAPTER 62. AIR SAFETY AND ZONING, Permit review procedures.

667. *N.J.A.C. 16:62-7.1*, CHAPTER 62. AIR SAFETY AND ZONING, General provisions.

668. *N.J.A.C. 16:64-6.6*, CHAPTER 64. RULES OF THE NEW JERSEY MARITIME PILOT AND DOCKING PILOT COMMISSION, Adjudicatory hearings.

669. *N.J.A.C. 16:64-8.11*, CHAPTER 64. RULES OF THE NEW JERSEY MARITIME PILOT AND DOCKING PILOT COMMISSION, Adjudicatory hearings.

670. *N.J.A.C. 16:65-1.1*, CHAPTER 65. TRANSPORTATION UTILITIES, Scope.

671. *N.J.A.C. 16:65-2.2*, CHAPTER 65. TRANSPORTATION UTILITIES, Service and notice of proceedings.

672. *N.J.A.C. 16:74-2.3*, CHAPTER 74. PROCEDURE FOR CLAIMS, Transmittal to Office of Administrative Law (OAL).

673. *N.J.A.C. 16:83-2.3*, CHAPTER 83. CONDUCT AND SAFETY OF THE PUBLIC IN THE USE OF NJ TRANSIT EQUIPMENT AND FACILITIES, Disposition of application; appeal of denial.

674. *N.J.A.C. 16:86-1.5*, CHAPTER 86. ADVERTISING STANDARDS, Dispute resolution.

675. *N.J.A.C. 17:1-1.3*, CHAPTER 1. GENERAL ADMINISTRATION, Hearing request.

676. *N.J.A.C. 17:2-1.7*, CHAPTER 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM, Appeal from Board decisions.

677. *N.J.A.C. 17:3-1.7*, CHAPTER 3. TEACHERS' PENSION AND ANNUITY FUND, Appeal from Board decisions.

678. *N.J.A.C. 17:4-1.7*, CHAPTER 4. POLICE AND FIREMEN'S RETIREMENT SYSTEM, Appeal from Board decisions.

679. *N.J.A.C. 17:5-1.6*, CHAPTER 5. STATE POLICE RETIREMENT SYSTEM, Appeal from board decisions.

680. *N.J.A.C. 17:9-10.13*, CHAPTER 9. STATE HEALTH BENEFITS PROGRAM, Protest.

681. *N.J.A.C. 17:11-8.1*, CHAPTER 11. STATE LEASING AND SPACE UTILIZATION, Informal hearings; subject matter.

682. *N.J.A.C. 17:12-3.1*, CHAPTER 12. DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT; SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM, Informal hearings; subject matter.

683. *N.J.A.C. 17:12-4.5*, CHAPTER 12. DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT; SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM, Resolution of complaints.

684. *N.J.A.C. 17:12-6.1*, CHAPTER 12. DIVISION OF PURCHASE AND PROPERTY: PURCHASE BUREAU AND CONTRACT COMPLIANCE AND ADMINISTRATION UNIT; SURPLUS PROPERTY UNIT, COMPUTER DISTRIBUTION PROGRAM, Purpose and scope.

685. *N.J.A.C. 17:17-1.13*, CHAPTER 17. RESIDENTIAL HOUSING MANAGEMENT BOARD, Administrative appeals procedure.

686. *N.J.A.C. 17:19-4.2*, CHAPTER 19. CLASSIFICATION AND PREQUALIFICATION OF FIRMS, Requests for hearings; hearing procedures; time limitations.

687. *N.J.A.C. 17:20-3.1*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Disputes over ownership or validity of winning lottery tickets.

688. *N.J.A.C. 17:20-5.1*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Reasons for denial, revocation, suspension, renewal rejection or imposition of civil penalties.

689. *N.J.A.C. 17:20-5.4*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Hearings.

690. *N.J.A.C. 17:20-11.1*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Public notice regarding proposed rulemaking.

691. *N.J.A.C. 17:20-11.2*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Public comments regarding existing rules and proposed rulemaking.

692. *N.J.A.C. 17:20-11.3*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Division rulemaking calendar.

693. *N.J.A.C. 17:20-11.5*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Extension of the public comment period.

694. *N.J.A.C. 17:20-11.6*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Conducting of a public hearing.

695. *N.J.A.C. 17:20-11.7*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Petitions for rulemaking.

696. *N.J.A.C. 17:20-11.9*, CHAPTER 20. RULES OF THE LOTTERY COMMISSION, Division actions upon receipt of petition.

697. *N.J.A.C. 17:25-1.7*, CHAPTER 25. COLLECTION OF DEBTS, Referral to the Office of Administrative Law; hearing.

698. *N.J.A.C. 17:27-10.9*, CHAPTER 27. AFFIRMATIVE ACTION RULES, Enforcement; violations.

699. *N.J.A.C. 17:42-1.7*, CHAPTER 42. OFFSET OF STATE LOTTERY PRIZES TO SATISFY OVERDUE CHILD SUPPORT PAYMENTS AND OVERPAYMENTS IN CERTAIN PUBLIC ASSISTANCE PROGRAMS, Right to hearing.

700. *N.J.A.C. 17:43-1.7*, CHAPTER 43. OFFSET OF STATE LOTTERY PRIZES TO SATISFY DEFAULTED FEDERAL AND STATE STUDENT LOANS, Right to hearing.

701. *N.J.A.C. 18:5-6.21*, CHAPTER 5. CIGARETTE TAX ACT RULES, Hearing of suspension or revocation of license.

702. *N.J.A.C. 18:6-6.6*, CHAPTER 6. UNFAIR CIGARETTE SALES ACT, Hearing of suspension or revocation of license.

703. *N.J.A.C. 18:12-4.3*, CHAPTER 12. LOCAL PROPERTY TAX: GENERAL, Appeals from Director's disapproval of contract.

704. *N.J.A.C. 18:18-1.1*, CHAPTER 18. MOTOR FUELS TAX, Words and phrases defined.

705. *N.J.A.C. 18:18-2.4*, CHAPTER 18. MOTOR FUELS TAX, Request for hearing upon refusal to grant license.

706. *N.J.A.C. 18:18-2.5*, CHAPTER 18. MOTOR FUELS TAX, Revocation and cancellation of license.

707. *N.J.A.C. 18:18-2.6*, CHAPTER 18. MOTOR FUELS TAX, Hearings.

708. *N.J.A.C. 18:18-2.10*, CHAPTER 18. MOTOR FUELS TAX, Nature of hearings.

709. *N.J.A.C. 18:19-5.5*, CHAPTER 19. MOTOR FUELS--RETAIL SALES, Suspension and revocation of license.

710. *N.J.A.C. 18:35-10.6*, CHAPTER 35. NEW JERSEY GROSS INCOME TAX, Administrative resolution; claimant agency proceedings.

711. *N.J.A.C. 18:40-1.1*, CHAPTER 40. DOMESTIC SECURITY FEE, Scope.

712. *N.J.A.C. 19:3-4.3*, NEW JERSEY MEADOWLANDS COMMISSION, Filing of current statements of qualification and supporting data.

713. *N.J.A.C. 19:4-4.19*, NEW JERSEY MEADOWLANDS COMMISSION, Appeals.

714. *N.J.A.C. 19:9-2.11*, NEW JERSEY TURNPIKE AUTHORITY, Procedure to resolve protested applications for, and awards of, licenses to cross.

715. *N.J.A.C. 19:9-2.12*, NEW JERSEY TURNPIKE AUTHORITY, Procedures to resolve protested solicitations and awards.

716. *N.J.A.C. 19:9-3.1*, NEW JERSEY TURNPIKE AUTHORITY, Towing rates on the Turnpike and the Parkway.

717. *N.J.A.C. 19:9-3.2*, NEW JERSEY TURNPIKE AUTHORITY, Road service rates on the Turnpike and Parkway.

718. *N.J.A.C. 19:9-8.4*, NEW JERSEY TURNPIKE AUTHORITY, Procedures, period of debarment, and scope of debarment affecting the debarment of a person(s).

719. *N.J.A.C. 19:9-8.7*, NEW JERSEY TURNPIKE AUTHORITY, Procedures, period of suspension and scope of suspension affecting the suspension of a person(s).

720. *N.J.A.C. 19:13-3.7*, PUBLIC EMPLOYMENT RELATIONS COMMISSION, Evidentiary hearings.

721. *N.J.A.C. 19:25-15.65*, ELECTION LAW ENFORCEMENT COMMISSION, Complaints alleging violation of general election expenditure limit.

722. *N.J.A.C. 19:25-16.48*, ELECTION LAW ENFORCEMENT COMMISSION, Complaint alleging violation of primary election expenditure limit.

723. *N.J.A.C. 19:25-17.1*, ELECTION LAW ENFORCEMENT COMMISSION, Opportunity for hearing.

724. *N.J.A.C. 19:25-19.6A*, ELECTION LAW ENFORCEMENT COMMISSION, Opportunity for hearing.

725. *N.J.A.C. 19:25-20.18A*, ELECTION LAW ENFORCEMENT COMMISSION, Opportunity for hearing.

726. *N.J.A.C. 19:25-23.27*, ELECTION LAW ENFORCEMENT COMMISSION, Appeal of certification decision.

727. *N.J.A.C. 19:25-23.48*, ELECTION LAW ENFORCEMENT COMMISSION, Conduct of the hearing.

728. *N.J.A.C. 19:25-25.10*, ELECTION LAW ENFORCEMENT COMMISSION, Opportunity for hearing.

729. *N.J.A.C. 19:25-26.8*, ELECTION LAW ENFORCEMENT COMMISSION, Opportunity for hearing.

730. *N.J.A.C. 19:30-3.6*, NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Failure to comply.

731. *N.J.A.C. 19:32-1.17*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

732. *N.J.A.C. 19:34A-1.9*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

733. *N.J.A.C. 19:36-6.7*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

734. *N.J.A.C. 19:37-1.6*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

735. *N.J.A.C. 19:38-4.1*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Scope and purpose.

736. *N.J.A.C. 19:38A-4.9*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeal process.

737. *N.J.A.C. 19:61-3.1*, STATE ETHICS COMMISSION, Allegations; procedure.

738. *N.J.A.C. 19:75-2.1*, SOUTH JERSEY TRANSPORTATION AUTHORITY, Routes of travel; generally.

739. *N.J.A.C. 19:75-7.5*, SOUTH JERSEY TRANSPORTATION AUTHORITY, Appeals.

740. *N.J.A.C. 19:76-6.6*, SOUTH JERSEY TRANSPORTATION AUTHORITY, Appeals.

741. *N.J.A.C. 19:40-1.3*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Construction and amendments.

742. *N.J.A.C. 19:42-7.1*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Hearings on regulations.

743. *N.J.A.C. 19:47-8.4*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, New games; requirements and procedures for application, declaratory ruling, test or experiment, and final approval of new authorized game.

744. *N.J.A.C. 19:65-2.7*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Public hearing.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 7 -- 1978, *1978 N.J. AG LEXIS 6.*

2. FORMAL OPINION No. 6 -- 1979, *1979 N.J. AG LEXIS 22.*

3. FORMAL OPINION No. 10 -- 1979, *1979 N.J. AG LEXIS 18.*

4. FORMAL OPINION No. 15 -- 1979, *1979 N.J. AG LEXIS 13.*

CASE NOTES

1. Contested case under the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-2(b)*, includes those disputes where by statute or constitutional provision a hearing is required before a State agency to determine rights, duties, obligations, privileges, benefits, or other legal relations of specific parties; to determine whether a contested case exists under the APA, the following three questions must be addressed: (1) is a hearing required by statute or constitutional provision; (2) will the hearing adjudicate rights, duties, obligations, privileges, benefits or other legal relations; and (3) are specific parties involved rather than large segments of the public? *Division of State Police v. Maguire, 368 N.J. Super. 564, 847 A.2d 614, 2004 N.J. Super. LEXIS 167 (App.Div. 2004).*

2. Because the regulatory proceedings before respondent, the New Jersey Board of Public Utilities, which ordered payment of stranded cost charges mandated by the Electric Discount and Energy Competition Act of 1999, *N.J. Stat. Ann. § 48:3-49* et seq., met the essentials of due process and the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and appellants, industrial and commercial utilities customers, had not shown that the legislation substantially impaired their contractual obligations in violation of U.S. Const. art. I, § 10 and N. J. Const. art. IV, § 7, the Board's orders were upheld. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

3. Corporation was not entitled to an adjudicatory hearing of its petition for a refund of a portion of the fees it paid to a township in connection with the issuance of construction permits because *N.J. Stat. Ann. § 52:14B-1* et seq. only provided for a procedure to be followed in the event an administrative hearing was required by statutory law or constitutional mandate and no statutory law or constitutional mandate required a hearing in this instance. Toys 'R" *Us v. Township of Mount Olive, 300 N.J. Super. 585, 693 A.2d 539, 1997 N.J. Super. LEXIS 229 (App.Div. 1997).*

4. Local finance board did not err in failing to declare a dissolution application a contested case where the board was not determining the legal rights, duties, obligations, privileges, benefits or other relations of the utilities authority under any constitutional or statutory right, and the utilities authority had no legal right not to be dissolved if the county complied with *N.J. Stat. Ann. § 40A:5A-20. In re County of Bergen, 268 N.J. Super. 403, 633 A.2d 1017, 1993 N.J. Super. LEXIS 840 (App.Div. 1993).*

5. Plaintiffs fishermen, property owners and citizens group, in their request from defendant state department of environmental protection for an adjudicatory hearing, were not entitled to such a hearing as the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., required an adjudicatory hearing only where a party was entitled to such a hearing by statutory or constitutional right. *Spalt v. New Jersey Dep't of Environmental Protection, 237 N.J. Super. 206, 567 A.2d 264, 1989 N.J. Super. LEXIS 420 (App.Div. 1989).*

6. Public utilities board's adoption of a electric company's proposal to reduce its rates did not violate the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., because no hearing was required under statutory or constitutional law. *In re Application of Rockland Electric Co., 231 N.J. Super. 478, 555 A.2d 1140, 1989 N.J. Super. LEXIS 89 (App.Div. 1989).*

7. Supplementary legislation to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and *N.J. Stat. Ann. § 52:14F-1* et seq., has preserved the bifurcated administrative adjudication process in which the hearing and decisional phases of cases are handled separately, and thus, while administrative law judges (ALJ) have primary responsibility for conducting hearings in contested cases, the head of an agency will himself exercise the ultimate options of adopting, rejecting, or modifying the recommendations of the ALJ; the agency has the duty of ensuring that the ALJ's decision was based on a preponderance of the credible evidence. *De Vitis v. New Jersey Racing Com., 202 N.J. Super. 484, 495 A.2d 457, 1985 N.J. Super. LEXIS 1357 (App.Div. 1985).*

8. Township was not entitled to an administrative hearing after the Department of Environmental Protection granted a certificate of registration to a waste management corporation for the operation of a solid waste transfer station in the township; the state Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., did not create a substantive right to an administrative hearing, but prescribed the procedure to be followed in the event an administrative hearing was required by statutory law or constitutional mandate. *Application of Modern Industrial Waste Service, Inc., 153 N.J. Super. 232, 379 A.2d 476, 1977 N.J. Super. LEXIS 1105 (App.Div. 1977).*

9. Developer that obtained conceptual approval of a sewer project by the Department of Environmental Protection (DEP) under a prior regulation was not entitled under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1*, to a hearing prior to the DEP's rejection of the plan due to the passage of several years, during which time new and more stringent environmental regulations had been passed under *N.J. Stat. Ann. § 58:10A-4. Woodland Utility Co. v. Department of Environmental Protection, 166 N.J. Super. 324, 399 A.2d 1018, 1979 N.J. Super. LEXIS 629 (App.Div. 1979).*

10. Where a contested issue is one in which a majority of members of the Governing Committee of the New Jersey Commercial Automobile Insurance Plan has an obvious and direct financial interest, considerations of fundamental fairness and procedural due process require resort to the contested-case procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 704 A.2d 562, 1997 N.J. Super. LEXIS 511 (App.Div. 1997).*

11. Where an administrative law judge (ALJ) determined that the New Jersey Racing Commission had failed to provide sufficient proof as to charges against a horse trainer and a horse driver and the ALJ's initial decision indicated that they should not be suspended, but the Commission did not render its final decision in a timely manner pursuant to the 45-day statutory period of *N.J. Stat. Ann. § 52:14B-10(c)*, (d), the ALJ's order was "deemed approved", as the matters were uncomplicated, short, and mostly factual, and the final decisions of the Commission which were issued seven months and one year later were found to constitute "inexcusable negligence" and "gross indifference" to its responsibilities under the policies of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* et seq. *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

12. In an action by animal rights activists seeking review of various decision of the New Jersey Department of Environmental Protection, Division of Fish, Game, and Wildlife, Fish and Game Council, regarding the constitutionality of deer management legislation, the activists' challenge of the validity of a State Plan in which they argued that the State Plan by way of a policy statement was ineffective because case law required the substance and content of the State Plan to have been promulgated by regulation duly adopted in accord with the procedures mandated by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the court held the issue moot in view of the subsequent adoption of

deer management legislation. There was no procedural irregularity in the regulatory process following the revision, which included detailed delineation of the required contents of the application for approval of a community-based plan and the inclusion of more specific community notice requirements. *Mercer County Deer Alliance v. N.J. Dep't of Envtl. Prot., 349 N.J. Super. 440, 793 A.2d 847, 2002 N.J. Super. LEXIS 162 (App.Div. 2002).*

13. Supplementary legislation to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and *N.J. Stat. Ann. § 52:14F-1* et seq., has preserved the bifurcated administrative adjudication process in which the hearing and decisional phases of cases are handled separately, and thus, while administrative law judges (ALJ) have primary responsibility for conducting hearings in contested cases, the head of an agency will himself exercise the ultimate options of adopting, rejecting, or modifying the recommendations of the ALJ; the agency has the duty of ensuring that the ALJ's decision was based on a preponderance of the credible evidence. *De Vitis v. New Jersey Racing Com., 202 N.J. Super. 484, 495 A.2d 457, 1985 N.J. Super. LEXIS 1357 (App.Div. 1985).*

14. Determination by the New Jersey State Board of Education that the health benefits plans established by a local school board constituted self-insurance, contrary to *N.J. Stat. Ann. § 18A:16-13*, was affirmed because the plan was unauthorized by *N.J. Stat. Ann. § 18A:16-13* and the local school board's contention that the State Board's decision amounted to illegal rule making in violation of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., was rejected. *Atlantic City Educ. Ass'n v. Board of Educ., 299 N.J. Super. 649, 691 A.2d 884, 1997 N.J. Super. LEXIS 178 (App.Div. 1997).*

15. In upholding a decision of the Commissioner of Education that a district board of education should have appointed a certain teacher as the girls' basketball coach at a certain high school, the interpretation of the State Board of Education of N.J.A.C. 6:29-3.3 to impose an intra-district hiring requirement or preference relied on a strained construction of the word "employment"; such a construction of the regulation would effectively impose terms eliminated in the 1983 amendment without following the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. *Krupp v. Board of Educ., 278 N.J. Super. 31, 650 A.2d 366, 1994 N.J. Super. LEXIS 488 (App.Div. 1994).*

16. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation in violation of the *Administrative Procedure Act. Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

17. Although the interpretations of the agency charged with implementing a statute are entitled to deference, if those interpretations are inconsistent with the plain meaning of the statute, they cannot be sustained; particularly, where an interpretation has not been adopted with the procedural safeguards of the Administrative Procedures Act, that interpretation is not entitled to deference. *Township of Dover v. Scuorzo, 22 N.J. Tax 568, 2005 N.J. Tax LEXIS 26 (Tax Ct. 2005),* reversed by *392 N.J. Super. 466, 921 A.2d 450, 2007 N.J. Super. LEXIS 131 (App.Div. 2007).*

18. Rate caps placed on alternate operator service (AOS) providers by the New Jersey Board of Public Utilities, under *N.J. Admin. Code tit.14, § 10-6.3(h)*, (i), (j), (n), were upheld, as complying with the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., without the necessity of holding hearings, as the rate caps were found to be rulemaking and not rate-setting, and quasi-legislative in nature. *In re Regulation of Operator Serv. Providers, 343 N.J. Super. 282, 778 A.2d 546, 2001 N.J. Super. LEXIS 328 (App.Div. 2001).*

19. Agency's approval of a plan to ameliorate a regulatory taking claim must be made in accordance with regulations adopted pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq.; *N.J. Stat. Ann. § 13:9B-22* vests an agency with broad discretion to modify its action so as to minimize the detrimental effect to the value of property. *E. Cape May Assocs. v. Dep't of Envtl. Protection, 343 N.J. Super. 110, 777 A.2d 1015, 2001 N.J. Super. LEXIS 316 (App.Div. 2001),* appeal dismissed by *170 N.J. 211, 785 A.2d 439, 2001 N.J. LEXIS 1474 (2001).*

20. Department of Corrections' classification standards which were subject to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-1* et seq., which qualified as rule-making by the standards set forth in *Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 478 A.2d 742 (1984),* were not properly adopted and implemented in accordance with the requirements of the APA, and would have been unenforceable but for the temporary stay of invalidation granted in order to bring the policies and procedures under review in compliance with law. *Hampton v. Department of Corrections, 336 N.J. Super. 520, 765 A.2d 286, 2001 N.J. Super. LEXIS 43 (App.Div. 2001).*

21. Clear legislative purpose of the 1981 amendment to *N.J. Stat. Ann. § 5:9-7* was to avoid subjecting details of a particular game, and its ticket costs and prize rewards, to the salutary, but cumbersome procedural demands of quasi-legislative rulemaking under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* to -15. *Singer Asset Fin. Co., L.L.C. v. Department of the Treasury, Div. of State Lottery, 314 N.J. Super. 106, 714 A.2d 317, 1998 N.J. Super. LEXIS 221 (App.Div. 1998).*

22. Because game rules for Pick-6 Lotto were not amended under the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-1* to -15, but under the exemption that is provided by *N.J. Stat. Ann. § 5:9-7* for the rules establishing a lottery game, amendments to the Pick-6 rules were properly adopted without utilizing APA procedures. *Singer Asset Fin. Co., L.L.C. v. Department of the Treasury, Div. of State Lottery, 314 N.J. Super. 106, 714 A.2d 317, 1998 N.J. Super. LEXIS 221 (App.Div. 1998).*

23. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

24. The Department of Human Services is legally required to establish the Foster Parent Liability Program by administrative rules promulgated in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Scott v. State, 265 N.J. Super. 591, 628 A.2d 379, 1993 N.J. Super. LEXIS 704 (App.Div. 1993).*

25. The hospital rate setting reform plan developed by the Commission on Health Care Costs that adopted a two-tier cap program is invalid and unenforceable because it constitutes a rule of general application, which is a violation of the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *St. Barnabas Medical Center v. New Jersey Hosp. Rate Setting Com., 250 N.J. Super. 132, 593 A.2d 806, 1991 N.J. Super. LEXIS 258 (App.Div. 1991).*

26. Lottery commission's denial of adult bookstore's application to sell lottery tickets was arbitrary and capricious and violated the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* because the lottery commission was required to implement procedures or a policy to deny licenses to adult bookstores; in addition, the court held that the evidence in the record did not establish that there were sufficient agents in the region and did not support the reasons given by the lottery commission for the denial of the application. 613 *Corp. v. State, Div. of State Lottery, 210 N.J. Super. 485, 510 A.2d 103, 1986 N.J. Super. LEXIS 1289 (App.Div. 1986).*

27. In an action that challenged the promulgation of a welfare rule, the court held that proper notice was given in accordance with *N.J. Stat. Ann. § 52:14B-4(a).* The Administrative Procedure Act was followed, and there was no error in upholding the rule. *Motyka v. McCorkle, 58 N.J. 165, 276 A.2d 129, 1971 N.J. LEXIS 237 (1971).*

28. The Department of Human Services is legally required to establish the Foster Parent Liability Program by administrative rules promulgated in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Scott v. State, 265 N.J. Super. 591, 628 A.2d 379, 1993 N.J. Super. LEXIS 704 (App.Div. 1993).*

29. Revision of a corporate taxpayer's business allocation factor to determine income taxes pursuant to the New Jersey Corporation Business Tax Act, *N.J. Stat. Ann. § 54:10A-6,* was improper rulemaking by the Taxation Division Director under the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Metromedia, Inc. v. Taxation Div. Director, 3 N.J. Tax 397, 1981 N.J. Tax LEXIS 22 (Tax Ct. 1981),* reversed by *187 N.J. Super. 562, 455 A.2d 561, 1983 N.J. Super. LEXIS 755 (App.Div. 1983).*

30. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a),* which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

31. Pursuant to the Administrative Procedure Act, an agency may not use its power to interpret its own regulations as a means of amending those regulations or adopting new regulations. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

32. Pursuant to the Administrative Procedure Act (APA), even minor procedural changes may meet the definition of a rule because the APA, at *N.J. Stat. Ann. § 52:14B-2(e)*, defines a rule as an agency statement of general applicability and continuing effect. Thus, the definition does not distinguish between significant, material, substantive, interpretive, or procedural rules. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

33. Use of a Revenue Ruling did not violate the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* et seq. because the ruling was used to adjudicate the legal rights of a person before an agency and was not used as a rule of general applicability, as contemplated by *N.J. Stat. Ann. § 52:14B-2(e). Stevens v. Board of Trustees of the Pub. Employees' Retirement Sys., 309 N.J. Super. 300, 706 A.2d 1191, 1998 N.J. Super. LEXIS 105 (App.Div. 1998).*

34. The hospital rate setting reform plan developed by the Commission on Health Care Costs that adopted a two-tier cap program is invalid and unenforceable because it constitutes a rule of general application, which is a violation of the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *St. Barnabas Medical Center v. New Jersey Hosp. Rate Setting Com., 250 N.J. Super. 132, 593 A.2d 806, 1991 N.J. Super. LEXIS 258 (App.Div. 1991).*

35. Implementation of ruling by the New Jersey Board of Public Utilities of ruling holding that stock transfers to one or more shareholders which resulted in a change in majority interest required prior approval was not subject to the *Administrative Procedure Act. In re Application for a Declaratory Ruling, 234 N.J. Super. 139, 560 A.2d 689, 1989 N.J. Super. LEXIS 235 (App.Div. 1989).*

36. Decision by the Division of Medical Assistance and Health Services of the Department of Human Services that reimbursement rate appeals were to be submitted only by hospitals and not by consulting companies was a rule change pursuant to *N.J. Stat. Ann. § 52:14B-2(e)* which required that such determination be made after a rulemaking process, as required by the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

37. Agency determination that appeals of hospital reimbursement rates were to be submitted directly by the hospital, and not by a consulting company, violated the Administrative Procedure Act because formal rulemaking should have preceded such a change in policy. Because the policy was uniformly applicable to all hospitals, had a prospective application, set a new directive as to the submission policy of rate reviews, and was a purported interpretation of the agency's rule, the matter was subject to a rulemaking process. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

38. Informal agency action that is de facto rulemaking will be voided for failing to comply with the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-1* to *N.J. Stat. Ann. § 52:14B-25*, rulemaking procedures. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

39. In determining whether the Administrative Procedure Act rulemaking process should have been utilized, all six factors set out for guidance on that issue need not be present for an agency's action to be considered a rule. An agency's action is considered a rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rulemaking process. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

40. Pursuant to the Administrative Procedure Act (APA), even minor procedural changes may meet the definition of a rule because the APA, at *N.J. Stat. Ann. § 52:14B-2(e)*, defines a rule as an agency statement of general applicability and continuing effect. Thus, the definition does not distinguish between significant, material, substantive, interpretive, or procedural rules. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

41. Agency's approval of a plan to ameliorate a regulatory taking claim must be made in accordance with regulations adopted pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq.; *N.J. Stat. Ann. § 13:9B-22* vests an agency with broad discretion to modify its action so as to minimize the detrimental effect to the value of property. *E. Cape May Assocs. v. Dep't of Envtl. Protection, 343 N.J. Super. 110, 777 A.2d 1015, 2001 N.J. Super. LEXIS 316 (App.Div. 2001),* appeal dismissed by *170 N.J. 211, 785 A.2d 439, 2001 N.J. LEXIS 1474 (2001).*

42. Contracting-out policy of defendant New Jersey Transit Corporation was void because defendant in adopting its policy did not comply with the rule-making procedural requirements of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* and the policy was more than a statement concerning defendant's internal agency management however, the operation of the determination was stayed for six months to give defendant an opportunity to properly

adopt a policy. *Academy Bus Tours v. New Jersey Transit Corp., 263 N.J. Super. 353, 622 A.2d 1335, 1993 N.J. Super. LEXIS 115 (App.Div. 1993).*

43. In a proceeding on an application by several claimants for a stay pending appeal of the Plan of Operation (the Plan) devised by the trustee for the New Jersey Automobile Full Insurance Underwriting Association (JUA) and implemented by the New Jersey Commissioner of Insurance, the court, remanded the matter for a full administrative hearing on the Plan in accordance with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1et seq., because the JUA was an instrumentality of the State, having been created, funded and terminated pursuant to *N.J.S.A. 17:30E-1* to et seq., *N.J.S.A. 17:33B-2(h)(2)*, and former N.J.S.A. *17:33B-5*; the Plan was promulgated pursuant to *N.J.S.A. 17:33B-3(b)* within the auspices of state government through the Commissioner's participation and authority, and compliance with the APA was essential to protect policyholders' contract rights and the status of the current tort law. *In re Order of Comm'r of Ins. Deferring Certain Claim, etc., 256 N.J. Super. 553, 607 A.2d 992, 1992 N.J. Super. LEXIS 184 (App.Div. 1992).*

44. The hospital rate setting reform plan developed by the Commission on Health Care Costs that adopted a two-tier cap program is invalid and unenforceable because it constitutes a rule of general application, which is a violation of the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *St. Barnabas Medical Center v. New Jersey Hosp. Rate Setting Com., 250 N.J. Super. 132, 593 A.2d 806, 1991 N.J. Super. LEXIS 258 (App.Div. 1991).*

45. *N.J. Stat. Ann. §§ 52:14B-1* to *52:14B-15*, the New Jersey Administrative Procedure Act, was not violated when the New Jersey Department of Environmental Protection exempted sludge-only thermal reduction facilities from the solid waste permit requirement, although the superior court would have preferred that the exemption was adopted as a regulation. *Terminal Constr. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J. Super. 537, 582 A.2d 1288, 1990 N.J. Super. LEXIS 422 (App.Div. 1990).*

46. Administrative order of the state Department of Environmental Protection (agency), though referred to by the agency as a "policy statement," was a rule and thus was subject to the procedural requirements for adoption set forth in the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq.; the rule satisfied the definition thereof under *N.J. Stat. Ann. § 52:14B-2(e)* and the six factor common law standard to be applied in interpreting *N.J. Stat. Ann. § 52:14B-2(e). Woodland Private Study Group v. State, Dep't of Environmental Protection, 209 N.J. Super. 261, 507 A.2d 300, 1986 N.J. Super. LEXIS 1216, 16 Envtl. L. Rep. 20645 (App.Div. 1986),* affirmed by *109 N.J. 62, 533 A.2d 387, 1987 N.J. LEXIS 373, 27 Env't Rep. Cas. (BNA) 1834, 18 Envtl. L. Rep. 20263 (1987).*

47. Although a prison inmate was disciplined under disciplinary standards that were not adopted in conformity with the rulemaking procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the standards would invalidated for infractions occurring after a future date, and not retroactively. *Department of Corrections v. McNeil, 209 N.J. Super. 120, 506 A.2d 1291, 1986 N.J. Super. LEXIS 1204 (App.Div. 1986).*

48. Director of the Division of Taxation's construction of the term "books of the corporation" found in *N.J. Stat. Ann. § 54:10A-4* and *N.J. Stat. Ann. § 54:10A-5* to include a corporate taxpayer's Forms 10-K and other published financial statements, was not required to have been adopted in a formal regulation pursuant to the Administrative Procedure Act and the Director properly construed the term from applicable regulations. *Cities Service Co. v. Director, Division of Taxation, 5 N.J. Tax 257, 1983 N.J. Tax LEXIS 48 (Tax Ct. 1983).*

49. Because the New Jersey Board of Higher Education's adoption of a resolution, regarding a student-faculty funding ratio and a budgetary calendar, was not rule-making within the contemplation of the Administrative Procedure Act, a professors' appeal from the resolution was dismissed. *Rutgers Council of American Asso. of University Professors v. New Jersey Board of Higher Education, 126 N.J. Super. 53, 312 A.2d 677, 1973 N.J. Super. LEXIS 385, 85 L.R.R.M. (BNA) 2214, 72 Lab. Cas. (CCH) P53215 (App.Div. 1973).*

50. In an action that challenged the promulgation of a welfare rule, the court held that proper notice was given in accordance with *N.J. Stat. Ann. § 52:14B-4(a)*. The Administrative Procedure Act was followed, and there was no error in upholding the rule. *Motyka v. McCorkle, 58 N.J. 165, 276 A.2d 129, 1971 N.J. LEXIS 237 (1971).*

51. In a newspaper's action to obtain certain parole information under the Right to Know Law, *N.J. Stat. Ann. § 47:1A-1* et seq., the matter was remanded to the Parole Board to pass anew on the application for the requested information because the only regulation which, on its face, could unquestionably sustain a confidentiality exemption to disclosure was Department of Corrections (DOC) Standard 281.8, which was procedurally defective due to the failure to adopt it in compliance with the rulemaking procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Home News Pub. Co. v. State, 224 N.J. Super. 7, 539 A.2d 736, 1988 N.J. Super. LEXIS 70 (App.Div. 1988).*

52. Trial court properly ordered a parent's consolidated Department of Education (DOE) due process and discrimination complaints, asserting that a local school failed to comply with her disabled son's individual education plan (IEP), remanded to the DOE, as the trial court lacked jurisdiction from the outset to hear an appeal from an administrative agency. Since the trial court lacked jurisdiction to hear the interlocutory administrative appeal in the first instance and the DOE, through the Office of Administrative Law, was vested with authority to hear the parent's due process petition respecting the IEP, the cases should not have been consolidated after the unsuccessful mediation to the trial court. *D.G. v. North Plainfield Bd. of Educ., 400 N.J. Super. 1, 945 A.2d 707, 2008 N.J. Super. LEXIS 80 (App.Div. 2008).*

53. Because the regulatory proceedings before respondent, the New Jersey Board of Public Utilities, which ordered payment of stranded cost charges mandated by the Electric Discount and Energy Competition Act of 1999, *N.J. Stat. Ann. § 48:3-49* et seq., met the essentials of due process and the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and appellants, industrial and commercial utilities customers, had not shown that the legislation substantially impaired their contractual obligations in violation of U.S. Const. art. I, § 10 and N. J. Const. art. IV, § 7, the Board's orders were upheld. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

54. Cap waiver application did not constitute a "contested case" within the meaning of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the cap waiver proceeding was plainly legislative in nature and not quasi-judicial and the agency was not under a duty to consider evidence and apply the law to the facts as found, thereby exercising a discretion or judgment judicial in nature on evidentiary facts. *Board of Education v. State Board of Education, 172 N.J. Super. 547, 412 A.2d 1320, 1980 N.J. Super. LEXIS 467 (App.Div. 1980).*

55. For purposes of judicial review, the Port Authority Employment Relations Panel is an administrative agency, and Panel decisions presumptively are worthy of the deference afforded decisions by administrative agencies. Port Auth. of New York and New Jersey v. Port Auth. Empl. Rels. Panel (In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction), *194 N.J. 314, 944 A.2d 611, 2008 N.J. LEXIS 313, 184 L.R.R.M. (BNA) 2016 (2008).*

56. Final agency determination of the Department of Human Services declaring a claimant ineligible to receive Work First New Jersey/Temporary Assistance for Needy Families (WFNJ/TANF) benefits for her family because she also received benefits from the Subsidized Adoption Program (SAP) for her two adopted children was erroneous since the decision was based on an instruction issued by the agency that SAP benefits were duplicative of the WFNJ/TANF benefits. The instruction was held not a valid basis to determine eligibility because it operated as a rule and was not adopted in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* -- 15. *B.H. v. New Jersey, Dep't of Human Servs., 400 N.J. Super. 418, 947 A.2d 698, 2008 N.J. Super. LEXIS 120 (App.Div. 2008).*

57. In a proceeding on an application by several claimants for a stay pending appeal of the Plan of Operation (the Plan) devised by the trustee for the New Jersey Automobile Full Insurance Underwriting Association (JUA) and implemented by the New Jersey Commissioner of Insurance, the court, remanded the matter for a full administrative hearing on the Plan in accordance with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1et seq., because the JUA was an instrumentality of the State, having been created, funded and terminated pursuant to *N.J.S.A. 17:30E-1* to et seq., *N.J.S.A. 17:33B-2(h)(2)*, and former N.J.S.A. *17:33B-5*; the Plan was promulgated pursuant to *N.J.S.A. 17:33B-3(b)* within the auspices of state government through the Commissioner's participation and authority, and compliance with the APA was essential to protect policyholders' contract rights and the status of the current tort law. *In re Order of Comm'r of Ins. Deferring Certain Claim, etc., 256 N.J. Super. 553, 607 A.2d 992, 1992 N.J. Super. LEXIS 184 (App.Div. 1992).*

58. There is no basis for speculation that the New Jersey Legislature meant other than it said when it exempted from subjection to the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., agencies bearing responsibility for the management and operation of penal and correctional institutions; therefore, the actions of prison officials in an attack upon their disciplinary standards were exempt from subjection to the requirements of the Act. *Avant v. Clifford, 67 N.J. 496, 341 A.2d 629, 1975 N.J. LEXIS 205 (1975).*

59. Where the state Department of Environmental Protection (DEP) promulgated an amendment to *N.J. Admin. Code tit. 7, § 13-7.1(d)* that altered the map reflecting the outlines of a flood hazard area, *N.J. Stat. Ann. § 58:16A-52(b)* did not require DEP to promulgate regulations encompassing delineation methodology and technology. Thus, because a corporation affected by the amendment had been afforded ample opportunity to object and comment at the hearings that

were held pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., DEP's delineation of the new flood area boundaries was affirmed. *American Cyanamid Co. v. State, Dep't of Environmental Protection, 231 N.J. Super. 292, 555 A.2d 684, 1989 N.J. Super. LEXIS 86 (App.Div. 1989).*

60. While it is true that a taxpayer must be given an opportunity, upon adequate notice, to challenge the validity of an assessment, due process only requires that such opportunity be afforded at some stage before a tax becomes irrevocably fixed as a charge on the taxpayer's property; due process does not extend to the right of public participation by others, nor does it require that the plaintiff be allowed to press its views at a quasi-legislative proceeding such as a rule-making hearing under the New Jersey Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Airwork Service Div., Div. of Pacific Airmotive Corp. v. Director, Division of Taxation, 2 N.J. Tax 329, 1981 N.J. Tax LEXIS 84 (Tax Ct. 1981),* affirmed by *4 N.J. Tax 532, 1982 N.J. Tax LEXIS 88 (App.Div. 1982).*

61. Where the state Department of Environmental Protection (DEP) promulgated an amendment to *N.J. Admin. Code tit. 7, § 13-7.1(d)* that altered the map reflecting the outlines of a flood hazard area, *N.J. Stat. Ann. § 58:16A-52(b)* did not require DEP to promulgate regulations encompassing delineation methodology and technology. Thus, because a corporation affected by the amendment had been afforded ample opportunity to object and comment at the hearings that were held pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., DEP's delineation of the new flood area boundaries was affirmed. *American Cyanamid Co. v. State, Dep't of Environmental Protection, 231 N.J. Super. 292, 555 A.2d 684, 1989 N.J. Super. LEXIS 86 (App.Div. 1989).*

62. In an action by animal rights activists seeking review of various decision of the New Jersey Department of Environmental Protection, Division of Fish, Game, and Wildlife, Fish and Game Council, regarding the constitutionality of deer management legislation, the activists' challenge of the validity of a State Plan in which they argued that the State Plan by way of a policy statement was ineffective because case law required the substance and content of the State Plan to have been promulgated by regulation duly adopted in accord with the procedures mandated by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the court held the issue moot in view of the subsequent adoption of deer management legislation. There was no procedural irregularity in the regulatory process following the revision, which included detailed delineation of the required contents of the application for approval of a community-based plan and the inclusion of more specific community notice requirements. *Mercer County Deer Alliance v. N.J. Dep't of Envtl. Prot., 349 N.J. Super. 440, 793 A.2d 847, 2002 N.J. Super. LEXIS 162 (App.Div. 2002).*

63. Teacher failed to show the requisite degree of irreparable harm to justify imposition of an interim injunction to stay state administrative proceedings during the appeal of the court's abstention dismissal of her tenure termination action. *Williams v. Red Bank Bd. of Education, 508 F. Supp. 989, 1981 U.S. Dist. LEXIS 12150 (D.N.J. 1981).*

64. Where a contested issue is one in which a majority of members of the Governing Committee of the New Jersey Commercial Automobile Insurance Plan has an obvious and direct financial interest, considerations of fundamental fairness and procedural due process require resort to the contested-case procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 704 A.2d 562, 1997 N.J. Super. LEXIS 511 (App.Div. 1997).*

65. While it is true that a taxpayer must be given an opportunity, upon adequate notice, to challenge the validity of an assessment, due process only requires that such opportunity be afforded at some stage before a tax becomes irrevocably fixed as a charge on the taxpayer's property; due process does not extend to the right of public participation by others, nor does it require that the plaintiff be allowed to press its views at a quasi-legislative proceeding such as a rule-making hearing under the New Jersey Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Airwork Service Div., Div. of Pacific Airmotive Corp. v. Director, Division of Taxation, 2 N.J. Tax 329, 1981 N.J. Tax LEXIS 84 (Tax Ct. 1981),* affirmed by *4 N.J. Tax 532, 1982 N.J. Tax LEXIS 88 (App.Div. 1982).*

66. Although tenured teacher was dismissed for pleading guilty to possession of controlled substances pursuant to former N.J. Stat. Ann. § 2A:135-9 (now *N.J. Stat. Ann. § 2C:51-2*), state procedures guaranteeing him a hearing, including *N.J. Stat. Ann. § 52:14B-1*, were found adequate to secure the teacher's due process rights. *Humphreys v. Burke, 502 F. Supp. 449, 1980 U.S. Dist. LEXIS 15125 (D.N.J. 1980).*

67. Although a prison inmate was disciplined under disciplinary standards that were not adopted in conformity with the rulemaking procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the standards would invalidated for infractions occurring after a future date, and not retroactively. *Department of Corrections v. McNeil, 209 N.J. Super. 120, 506 A.2d 1291, 1986 N.J. Super. LEXIS 1204 (App.Div. 1986).*

68. There is no basis for speculation that the New Jersey Legislature meant other than it said when it exempted from subjection to the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., agencies bearing responsibility for

the management and operation of penal and correctional institutions; therefore, the actions of prison officials in an attack upon their disciplinary standards were exempt from subjection to the requirements of the Act. *Avant v. Clifford, 67 N.J. 496, 341 A.2d 629, 1975 N.J. LEXIS 205 (1975).*

69. Guidelines for notification of a sex offender's registration under *N.J. Stat. Ann. §§ 2C:7-3* and *2C:7-6*, of Megan's Law, *N.J. Stat. Ann. § 2C:7-1* et seq., were invalid because they were not adopted in accordance with the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

70. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

71. Because the New Jersey Board of Higher Education's adoption of a resolution, regarding a student-faculty funding ratio and a budgetary calendar, was not rule-making within the contemplation of the Administrative Procedure Act, a professors' appeal from the resolution was dismissed. *Rutgers Council of American Asso. of University Professors v. New Jersey Board of Higher Education, 126 N.J. Super. 53, 312 A.2d 677, 1973 N.J. Super. LEXIS 385, 85 L.R.R.M. (BNA) 2214, 72 Lab. Cas. (CCH) P53215 (App.Div. 1973).*

72. Trial court properly ordered a parent's consolidated Department of Education (DOE) due process and discrimination complaints, asserting that a local school failed to comply with her disabled son's individual education plan (IEP), remanded to the DOE, as the trial court lacked jurisdiction from the outset to hear an appeal from an administrative agency. Since the trial court lacked jurisdiction to hear the interlocutory administrative appeal in the first instance and the DOE, through the Office of Administrative Law, was vested with authority to hear the parent's due process petition respecting the IEP, the cases should not have been consolidated after the unsuccessful mediation to the trial court. *D.G. v. North Plainfield Bd. of Educ., 400 N.J. Super. 1, 945 A.2d 707, 2008 N.J. Super. LEXIS 80 (App.Div. 2008).*

73. Although tenured teacher was dismissed for pleading guilty to possession of controlled substances pursuant to former N.J. Stat. Ann. § 2A:135-9 (now *N.J. Stat. Ann. § 2C:51-2*), state procedures guaranteeing him a hearing, including *N.J. Stat. Ann. § 52:14B-1*, were found adequate to secure the teacher's due process rights. *Humphreys v. Burke, 502 F. Supp. 449, 1980 U.S. Dist. LEXIS 15125 (D.N.J. 1980).*

74. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a)*, which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

75. In upholding a decision of the Commissioner of Education that a district board of education should have appointed a certain teacher as the girls' basketball coach at a certain high school, the interpretation of the State Board of Education of N.J.A.C. 6:29-3.3 to impose an intra-district hiring requirement or preference relied on a strained construction of the word "employment"; such a construction of the regulation would effectively impose terms eliminated in the 1983 amendment without following the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. *Krupp v. Board of Educ., 278 N.J. Super. 31, 650 A.2d 366, 1994 N.J. Super. LEXIS 488 (App.Div. 1994).*

76. In upholding a decision of the Commissioner of Education that a district board of education should have appointed a certain teacher as the girls' basketball coach at a certain high school, the interpretation of the State Board of Education of N.J.A.C. 6:29-3.3 to impose an intra-district hiring requirement or preference relied on a strained

construction of the word "employment"; such a construction of the regulation would effectively impose terms eliminated in the 1983 amendment without following the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. *Krupp v. Board of Educ., 278 N.J. Super. 31, 650 A.2d 366, 1994 N.J. Super. LEXIS 488 (App.Div. 1994).*

77. Teacher failed to show the requisite degree of irreparable harm to justify imposition of an interim injunction to stay state administrative proceedings during the appeal of the court's abstention dismissal of her tenure termination action. *Williams v. Red Bank Bd. of Education, 508 F. Supp. 989, 1981 U.S. Dist. LEXIS 12150 (D.N.J. 1981).*

78. Because the regulatory proceedings before respondent, the New Jersey Board of Public Utilities, which ordered payment of stranded cost charges mandated by the Electric Discount and Energy Competition Act of 1999, *N.J. Stat. Ann. § 48:3-49* et seq., met the essentials of due process and the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and appellants, industrial and commercial utilities customers, had not shown that the legislation substantially impaired their contractual obligations in violation of U.S. Const. art. I, § 10 and N. J. Const. art. IV, § 7, the Board's orders were upheld. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

79. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation in violation of the *Administrative Procedure Act. Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

80. Implementation of ruling by the New Jersey Board of Public Utilities of ruling holding that stock transfers to one or more shareholders which resulted in a change in majority interest required prior approval was not subject to the *Administrative Procedure Act. In re Application for a Declaratory Ruling, 234 N.J. Super. 139, 560 A.2d 689, 1989 N.J. Super. LEXIS 235 (App.Div. 1989).*

81. In an action by animal rights activists seeking review of various decision of the New Jersey Department of Environmental Protection, Division of Fish, Game, and Wildlife, Fish and Game Council, regarding the constitutionality of deer management legislation, the activists' challenge of the validity of a State Plan in which they argued that the State Plan by way of a policy statement was ineffective because case law required the substance and content of the State Plan to have been promulgated by regulation duly adopted in accord with the procedures mandated by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the court held the issue moot in view of the subsequent adoption of deer management legislation. There was no procedural irregularity in the regulatory process following the revision, which included detailed delineation of the required contents of the application for approval of a community-based plan and the inclusion of more specific community notice requirements. *Mercer County Deer Alliance v. N.J. Dep't of Envtl. Prot., 349 N.J. Super. 440, 793 A.2d 847, 2002 N.J. Super. LEXIS 162 (App.Div. 2002).*

82. *N.J. Stat. Ann. §§ 52:14B-1* to *52:14B-15*, the New Jersey Administrative Procedure Act, was not violated when the New Jersey Department of Environmental Protection exempted sludge-only thermal reduction facilities from the solid waste permit requirement, although the superior court would have preferred that the exemption was adopted as a regulation. *Terminal Constr. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J. Super. 537, 582 A.2d 1288, 1990 N.J. Super. LEXIS 422 (App.Div. 1990).*

83. Developer that obtained conceptual approval of a sewer project by the Department of Environmental Protection (DEP) under a prior regulation was not entitled under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1*, to a hearing prior to the DEP's rejection of the plan due to the passage of several years, during which time new and more stringent environmental regulations had been passed under *N.J. Stat. Ann. § 58:10A-4. Woodland Utility Co. v. Department of Environmental Protection, 166 N.J. Super. 324, 399 A.2d 1018, 1979 N.J. Super. LEXIS 629 (App.Div. 1979).*

84. For purposes of judicial review, the Port Authority Employment Relations Panel is an administrative agency, and Panel decisions presumptively are worthy of the deference afforded decisions by administrative agencies. Port Auth. of New York and New Jersey v. Port Auth. Empl. Rels. Panel (In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction), *194 N.J. 314, 944 A.2d 611, 2008 N.J. LEXIS 313, 184 L.R.R.M. (BNA) 2016 (2008).*

85. Local finance board did not err in failing to declare a dissolution application a contested case where the board was not determining the legal rights, duties, obligations, privileges, benefits or other relations of the utilities authority under any constitutional or statutory right, and the utilities authority had no legal right not to be dissolved if the county complied with *N.J. Stat. Ann. § 40A:5A-20. In re County of Bergen, 268 N.J. Super. 403, 633 A.2d 1017, 1993 N.J. Super. LEXIS 840 (App.Div. 1993).*

86. *N.J. Stat. Ann. §§ 52:14B-1* to *52:14B-15*, the New Jersey Administrative Procedure Act, was not violated when the New Jersey Department of Environmental Protection exempted sludge-only thermal reduction facilities from the solid waste permit requirement, although the superior court would have preferred that the exemption was adopted as a regulation. *Terminal Constr. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J. Super. 537, 582 A.2d 1288, 1990 N.J. Super. LEXIS 422 (App.Div. 1990).*

87. Developer that obtained conceptual approval of a sewer project by the Department of Environmental Protection (DEP) under a prior regulation was not entitled under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1*, to a hearing prior to the DEP's rejection of the plan due to the passage of several years, during which time new and more stringent environmental regulations had been passed under *N.J. Stat. Ann. § 58:10A-4. Woodland Utility Co. v. Department of Environmental Protection, 166 N.J. Super. 324, 399 A.2d 1018, 1979 N.J. Super. LEXIS 629 (App.Div. 1979).*

88. Contested case under the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-2(b)*, includes those disputes whereby statute or constitutional provision a hearing is required before a State agency to determine rights, duties, obligations, privileges, benefits, or other legal relations of specific parties; to determine whether a contested case exists under the APA, the following three questions must be addressed: (1) is a hearing required by statute or constitutional provision; (2) will the hearing adjudicate rights, duties, obligations, privileges, benefits or other legal relations; and (3) are specific parties involved rather than large segments of the public? *Division of State Police v. Maguire, 368 N.J. Super. 564, 847 A.2d 614, 2004 N.J. Super. LEXIS 167 (App.Div. 2004).*

89. Under *N.J. Const. art. 1, par. 10*, and the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., a state trooper does not have a constitutional right to an open or public hearing on the departmental charges; however, absent a showing of good cause or sufficient reason for keeping a hearing private, the general policy favors an open administrative hearing, particularly if the person involved requests it; the state police have a rational and justifiable basis for the maintaining of a policy of non-public disciplinary hearings in the state police. *Kelly v. Sterr, 62 N.J. 105, 299 A.2d 390, 1973 N.J. LEXIS 226 (1973),* writ of certiorari denied by *414 U.S. 822, 94 S. Ct. 122, 38 L. Ed. 2d 55, 1973 U.S. LEXIS 324 (1973).*

90. Clear legislative purpose of the 1981 amendment to *N.J. Stat. Ann. § 5:9-7* was to avoid subjecting details of a particular game, and its ticket costs and prize rewards, to the salutary, but cumbersome procedural demands of quasi-legislative rulemaking under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* to -15. *Singer Asset Fin. Co., L.L.C. v. Department of the Treasury, Div. of State Lottery, 314 N.J. Super. 106, 714 A.2d 317, 1998 N.J. Super. LEXIS 221 (App.Div. 1998).*

91. Because game rules for Pick-6 Lotto were not amended under the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-1* to -15, but under the exemption that is provided by *N.J. Stat. Ann. § 5:9-7* for the rules establishing a lottery game, amendments to the Pick-6 rules were properly adopted without utilizing APA procedures. *Singer Asset Fin. Co., L.L.C. v. Department of the Treasury, Div. of State Lottery, 314 N.J. Super. 106, 714 A.2d 317, 1998 N.J. Super. LEXIS 221 (App.Div. 1998).*

92. Lottery commission's denial of adult bookstore's application to sell lottery tickets was arbitrary and capricious and violated the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* because the lottery commission was required to implement procedures or a policy to deny licenses to adult bookstores; in addition, the court held that the evidence in the record did not establish that there were sufficient agents in the region and did not support the reasons given by the lottery commission for the denial of the application. 613 *Corp. v. State, Div. of State Lottery, 210 N.J. Super. 485, 510 A.2d 103, 1986 N.J. Super. LEXIS 1289 (App.Div. 1986).*

93. Final ruling of the Division of Alcoholic Beverages Control finding that the proposed use of a license issued at a previous location of petitioner establishment at a new location within 1000 feet of another licensed establishment required a place-to-place transfer did not violate the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., and was based on a correct analysis of the law and policies that required a recognition of the link between a plenary retail consumption license and the premises in which that license was used. *Innkeeper, Inc. v. Remington, Inc., 287 N.J. Super. 54, 670 A.2d 546, 1995 N.J. Super. LEXIS 593 (App.Div. 1995).*

94. There is no basis for speculation that the New Jersey Legislature meant other than it said when it exempted from subjection to the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq., agencies bearing responsibility for the management and operation of penal and correctional institutions; therefore, the actions of prison officials in an attack upon their disciplinary standards were exempt from subjection to the requirements of the Act. *Avant v. Clifford, 67 N.J. 496, 341 A.2d 629, 1975 N.J. LEXIS 205 (1975).*

95. Decision by the Division of Medical Assistance and Health Services of the Department of Human Services that reimbursement rate appeals were to be submitted only by hospitals and not by consulting companies was a rule change pursuant to *N.J. Stat. Ann. § 52:14B-2(e)* which required that such determination be made after a rulemaking process, as required by the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

96. Agency determination that appeals of hospital reimbursement rates were to be submitted directly by the hospital, and not by a consulting company, violated the Administrative Procedure Act because formal rulemaking should have preceded such a change in policy. Because the policy was uniformly applicable to all hospitals, had a prospective application, set a new directive as to the submission policy of rate reviews, and was a purported interpretation of the agency's rule, the matter was subject to a rulemaking process. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

97. In a proceeding on an application by several claimants for a stay pending appeal of the Plan of Operation (the Plan) devised by the trustee for the New Jersey Automobile Full Insurance Underwriting Association (JUA) and implemented by the New Jersey Commissioner of Insurance, the court, remanded the matter for a full administrative hearing on the Plan in accordance with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1et seq., because the JUA was an instrumentality of the State, having been created, funded and terminated pursuant to *N.J.S.A. 17:30E-1* to et seq., *N.J.S.A. 17:33B-2(h)(2)*, and former N.J.S.A. *17:33B-5*; the Plan was promulgated pursuant to *N.J.S.A. 17:33B-3(b)* within the auspices of state government through the Commissioner's participation and authority, and compliance with the APA was essential to protect policyholders' contract rights and the status of the current tort law. *In re Order of Comm'r of Ins. Deferring Certain Claim, etc., 256 N.J. Super. 553, 607 A.2d 992, 1992 N.J. Super. LEXIS 184 (App.Div. 1992).*

98. Where a contested issue is one in which a majority of members of the Governing Committee of the New Jersey Commercial Automobile Insurance Plan has an obvious and direct financial interest, considerations of fundamental fairness and procedural due process require resort to the contested-case procedures of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 704 A.2d 562, 1997 N.J. Super. LEXIS 511 (App.Div. 1997).*

99. Where the state Department of Environmental Protection (DEP) promulgated an amendment to *N.J. Admin. Code tit. 7, § 13-7.1(d)* that altered the map reflecting the outlines of a flood hazard area, *N.J. Stat. Ann. § 58:16A-52(b)* did not require DEP to promulgate regulations encompassing delineation methodology and technology. Thus, because a corporation affected by the amendment had been afforded ample opportunity to object and comment at the hearings that were held pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., DEP's delineation of the new flood area boundaries was affirmed. *American Cyanamid Co. v. State, Dep't of Environmental Protection, 231 N.J. Super. 292, 555 A.2d 684, 1989 N.J. Super. LEXIS 86 (App.Div. 1989).*

100. In its Commercial Cleaning Corporation decision, the Supreme Court of New Jersey held that a trial-type hearing challenging a bid award is not required, particularly when the bidding authority is not compelled by statute to award the bid to the lowest responsible bidder, but may award it to the bidder whose proposal is found to be most advantageous to the public, price being only one factor. Although Commercial Cleaning predated the adoption of the New Jersey Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., its rationale remains fully viable. *Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J. Super. 175, 848 A.2d 793, 2004 N.J. Super. LEXIS 173 (App.Div. 2004).*

101. Final agency determination of the Department of Human Services declaring a claimant ineligible to receive Work First New Jersey/Temporary Assistance for Needy Families (WFNJ/TANF) benefits for her family because she also received benefits from the Subsidized Adoption Program (SAP) for her two adopted children was erroneous since the decision was based on an instruction issued by the agency that SAP benefits were duplicative of the WFNJ/TANF benefits. The instruction was held not a valid basis to determine eligibility because it operated as a rule and was not adopted in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* -- 15. *B.H. v. New Jersey, Dep't of Human Servs., 400 N.J. Super. 418, 947 A.2d 698, 2008 N.J. Super. LEXIS 120 (App.Div. 2008).*

102. Agency's approval of a plan to ameliorate a regulatory taking claim must be made in accordance with regulations adopted pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq.; *N.J. Stat. Ann. § 13:9B-22* vests an agency with broad discretion to modify its action so as to minimize the detrimental effect to the value of property. *E. Cape May Assocs. v. Dep't of Envtl. Protection, 343 N.J. Super. 110, 777 A.2d 1015, 2001 N.J. Super. LEXIS 316 (App.Div. 2001),* appeal dismissed by *170 N.J. 211, 785 A.2d 439, 2001 N.J. LEXIS 1474 (2001).*

103. Community phone book publisher's action against the Director of Taxation, which alleged tax discrimination and sought to enjoin the director's decision advising where a sale for resale exemption could be claimed under *N.J. Stat. Ann. § 54:32B-2(e)(1)(A)*, was properly dismissed because the director was not required to go through the rule making procedures of *N.J. Stat. Ann. § 52:14B-1* et seq. in order to issue that opinion. Princeton Community Phone Book, Inc. v. *Baldwin, 9 N.J. Tax 195, 1985 N.J. Super. LEXIS 1702 (N.J. Super. Ct. 1985).*

104. Revision of a corporate taxpayer's business allocation factor to determine income taxes pursuant to the New Jersey Corporation Business Tax Act, *N.J. Stat. Ann. § 54:10A-6*, was improper rulemaking by the Taxation Division Director under the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Metromedia, Inc. v. Taxation Div. Director, 3 N.J. Tax 397, 1981 N.J. Tax LEXIS 22 (Tax Ct. 1981),* reversed by *187 N.J. Super. 562, 455 A.2d 561, 1983 N.J. Super. LEXIS 755 (App.Div. 1983).*

105. While it is true that a taxpayer must be given an opportunity, upon adequate notice, to challenge the validity of an assessment, due process only requires that such opportunity be afforded at some stage before a tax becomes irrevocably fixed as a charge on the taxpayer's property; due process does not extend to the right of public participation by others, nor does it require that the plaintiff be allowed to press its views at a quasi-legislative proceeding such as a rule-making hearing under the New Jersey Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Airwork Service Div., Div. of Pacific Airmotive Corp. v. Director, Division of Taxation, 2 N.J. Tax 329, 1981 N.J. Tax LEXIS 84 (Tax Ct. 1981),* affirmed by *4 N.J. Tax 532, 1982 N.J. Tax LEXIS 88 (App.Div. 1982).*

106. Director of the Division of Taxation's construction of the term "books of the corporation" found in *N.J. Stat. Ann. § 54:10A-4* and *N.J. Stat. Ann. § 54:10A-5* to include a corporate taxpayer's Forms 10-K and other published financial statements, was not required to have been adopted in a formal regulation pursuant to the Administrative Procedure Act and the Director properly construed the term from applicable regulations. *Cities Service Co. v. Director, Division of Taxation, 5 N.J. Tax 257, 1983 N.J. Tax LEXIS 48 (Tax Ct. 1983).*

107. Community phone book publisher's action against the Director of Taxation, which alleged tax discrimination and sought to enjoin the director's decision advising where a sale for resale exemption could be claimed under *N.J. Stat. Ann. § 54:32B-2(e)(1)(A)*, was properly dismissed because the director was not required to go through the rule making procedures of *N.J. Stat. Ann. § 52:14B-1* et seq. in order to issue that opinion. Princeton Community Phone Book, Inc. v. *Baldwin, 9 N.J. Tax 195, 1985 N.J. Super. LEXIS 1702 (N.J. Super. Ct. 1985).*

108. *N.J. Stat. Ann. § 39:4-120* vested only the Department of Transportation with the power to approve the installation of a traffic control signal at an intersection of a street in the municipality and thus no hearing was required as to the department's decision to install such traffic signal; the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., did not create a substantive right on the part of a municipality to a hearing on such decision, nor was such decision a contested case within the meaning of *N.J. Stat. Ann. § 52:14B-2(b). Cedar Grove v. Sheridan, 209 N.J. Super. 267, 507 A.2d 304, 1986 N.J. Super. LEXIS 1211 (App.Div. 1986).*

NJ ICLE

1. *New Jersey Environmental Law 2.22* Clean Air Council

LAW REVIEWS & JOURNALS

1. *7 Seton Hall Const. L.J. 525,* COMMENT: MEGAN'S LAW AS APPLIED TO JUVENILES: PROTECTING CHILDREN AT THE EXPENSE OF CHILDREN?

2. *29 Seton Hall L. Rev. 256,* NOTE: Quasi-Governmental Immunity: Should Organizations Receive Immunity for Charitable Works? -- Snyder v. American Association of Blood Banks.

3. *30 Seton Hall L. Rev. 715,* A TRIBUTE TO JUSTICE ALAN B. HANDLER: Justice Alan B. Handler: The Jurist as Scholar, Teacher, Craftsman, and Statesman.

4. *18 Seton Hall Legis. J. 59,* FIXING THE FISCAL POLICE AND FIRETRAP: A CRITIQUE OF NEW JERSEY'S COMPULSORY INTEREST ARBITRATION ACT.

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LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS
CHAPTER 14B. ADMINISTRATIVE PROCEDURE AND REGULATORY FLEXIBILITY

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:14B-2 (2008)

§ 52:14B-2. Definitions

As used in this act:

(a) "State agency" or "agency" shall include each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor.

(b) "Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

(c) "Administrative adjudication" or "adjudication" includes any and every final determination, decision or order made or rendered in any contested case.

(d) "The head of the agency" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case.

(e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

(f) "License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

(g) "Secretary" means the Secretary of State.

(h) "Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

HISTORY: L. 1968, c. 410, § 2; amended 1980, c. 166; 1981, c. 27, § 10; 1981, c. 511, § 21; 1993, c. 343, § 1.

NOTES:

Cross References:

Conduct of hearings; rules of evidence; punishment of contempts; rehearing, see *5:12-107*.

Adjudication of certain contested cases, see *52:14B-10.1*.

Powers, duties of Director and Chief Administrative Law Judge, see *52:14F-5*.

Administrative Law jurisdictional exclusions *Text of section operative until Dec. 31, 1987, see *52:14F-8*.

Environmental unit, see *52:14F-12*.

Division of Public Interest Advocacy; power, see *52:27EE-59*.

Division of Elder Advocacy; powers and duties, see *52:27EE-63*.

Administrative Code:

1. *N.J.A.C. 1:1-2.1*, CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES, Definitions.

2. *N.J.A.C. 1:30-1.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Definitions.

3. *N.J.A.C. 7:27-22.14*, CHAPTER 27. AIR POLLUTION CONTROL, General operating permits.

4. *N.J.A.C. 10:6-1.2*, CHAPTER 6. HEARINGS, Definitions.

5. *N.J.A.C. 10:42A-3.1*, CHAPTER 42A LIFE-THREATENING EMERGENCIES, Enforcement.

6. *N.J.A.C. 10:48-1.5*, CHAPTER 48. APPEAL PROCEDURE, Definitions.

7. *N.J.A.C. 10:90-9.2*, CHAPTER 90. WORK FIRST NEW JERSEY PROGRAM, Definitions related to hearings.

8. *N.J.A.C. 10:91-1.2*, CHAPTER 91. ORGANIZATION AND GENERAL POLICY PROVISIONS OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED, Definitions.

9. *N.J.A.C. 11:1-2A.2*, CHAPTER 1. ADMINISTRATION, Definitions.

10. *N.J.A.C. 11:3-18.2*, CHAPTER 3. AUTOMOBILE INSURANCE, Definitions.

11. *N.J.A.C. 12A:2-1.16*, CHAPTER 2. GRANT PROGRAMS, Appeals.

12. *N.J.A.C. 12A:2A-2.13*, CHAPTER 2A. COMMISSION ASSISTANCE PROGRAMS, Appeals.

13. *N.J.A.C. 19:32-1.17*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

14. *N.J.A.C. 19:34A-1.9*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

15. *N.J.A.C. 19:36-6.7*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

16. *N.J.A.C. 19:37-1.6*, NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Appeals.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 3 -- 1977, *1977 N.J. AG LEXIS 24*.

2. FORMAL OPINION No. 6 -- 1979, *1979 N.J. AG LEXIS 22*.

3. FORMAL OPINION No. 10 -- 1979, *1979 N.J. AG LEXIS 18*.

4. FORMAL OPINION No. 15 -- 1979, *1979 N.J. AG LEXIS 13*.

CASE NOTES

1. Question of whether contractor was subject to statutory requirements imposed on electrical contractors for the Turnpike project it was working on in which it was laying fiber-optic cable that did not carry any potential for electrical charges did not involve any contested issues of material fact, and, thus, an agency hearing was not required and the Board of Examiners of Electrical Contractors could issue a final decision on that question. *In re Final Agency Decision of the Bd. of Examiners of Elec. Contrs., 356 N.J. Super. 42, 811 A.2d 484, 2002 N.J. Super. LEXIS 498 (App.Div. 2002)*.

2. Contested case under the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-2(b)*, includes those disputes where by statute or constitutional provision a hearing is required before a State agency to determine rights, duties, obligations, privileges, benefits, or other legal relations of specific parties; to determine whether a contested case exists under the APA, the following three questions must be addressed: (1) is a hearing required by statute or constitutional provision; (2) will the hearing adjudicate rights, duties, obligations, privileges, benefits or other legal relations; and (3) are specific parties involved rather than large segments of the public? *Division of State Police v. Maguire, 368 N.J. Super. 564, 847 A.2d 614, 2004 N.J. Super. LEXIS 167 (App.Div. 2004).*

3. The New Jersey Housing and Mortgage Finance Agency's (HMFA) 2003 Qualified Allocation Plan (QAP) to administer the *26 U.S.C. § 42* Low Income Housing Tax Credit (LIHTC) program was properly adopted without a hearing under *N.J. Stat. Ann. § 52:14B-2(b)*, since the HMFA was rule-making for broad application to the State, and then gave its reasoning. *In re Adoption of 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 369 N.J. Super. 2, 848 A.2d 1, 2004 N.J. Super. LEXIS 159 (App.Div. 2004).*

4. Where there was no disputing that a conduit installed by general laborers was to carry only fiber-optic cable, not electrical cable, a complaint concerning its installation by non-electricians was not a contested case and was properly determined under *N.J. Stat. Ann. § 52:14B-2(b)* of the Administrative Procedure Act not to require an evidentiary hearing. *In re Final Agency Decision of the Bd. of Examiners of Elec. Contrs., 356 N.J. Super. 42, 811 A.2d 484, 2002 N.J. Super. LEXIS 498 (App.Div. 2002).*

5. The trial court erred in affirming a decision of the state board of medical examiners which revoked the physician's license under *N.J. Stat. Ann. § 45:1-21* after he pled guilty to an offense that arguably implicated moral turpitude; pursuant to *N.J. Stat. Ann. § 52:14B-11* and *N.J. Stat. Ann. § 52:14B-2(b)*, the physician had a right to a plenary hearing at which he would be allowed to present evidence. *In re Fanelli, 174 N.J. 165, 803 A.2d 1146, 2002 N.J. LEXIS 1109, 29 Employee Benefits Cas. (BNA) 1155 (2002).*

6. Use of an order to show cause was a valid means for the Board of Public Movers and Warehousemen to bring the issue of a licensee's compliance with a prior Board order before the Board even though such an order lacked a basis in a rule or regulation that was validly promulgated in accordance with the standards of the Administrative Procedure Act. Although the order to show cause mechanism is not within the range of subjects that is referred to in *N.J. Stat. Ann. § 52:14B-2(e)*, which defines "administrative rule" by describing the qualities characterizing such enactments, and is not an agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization of any agency, it is a well-established means for bringing a matter expeditiously to the attention of a tribunal, including an administrative agency. *In re A-1 Jersey Moving & Storage, 309 N.J. Super. 33, 706 A.2d 752, 1998 N.J. Super. LEXIS 68 (App.Div. 1998).*

7. Under *N.J.S.A. § 52:14B-2(b)*, determination by the New Jersey Transit Corporation of an applicant's eligibility for Access Link paratransit services was not required to be treated as a contested case because it was not required under the United States Constitution, the New Jersey Constitution, or any other New Jersey statute that an appeal from an eligibility decision be considered a contested case. *Sell v. New Jersey Transit Corp., 298 N.J. Super. 640, 689 A.2d 1386, 1997 N.J. Super. LEXIS 123, 6 Am. Disabilities Cas. (BNA) 821, 20* Am. Disabilities Dec. 704 (App.Div. 1997).

8. In an appeal from an action of the New Jersey Council on Affordable Housing (COAH), the Superior Court of New Jersey, Appellate Division, remanded the matter to COAH for transmittal of the matter to the Office of Administrative Law (OAL) pursuant to *N.J. Stat. Ann. § 52:27D-315(c)* and *N.J. Stat. Ann. § 52:14B-2(b)* because there existed an issue of fact that, on its face, appeared to be material and contested: whether the rezoning of the property of two operating country clubs provided a realistic opportunity for the construction of 700 units of affordable housing. *Quad Enterprises v. Paramus, 250 N.J. Super. 256, 593 A.2d 1227, 1991 N.J. Super. LEXIS 272 (App.Div. 1991).*

9. Under *N.J. Stat. Ann. § 52:14B-2(b)*, "contested case" is defined as a proceeding in which the legal rights, privileges, benefits, or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. *Crain v. State, Dep't of Treasury, Div. of Pensions, 245 N.J. Super. 229, 584 A.2d 863, 1991 N.J. Super. LEXIS 2 (App.Div. 1991).*

10. Property owner who was denied a permit for state highway access had a right to a hearing under the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to *52:14B-15*, to review and contest all the evidence before the State Department of Transportation and to cross-examine all expert witnesses. *High Horizons Dev. Co. v. State, DOT, 120 N.J. 40, 575 A.2d 1360, 1990 N.J. LEXIS 81 (1990).*

11. Although the Board was clearly one of the State agencies governed by the provisions of the Administrative Procedure Act (APA), specifically *N.J. Stat. Ann. § 52:14B-2(a)*, there was no substantive right to an administrative hearing; APA provided for a procedure to be followed in the event such a hearing was required. *Valdes v. New Jersey State Bd. of Medical Examiners, 205 N.J. Super. 398, 501 A.2d 166, 1985 N.J. Super. LEXIS 1559 (App.Div. 1985).*

12. Group of property owners were not entitled to reversal of the state department of environmental protection's decision to issue a permit for the construction of a sewage pumping station on the reasoning that there were denied a full evidentiary hearing as their case was not contested; property owners were accorded a full and fair hearing to voice their objections to the issuance of the permit. *Normandy Beach Improv. Asso. v. Commissioner, Dep't of Environmental Protection, 193 N.J. Super. 57, 472 A.2d 156, 1983 N.J. Super. LEXIS 1065 (App.Div. 1983).*

13. Because the issue of whether to grant applicant bank a branch office was a contested issue, the matter was required to be heard in accordance with the Administrative Procedure Act and the issue should have been determined by an administrative law judge or by the commissioner. *Application of Orange Sav. Bank, 172 N.J. Super. 275, 411 A.2d 1150, 1980 N.J. Super. LEXIS 440 (App.Div. 1980),* appeal dismissed by *84 N.J. 433, 420 A.2d 339, 1980 N.J. LEXIS 2103 (1980).*

14. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

15. Notice of violation of the Solid Waste Management Act issued by the Department of Environmental Protection, which orders the immediate cessation of operation of a solid waste facility, is an order of abatement within the intent of *N.J. Stat. Ann. §13:1E-9(c)*, which entitles the recipient to an administrative hearing to challenge the violation. *Gloucester County Imp. Authority v. New Jersey Dep't of Environmental Protection, 391 N.J. Super. 244, 917 A.2d 833, 2007 N.J. Super. LEXIS 79 (App.Div. 2007).*

16. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

17. Hearing for the placement of a recipient in a particular center, filed by guardians after recipients removal to a state facility from a private facility upon reaching the age of 21, was not a contested case as defined in *N.J. Stat. Ann. § 52:14B-2(b)*; thus, the case did not have to be heard by an administrative law judge. J.E. on behalf of *G.E. v. State Dep't of Human Services, Div. of Developmental Disabilities, 253 N.J. Super. 459, 602 A.2d 279, 1992 N.J. Super. LEXIS 32 (App.Div. 1992),* reversed by *131 N.J. 552, 622 A.2d 227, 1993 N.J. LEXIS 67 (1993).*

18. Under *N.J.S.A. § 52:14B-2(b)*, determination by the New Jersey Transit Corporation of an applicant's eligibility for Access Link paratransit services was not required to be treated as a contested case because it was not required under the United States Constitution, the New Jersey Constitution, or any other New Jersey statute that an appeal from an eligibility decision be considered a contested case. *Sell v. New Jersey Transit Corp., 298 N.J. Super. 640, 689 A.2d 1386, 1997 N.J. Super. LEXIS 123, 6 Am. Disabilities Cas. (BNA) 821, 20* Am. Disabilities Dec. 704 (App.Div. 1997).

19. Whether access to a highway afforded to a land developer was reasonable and whether the access was a safe use of the highway was a factual question which had to be decided after a "contested case" evidentiary hearing pursuant to *N.J. Stat. Ann. § 52:14B-2(b). High Horizons Dev. Co. v. New Jersey DOT, 231 N.J. Super. 399, 555 A.2d 740, 1989 N.J. Super. LEXIS 106 (App.Div. 1989),* modified by *120 N.J. 40, 575 A.2d 1360, 1990 N.J. LEXIS 81 (1990).*

20. Administrative Order 1996-06, issued by the Commissioner of the Department of Environmental Protection (DEP) on July 29, 1996 and which directed the DEP staff to apply departmental policies and regulations in a manner

consistent and compatible with the State Development and Redevelopment Plan (State Plan), was not the functional equivalent of an administrative rule, as defined in the Administrative Procedures Act (APA), *N.J.S.A. 52:14B-2(e)*, because the order was directed to the DEP assistant commissioners and not to any member of the public and because it did not purport to impose specific conditions on developers' applications for permits and approvals; the administrative order did not mandate compliance with the State Plan by rule or regulation, but rather declared the intra-agency policy that DEP, in performing its own duties, was to act in conformity with the State Plan when otherwise authorized. *New Jersey Builders Ass'n v. New Jersey Dep't of Envtl. Protection, 306 N.J. Super. 93, 703 A.2d 323, 1997 N.J. Super. LEXIS 486 (App.Div. 1997).*

21. Agency order will be deemed an intra-agency statement exempt from the rule-making requirements of the Administrative Procedures Act (APA) to the extent that (1) it is intended to govern the conduct of agency employees, as opposed to members of the regulated public; (2) any impact on the regulated public is incidental or unsubstantial; and (3) that impact is on interests or rights that do not rise to a level needing the protection afforded by the APA rule-making procedures. *New Jersey Builders Ass'n v. New Jersey Dep't of Envtl. Protection, 306 N.J. Super. 93, 703 A.2d 323, 1997 N.J. Super. LEXIS 486 (App.Div. 1997).*

22. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation under *N.J. Stat. Ann. § 52:14B-2(e)* and violated the Administrative Procedure Act, *N.J. Stat. Ann. § 56:6-2(e). Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

23. Not every action of a state agency constitutes rulemaking; as distinguished from rulemaking is informal agency action, defined as any determination that is taken without a trial-type hearing, including investigating, publicizing, negotiating, settling, advising, planning, and supervising a regulated industry. Indeed, informal action constitutes the bulk of the activity of most administrative agencies. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

24. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

25. If a rule promulgation complying with the standards of the Administrative Procedure Act is necessary to validate the order to show cause mechanism in administrative agencies because it describes the procedure or practice requirements of any agency, pursuant to *N.J. Stat. Ann. § 52:14B-2*, then *N.J. Admin. Code tit. 1, § 1-9.2* would suffice as the required basis. *In re A-1 Jersey Moving & Storage, 309 N.J. Super. 33, 706 A.2d 752, 1998 N.J. Super. LEXIS 68 (App.Div. 1998).*

26. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

27. Under *N.J. Stat. Ann. § 52:14B-2*, Council on Affordable Housing is an "agency," because it was authorized by statute to make, adopt, or promulgate rules or adjudicate contested cases. *Bernards v. State, Dep't of Community Affairs, 233 N.J. Super. 1, 558 A.2d 1, 1989 N.J. Super. LEXIS 148 (App.Div. 1989).*

28. Action by the New Jersey Natural Resource Council (Council) of the Division of Marine Services of the New Jersey Department of Environmental Protection for the grant of a license to an electric company to lay a submarine

cable under tideland waters was not an exercise of the Council's rule making function as defined in *N.J. Stat. Ann. § 52:14B-2(e)* of the New Jersey Administrative Procedure Act (Act), *N.J. Stat. Ann. § 52:14B-1* et seq.; thus, the notice and hearing provisions of *N.J. Stat. Ann. § 52:14B-4(a)* of the Act did not *apply. Atlantic City Electric Co. v. Bardin, 145 N.J. Super. 438, 368 A.2d 366, 1976 N.J. Super. LEXIS 631, 7 Envtl. L. Rep. 20297 (App.Div. 1976).*

29. Not every action of a state agency constitutes rulemaking; as distinguished from rulemaking is informal agency action, defined as any determination that is taken without a trial-type hearing, including investigating, publicizing, negotiating, settling, advising, planning, and supervising a regulated industry. Indeed, informal action constitutes the bulk of the activity of most administrative agencies. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

30. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

31. If a rule promulgation complying with the standards of the Administrative Procedure Act is necessary to validate the order to show cause mechanism in administrative agencies because it describes the procedure or practice requirements of any agency, pursuant to *N.J. Stat. Ann. § 52:14B-2*, then *N.J. Admin. Code tit. 1, § 1-9.2* would suffice as the required basis. *In re A-1 Jersey Moving & Storage, 309 N.J. Super. 33, 706 A.2d 752, 1998 N.J. Super. LEXIS 68 (App.Div. 1998).*

32. Director of the Tax Division's decision to delete corporation's safe-harbor-lease property from the allocation fraction did not constitute administrative rule-making within the meaning of the *N.J. Stat. Ann. 52:14B-2(e)* of New Jersey Administrative Procedure Act because the agency's determination did not meet most of the factors required by the applicable common-law test. *Reuben H. Donnelley Corp. v. Director, Division of Taxation, 128 N.J. 218, 607 A.2d 1281, 1992 N.J. LEXIS 385 (1992).*

33. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a)*, which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

34. Pursuant to the Administrative Procedure Act (APA), even minor procedural changes may meet the definition of a rule because the APA, at *N.J. Stat. Ann. § 52:14B-2(e)*, defines a rule as an agency statement of general applicability and continuing effect. Thus, the definition does not distinguish between significant, material, substantive, interpretive, or procedural rules. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

35. Use of a Revenue Ruling did not violate the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* et seq. because the ruling was used to adjudicate the legal rights of a person before an agency and was not used as a rule of general applicability, as contemplated by *N.J. Stat. Ann. § 52:14B-2(e). Stevens v. Board of Trustees of the Pub. Employees' Retirement Sys., 309 N.J. Super. 300, 706 A.2d 1191, 1998 N.J. Super. LEXIS 105 (App.Div. 1998).*

36. Although respondent department's memorandum implemented a new task for respondent utilization review organizations and represented a new rule within the context of respondent department's interpretation of how a revised statute impacted existing functions, the rulemaking function, although a violation of *N.J. Stat. Ann. § 52:14B-2*, did not taint the interpretive aspect of respondent department's memorandum. *Axiom Review v. Barnert Memorial Hosp. (In re Final Agency Decision by N.J. Dep't of Health Regarding Utilization & Quality Review for Calendar Year 1993), 273 N.J. Super. 205, 641 A.2d 1043, 1994 N.J. Super. LEXIS 146 (App.Div. 1994).*

37. *N.J. Stat. Ann. § 52:14B-2(e)* provides in pertinent part the "Administrative rule" or "rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy. *In re Petition of Paterson Counseling Center, Inc., 237 N.J. Super. 240, 567 A.2d 282, 1989 N.J. Super. LEXIS 431 (App.Div. 1989).*

38. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

39. Decision by the Division of Medical Assistance and Health Services of the Department of Human Services that reimbursement rate appeals were to be submitted only by hospitals and not by consulting companies was a rule change pursuant to *N.J. Stat. Ann. § 52:14B-2(e)* which required that such determination be made after a rulemaking process. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

40. Pursuant to the Administrative Procedure Act (APA), even minor procedural changes may meet the definition of a rule because the APA, at *N.J. Stat. Ann. § 52:14B-2(e)*, defines a rule as an agency statement of general applicability and continuing effect. Thus, the definition does not distinguish between significant, material, substantive, interpretive, or procedural rules. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

41. Commissioner of Education concluded that a school district claim was purely legal in nature and did not present any material issue of fact that would require a contested case hearing before an administrative law judge consistent with N.J. Stat. Ann. § 52:14B-2(b). *Sloan v. Klagholtz, 342 N.J. Super. 385, 776 A.2d 894, 2001 N.J. Super. LEXIS 271 (App.Div. 2001).*

42. Police policy and procedure manual promulgated by the state attorney general was excepted by *N.J. Stat. Ann. § 52:14B-2(e)* of the Administrative Procedure Act (APA) from the requirements of the APA, and the manual was enforceable and applicable to internal affairs investigator's interview of police officer. *In re Carroll, 339 N.J. Super. 429, 772 A.2d 45, 2001 N.J. Super. LEXIS 175 (App.Div. 2001).*

43. New Jersey State Police is an agency to which the Administrative Procedure Act (Act) applies under *N.J. Stat. Ann. § 52:14B-2*; thus, the state police may not adopt rules without first satisfying the notice and hearing steps of the Act. *Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 763 A.2d 295, 2000 N.J. Super. LEXIS 447 (App.Div. 2000).*

44. Court determined that the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2*, was not violated by the implementation of the $15 fee, but that it was violated by the adoption of the New Jersey Point of Contact operating hours. *Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 763 A.2d 295, 2000 N.J. Super. LEXIS 447 (App.Div. 2000).*

45. Court concluded that assuming that the imposition of the $15 fee was a "rule," no rulemaking procedures were necessary under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2*, because the existing regulation for the purpose of processing criminal history name search identification checks, *N.J. Admin. Code § 13:59-1.3(b)*, was sufficiently broad to encompass authority to charge the same fee for national instant criminal background check system (NICS) checks. *Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 763 A.2d 295, 2000 N.J. Super. LEXIS 447 (App.Div. 2000).*

46. New Jersey Point of Contact operating hours were invalid as being adopted in violation of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2. Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 763 A.2d 295, 2000 N.J. Super. LEXIS 447 (App.Div. 2000).*

47. In a challenge to an amendment to a county's solid waste management plan, the appellate court rejected the argument of the Department of Environmental Protection (DEP) that because its adoption of the rulemaking requirements of the Administrative Procedure Act (APA), *N.J.Stat. Ann.§ 52:14B-4* and *N.J.A.C. 1:30*, was itself

discretionary, the DEP was free to disregard its own rules of procedure, former *N.J.A.C.§ 7:26-6.6*, which adopted the APA requirements. Under *N.J.Stat. Ann.§ 52:14B-2*, an agency's decision to abandon or modify its own procedural regulations had to be accomplished through rule-making. *In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

48. Attorney general 's use of the consent form and procedure for authorizing the interception of oral or wire communications under *N.J. Stat. Ann. § 2A:156A-4(c)* did not amount to an administrative rule for the purposes of *N.J. Stat. Ann. § 52:14B-2. State v. Laurence, 259 N.J. Super. 225, 611 A.2d 1164, 1992 N.J. Super. LEXIS 323 (Law Div. 1992).*

49. Director of the Tax Division's decision to delete corporation's safe-harbor-lease property from the allocation fraction did not constitute administrative rule-making within the meaning of the *N.J. Stat. Ann. 52:14B-2(e)* of New Jersey Administrative Procedure Act because the agency's determination did not meet most of the factors required by the applicable common-law test. *Reuben H. Donnelley Corp. v. Director, Division of Taxation, 128 N.J. 218, 607 A.2d 1281, 1992 N.J. LEXIS 385 (1992).*

50. Under *N.J. Stat. Ann. § 52:14B-2*, Council on Affordable Housing is an "agency," because it was authorized by statute to make, adopt, or promulgate rules or adjudicate contested cases. *Bernards v. State, Dep't of Community Affairs, 233 N.J. Super. 1, 558 A.2d 1, 1989 N.J. Super. LEXIS 148 (App.Div. 1989).*

51. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have treated the allocation as an administrative rule subject to the provisions of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2(e). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

52. *N.J. Stat. Ann. § 39:4-120* vested only the Department of Transportation with the power to approve the installation of a traffic control signal at an intersection of a street in the municipality and thus no hearing was required as to the department's decision to install such traffic signal; the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., did not create a substantive right on the part of a municipality to a hearing on such decision, nor was such decision a contested case within the meaning of *N.J. Stat. Ann. § 52:14B-2(b). Cedar Grove v. Sheridan, 209 N.J. Super. 267, 507 A.2d 304, 1986 N.J. Super. LEXIS 1211 (App.Div. 1986).*

53. Contested case as defined in *N.J. Stat. Ann. § 52:14B-2(b)* is one requiring a statutory or constitutional right. *Cedar Grove v. Sheridan, 209 N.J. Super. 267, 507 A.2d 304, 1986 N.J. Super. LEXIS 1211 (App.Div. 1986).*

54. Administrative order of the state Department of Environmental Protection (agency), though referred to by the agency as a "policy statement," was a rule and thus was subject to the procedural requirements for adoption set forth in the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq.; the rule satisfied the definition thereof under *N.J. Stat. Ann. § 52:14B-2(e)* and the six factor common law standard to be applied in interpreting *N.J. Stat. Ann. § 52:14B-2(e). Woodland Private Study Group v. State, Dep't of Environmental Protection, 209 N.J. Super. 261, 507 A.2d 300, 1986 N.J. Super. LEXIS 1216, 16 Envtl. L. Rep. 20645 (App.Div. 1986),* affirmed by *109 N.J. 62, 533 A.2d 387, 1987 N.J. LEXIS 373, 27 Env't Rep. Cas. (BNA) 1834, 18 Envtl. L. Rep. 20263 (1987).*

55. Because the New Jersey Board of Higher Education's adoption of a resolution, regarding a student-faculty funding ratio and a budgetary calendar, was not rule-making within the contemplation of the Administrative Procedure Act, a professors' appeal from the resolution was dismissed. *Rutgers Council of American Asso. of University Professors v. New Jersey Board of Higher Education, 126 N.J. Super. 53, 312 A.2d 677, 1973 N.J. Super. LEXIS 385, 85 L.R.R.M. (BNA) 2214, 72 Lab. Cas. (CCH) P53215 (App.Div. 1973).*

56. The Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., was never intended to apply to parole release proceedings conducted in accordance with *N.J. Stat. Ann. § 30:4-106* et seq., and did not entitle parolees to detailed findings of fact in connection with parole denials, as these were not contested cases. *Beckworth v. New Jersey State Parole Bd., 62 N.J. 348, 301 A.2d 727, 1973 N.J. LEXIS 251 (1973).*

57. Approval by the New Jersey State Board of Medical Examiners (Board) of a chiropractic school's application for approval was proper although the Board did not file findings of fact or conclusions of law, where the Board did not hear the matter as a contested hearing as defined by *N.J. Stat. Ann. § 52:14B-2(b)* of the *New Jersey Administrative Procedure Act. In re Sherman College of Straight Chiropractic, 164 N.J. Super. 519, 397 A.2d 362, 1979 N.J. Super. LEXIS 531 (App.Div. 1979).*

58. "Lewdness or immorality" for purposes of the alcoholic beverage licensing regulations, *N.J. Admin. Code tit. 13, § 2-23.6*, was not vague, ambiguous, or unconstitutional; the Administrative Procedure Act, *N.J. Stat. Ann. §*

52:14B-2, did not preclude the use of contested case decisions as illustrative of lewd and immoral conduct or as precedent and the criminal law definition set forth in *N.J. Stat. Ann. § 2C:14-4* of lewd did not apply to the regulations. *G. & J.K. Enterprises, Inc. v. Division of Alcoholic Beverage Control, 205 N.J. Super. 77, 500 A.2d 43, 1985 N.J. Super. LEXIS 1514 (App.Div. 1985).*

59. In an appeal from a decision of the New Jersey Transit Corporation (NJT) denying an applicant eligibility for Access Link paratransit services, applicant was not entitled to have the argument, that the NJT administrative hearing should have been a contested case under New Jersey's Administrative Procedure Act (APA), *N.J.S.A. § 52:14B-2(b)*, considered because the applicant did not seek to have his case referred to the Office of Administrative Law for a hearing under the APA pursuant to the procedures set forth in *N.J.A.C. 1:1-1.1* to *-21.6*; thus, the applicant did not raise the issue before the *NJT. Sell v. New Jersey Transit Corp., 298 N.J. Super. 640, 689 A.2d 1386, 1997 N.J. Super. LEXIS 123, 6 Am. Disabilities Cas. (BNA) 821, 20* Am. Disabilities Dec. 704 (App.Div. 1997).

60. Since a decision by the New Jersey Department of Environmental Protection to either grant or deny a general permit under the Freshwater Wetlands Protection Act, *N.J. Stat. Ann. § 13:9B-1* to -30, constituted an "administrative adjudication" under *N.J. Stat. Ann. § 52:14B-2(c)* that afforded the permit applicant the opportunity to contest that decision at a hearing, the Department's decision was part of a quasi-judicial procedure that required the Department to make sufficient findings of fact to allow judicial review. *In re Freshwater Wetlands General Permits, 372 N.J. Super. 578, 860 A.2d 450, 2004 N.J. Super. LEXIS 404 (App.Div. 2004).*

61. Trial court properly ordered a parent's consolidated Department of Education (DOE) due process and discrimination complaints, asserting that a local school failed to comply with her disabled son's individual education plan (IEP), remanded to the DOE, as the trial court lacked jurisdiction from the outset to hear an appeal from an administrative agency. Since the trial court lacked jurisdiction to hear the interlocutory administrative appeal in the first instance and the DOE, through the Office of Administrative Law, was vested with authority to hear the parent's due process petition respecting the IEP, the cases should not have been consolidated after the unsuccessful mediation to the trial court. *D.G. v. North Plainfield Bd. of Educ., 400 N.J. Super. 1, 945 A.2d 707, 2008 N.J. Super. LEXIS 80 (App.Div. 2008).*

62. As no statute authorizes county correctional facilities to adjudicate contested cases and promulgate rules, they are not state agencies under *N.J. Stat. Ann. § 52:14B-2(a)*; and as they have no jurisdiction to exercise any authority beyond the county, they are agencies with only local authority. Therefore, an inmate's appeal from a county correctional facility's disciplinary action must be filed in the superior court law division as an action in lieu of prerogative writs. *Selobyt v. Keough-Dwyer Correctional Facility of Sussex County, 375 N.J. Super. 91, 866 A.2d 1018, 2005 N.J. Super. LEXIS 52 (App.Div. 2005).*

63. County did not have standing to challenge a disability retirement award by the Board of Trustees of the Public Employees Retirement System under *N.J. Stat. Ann. § 52:14B-2* merely because county entered into a private agreement conditioning eligibility for benefits on findings by the Board; although county had a stake in the proceedings, it did not have an adverse interest. *Camden County v. Board of Trustees of the Pub. Emples. Retirement Sys., 334 N.J. Super. 624, 760 A.2d 808, 2000 N.J. Super. LEXIS 380 (App.Div. 2000),* reversed by *170 N.J. 439, 790 A.2d 158, 2002 N.J. LEXIS 50 (2002).*

64. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

65. For purposes of judicial review, the Port Authority Employment Relations Panel is an administrative agency, and Panel decisions presumptively are worthy of the deference afforded decisions by administrative agencies. Port Auth. of New York and New Jersey v. Port Auth. Empl. Rels. Panel (In re Alleged Improper Practice Under Section XI,

Paragraph A(d) of the Port Authority Labor Relations Instruction), *194 N.J. 314, 944 A.2d 611, 2008 N.J. LEXIS 313, 184 L.R.R.M. (BNA) 2016 (2008).*

66. Final agency determination of the Department of Human Services declaring a claimant ineligible to receive Work First New Jersey/Temporary Assistance for Needy Families (WFNJ/TANF) benefits for her family because she also received benefits from the Subsidized Adoption Program (SAP) for her two adopted children was erroneous since the decision was based on an instruction issued by the agency that SAP benefits were duplicative of the WFNJ/TANF benefits. The instruction was held not a valid basis to determine eligibility because it operated as a rule and was not adopted in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* -- 15. *B.H. v. New Jersey, Dep't of Human Servs., 400 N.J. Super. 418, 947 A.2d 698, 2008 N.J. Super. LEXIS 120 (App.Div. 2008).*

67. Although the New Jersey Board of Public Utilities issued a decision on securitization, i.e., the structuring and pricing of transition bonds, which were used to reduce stranded costs, without conducting hearings, given the provisions of *N.J. Stat. Ann. § 52:14B-9, N.J. Stat. Ann. § 52:14B-2,* and *N.J. Stat. Ann. § 48:3-64,* and the fact that *N.J. Stat. Ann. § 48:3-64* did not require a hearing and referred back to *N.J. Stat. Ann. § 48:3-62,* which did not require a hearing, and *N.J. Stat. Ann. § 48:3-64* did not refer back to *N.J. Stat. Ann. § 48:3-61,* which did require a hearing, the failure of the Board to conduct a hearing was not error. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

68. Under *N.J. Stat. Ann. § 52:14B-2(d)* of the New Jersey Administrative Procedure Act, the New Jersey Delaware and Raritan Canal Commission, not the New Jersey Department of Environmental Protection, is the "head of the agency" and has the exclusive power to determine a review zone and to approve, reject, or modify any project within it. *Infinity Outdoor, Inc. v. Delaware and Raritan Canal Com'n, 388 N.J. Super. 278, 907 A.2d 1018, 2006 N.J. Super. LEXIS 278 (App.Div. 2006).*

69. In an appeal from a decision of the New Jersey Transit Corporation (NJT) denying an applicant eligibility for Access Link paratransit services, applicant was not entitled to have the argument, that the NJT administrative hearing should have been a contested case under New Jersey's Administrative Procedure Act (APA), *N.J.S.A. § 52:14B-2(b),* considered because the applicant did not seek to have his case referred to the Office of Administrative Law for a hearing under the APA pursuant to the procedures set forth in *N.J.A.C. 1:1-1.1* to *-21.6*; thus, the applicant did not raise the issue before the *NJT. Sell v. New Jersey Transit Corp., 298 N.J. Super. 640, 689 A.2d 1386, 1997 N.J. Super. LEXIS 123, 6 Am. Disabilities Cas. (BNA) 821, 20* Am. Disabilities Dec. 704 (App.Div. 1997).

70. Contested case as defined in *N.J. Stat. Ann. § 52:14B-2(b)* is one requiring a statutory or constitutional right. *Cedar Grove v. Sheridan, 209 N.J. Super. 267, 507 A.2d 304, 1986 N.J. Super. LEXIS 1211 (App.Div. 1986).*

71. Property owner who was denied a permit for state highway access had a right to a hearing under the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to *52:14B-15,* to review and contest all the evidence before the State Department of Transportation and to cross-examine all expert witnesses. *High Horizons Dev. Co. v. State, DOT, 120 N.J. 40, 575 A.2d 1360, 1990 N.J. LEXIS 81 (1990).*

72. "Lewdness or immorality" for purposes of the alcoholic beverage licensing regulations, *N.J. Admin. Code tit. 13, § 2-23.6,* was not vague, ambiguous, or unconstitutional; the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2,* did not preclude the use of contested case decisions as illustrative of lewd and immoral conduct or as precedent and the criminal law definition set forth in *N.J. Stat. Ann. § 2C:14-4* of lewd did not apply to the regulations. *G. & J.K. Enterprises, Inc. v. Division of Alcoholic Beverage Control, 205 N.J. Super. 77, 500 A.2d 43, 1985 N.J. Super. LEXIS 1514 (App.Div. 1985).*

73. Court concluded that assuming that the imposition of the $15 fee was a "rule," no rulemaking procedures were necessary under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2,* because the existing regulation for the purpose of processing criminal history name search identification checks, *N.J. Admin. Code § 13:59-1.3(b),* was sufficiently broad to encompass authority to charge the same fee for national instant criminal background check system (NICS) checks. *Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 763 A.2d 295, 2000 N.J. Super. LEXIS 447 (App.Div. 2000).*

74. Under the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., inmates were entitled to a contested case hearing before an administrative law judge only if the prison disciplinary sanctions they were challenging involved the loss of 365 days or more of time credits. *Zeltner v. New Jersey Dep't of Corrections, 201 N.J. Super. 195, 492 A.2d 1084, 1985 N.J. Super. LEXIS 1287 (App.Div. 1985).*

75. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

76. Commissioner of Education concluded that a school district claim was purely legal in nature and did not present any material issue of fact that would require a contested case hearing before an administrative law judge consistent with N.J. Stat. Ann. § 52:14B- 2(b). *Sloan v. Klagholtz, 342 N.J. Super. 385, 776 A.2d 894, 2001 N.J. Super. LEXIS 271 (App.Div. 2001).*

77. Because the New Jersey Board of Higher Education's adoption of a resolution, regarding a student-faculty funding ratio and a budgetary calendar, was not rule-making within the contemplation of the Administrative Procedure Act, a professors' appeal from the resolution was dismissed. *Rutgers Council of American Asso. of University Professors v. New Jersey Board of Higher Education, 126 N.J. Super. 53, 312 A.2d 677, 1973 N.J. Super. LEXIS 385, 85 L.R.R.M. (BNA) 2214, 72 Lab. Cas. (CCH) P53215 (App.Div. 1973).*

78. Trial court properly ordered a parent's consolidated Department of Education (DOE) due process and discrimination complaints, asserting that a local school failed to comply with her disabled son's individual education plan (IEP), remanded to the DOE, as the trial court lacked jurisdiction from the outset to hear an appeal from an administrative agency. Since the trial court lacked jurisdiction to hear the interlocutory administrative appeal in the first instance and the DOE, through the Office of Administrative Law, was vested with authority to hear the parent's due process petition respecting the IEP, the cases should not have been consolidated after the unsuccessful mediation to the trial court. *D.G. v. North Plainfield Bd. of Educ., 400 N.J. Super. 1, 945 A.2d 707, 2008 N.J. Super. LEXIS 80 (App.Div. 2008).*

79. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a),* which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

80. Neither procedural due process nor the APA required the N.J. Board of Public Utilities to provide particularized notice of its specific intention to make a policy determination with respect to accelerated amortization of deferred energy balance, and the resolution of the unique policy question presented in the aftermath of the Three Mile Island incident would not have been aided by the furnishing of a more explicit notice on the matter. *In re Petition of Jersey Cent. Power & Light Co., 85 N.J. 520, 428 A.2d 498, 1981 N.J. LEXIS 1603 (1981).*

81. Although the New Jersey Board of Public Utilities issued a decision on securitization, i.e., the structuring and pricing of transition bonds, which were used to reduce stranded costs, without conducting hearings, given the provisions of *N.J. Stat. Ann. § 52:14B-9, N.J. Stat. Ann. § 52:14B-2,* and *N.J. Stat. Ann. § 48:3-64,* and the fact that *N.J. Stat. Ann. § 48:3-64* did not require a hearing and referred back to *N.J. Stat. Ann. § 48:3-62,* which did not require a hearing, and *N.J. Stat. Ann. § 48:3-64* did not refer back to *N.J. Stat. Ann. § 48:3-61,* which did require a hearing, the failure of the Board to conduct a hearing was not error. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

82. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation under *N.J. Stat. Ann. § 52:14B-2(e)* and violated the Administrative Procedure Act, *N.J. Stat. Ann. § 56:6-2(e). Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

83. Action by the New Jersey Natural Resource Council (Council) of the Division of Marine Services of the New Jersey Department of Environmental Protection for the grant of a license to an electric company to lay a submarine cable under tideland waters was not an exercise of the Council's rule making function as defined in *N.J. Stat. Ann. § 52:14B-2(e)* of the New Jersey Administrative Procedure Act (Act), *N.J. Stat. Ann. § 52:14B-1* et seq.; thus, the notice and hearing provisions of *N.J. Stat. Ann. § 52:14B-4(a)* of the Act did not *apply. Atlantic City Electric Co. v. Bardin, 145 N.J. Super. 438, 368 A.2d 366, 1976 N.J. Super. LEXIS 631, 7 Envtl. L. Rep. 20297 (App.Div. 1976).*

84. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

85. Notice of violation of the Solid Waste Management Act issued by the Department of Environmental Protection, which orders the immediate cessation of operation of a solid waste facility, is an order of abatement within the intent of *N.J. Stat. Ann. §13:1E-9(c)*, which entitles the recipient to an administrative hearing to challenge the violation. *Gloucester County Imp. Authority v. New Jersey Dep't of Environmental Protection, 391 N.J. Super. 244, 917 A.2d 833, 2007 N.J. Super. LEXIS 79 (App.Div. 2007).*

86. "Lewdness or immorality" for purposes of the alcoholic beverage licensing regulations, *N.J. Admin. Code tit. 13, § 2-23.6*, was not vague, ambiguous, or unconstitutional; the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2*, did not preclude the use of contested case decisions as illustrative of lewd and immoral conduct or as precedent and the criminal law definition set forth in *N.J. Stat. Ann. § 2C:14-4* of lewd did not apply to the regulations. *G. & J.K. Enterprises, Inc. v. Division of Alcoholic Beverage Control, 205 N.J. Super. 77, 500 A.2d 43, 1985 N.J. Super. LEXIS 1514 (App.Div. 1985).*

87. For purposes of judicial review, the Port Authority Employment Relations Panel is an administrative agency, and Panel decisions presumptively are worthy of the deference afforded decisions by administrative agencies. Port Auth. of New York and New Jersey v. Port Auth. Empl. Rels. Panel (In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction), *194 N.J. 314, 944 A.2d 611, 2008 N.J. LEXIS 313, 184 L.R.R.M. (BNA) 2016 (2008).*

88. Radio stations' appeal of the New Jersey Meadowlands Commission's quasi-legislative resolution to amend a developer's redevelopment agreement to allow taller buildings was dismissed since the Commission gave public notice, gave sufficient information about the proposed amendment to allow for meaningful objections or comments, held public hearings, and accepted written and oral comments; it was permissible for the Commission to rely on undisclosed communications from the developer and on its staff recommendations. If the stations wanted to litigate their specific broadcast signal interruption taking or reverse taking claims, they had to do so in a judicial action in the *Superior Court of New Jersey, Law Division. Infinity Broadcasting Corp. v. New Jersey Meadowlands Comm'n, 377 N.J. Super. 209, 872 A.2d 125, 2005 N.J. Super. LEXIS 140 (App.Div. 2005)*, affirmed in part and reversed in part by *187 N.J. 212, 901 A.2d 312, 2006 N.J. LEXIS 1052 (2006).*

89. Under *N.J. Stat. Ann. § 52:14B-2(d)* of the New Jersey Administrative Procedure Act, the New Jersey Delaware and Raritan Canal Commission, not the New Jersey Department of Environmental Protection, is the "head of the agency" and has the exclusive power to determine a review zone and to approve, reject, or modify any project within it. *Infinity Outdoor, Inc. v. Delaware and Raritan Canal Com'n, 388 N.J. Super. 278, 907 A.2d 1018, 2006 N.J. Super. LEXIS 278 (App.Div. 2006).*

90. The trial court erred in affirming a decision of the state board of medical examiners which revoked the physician's license under *N.J. Stat. Ann. § 45:1-21* after he pled guilty to an offense that arguably implicated moral turpitude; pursuant to *N.J. Stat. Ann. § 52:14B-11* and *N.J. Stat. Ann. § 52:14B-2(b)*, the physician had a right to a plenary hearing at which he would be allowed to present evidence. *In re Fanelli, 174 N.J. 165, 803 A.2d 1146, 2002 N.J. LEXIS 1109, 29 Employee Benefits Cas. (BNA) 1155 (2002).*

91. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the

foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

92. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have treated the allocation as an administrative rule subject to the provisions of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2(e). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

93. Decision by the Division of Medical Assistance and Health Services of the Department of Human Services that reimbursement rate appeals were to be submitted only by hospitals and not by consulting companies was a rule change pursuant to *N.J. Stat. Ann. § 52:14B-2(e)* which required that such determination be made after a rulemaking process. *Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003).*

94. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have treated the allocation as an administrative rule subject to the provisions of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-2(e). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

95. Because "insurer" included a group of affiliated insurers, the New Jersey Commissioner of Insurance's change of a reporting policy consistent with the reporting regulations should have been effected through the rule-making procedures of *N.J. Stat. Ann. § 52:14B-2(e). American Employers' Ins. Co. v. Commissioner of Ins., Dep't of Ins., 236 N.J. Super. 428, 566 A.2d 202, 1989 N.J. Super. LEXIS 380 (App.Div. 1989).*

96. In an appeal from an action of the New Jersey Council on Affordable Housing (COAH), the Superior Court of New Jersey, Appellate Division, remanded the matter to COAH for transmittal of the matter to the Office of Administrative Law (OAL) pursuant to *N.J. Stat. Ann. § 52:27D-315(c)* and *N.J. Stat. Ann. § 52:14B-2(b)* because there existed an issue of fact that, on its face, appeared to be material and contested: whether the rezoning of the property of two operating country clubs provided a realistic opportunity for the construction of 700 units of affordable housing. *Quad Enterprises v. Paramus, 250 N.J. Super. 256, 593 A.2d 1227, 1991 N.J. Super. LEXIS 272 (App.Div. 1991).*

97. Administrative Procedure Act did not apply to an amendment of a congressionally authorized agreement between the federal and state government for the state's Medicaid plan; nor did the agreement fall within the definition of "an administrative rule." *Klein v. County of Hudson, 187 N.J. Super. 603, 455 A.2d 583, 1980 N.J. Super. LEXIS 838 (Law Div. 1980),* affirmed by *187 N.J. Super. 433, 455 A.2d 491, 1982 N.J. Super. LEXIS 956 (App.Div. 1982).*

98. Final agency determination of the Department of Human Services declaring a claimant ineligible to receive Work First New Jersey/Temporary Assistance for Needy Families (WFNJ/TANF) benefits for her family because she also received benefits from the Subsidized Adoption Program (SAP) for her two adopted children was erroneous since the decision was based on an instruction issued by the agency that SAP benefits were duplicative of the WFNJ/TANF benefits. The instruction was held not a valid basis to determine eligibility because it operated as a rule and was not adopted in accordance with the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* -- 15. *B.H. v. New Jersey, Dep't of Human Servs., 400 N.J. Super. 418, 947 A.2d 698, 2008 N.J. Super. LEXIS 120 (App.Div. 2008).*

99. Director of the Tax Division's decision to delete corporation's safe-harbor-lease property from the allocation fraction did not constitute administrative rule-making within the meaning of the *N.J. Stat. Ann. 52:14B-2(e)* of New Jersey Administrative Procedure Act because the agency's determination did not meet most of the factors required by the applicable common-law test. *Reuben H. Donnelley Corp. v. Director, Division of Taxation, 128 N.J. 218, 607 A.2d 1281, 1992 N.J. LEXIS 385 (1992).*

100. *N.J. Stat. Ann. § 39:4-120* vested only the Department of Transportation with the power to approve the installation of a traffic control signal at an intersection of a street in the municipality and thus no hearing was required as to the department's decision to install such traffic signal; the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., did not create a substantive right on the part of a municipality to a hearing on such decision, nor was such decision a contested case within the meaning of *N.J. Stat. Ann. § 52:14B-2(b). Cedar Grove v. Sheridan, 209 N.J. Super. 267, 507 A.2d 304, 1986 N.J. Super. LEXIS 1211 (App.Div. 1986).*

PRACTICE GUIDES & TREATISES

1. *Employment Litigation in New Jersey § 9.05*[11], Administrative Hearings at Office of Administrative Law

NJ ICLE

1. *New Jersey Environmental Law 4.32* Other CAFRA Cases

LAW REVIEWS & JOURNALS

1. *7 Seton Hall Const. L.J. 913,* COMMENT: MEGAN'S LAW: PROTECTING THE VULNERABLE OR UNCONSTITUTIONALLY PUNISHING SEX OFFENDERS?

2. *30 Seton Hall L. Rev. 715,* A TRIBUTE TO JUSTICE ALAN B. HANDLER: Justice Alan B. Handler: The Jurist as Scholar, Teacher, Craftsman, and Statesman.

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N.J. Stat. § 52:14B-3 (2008)

§ 52:14B-3. Additional requirements for rule-making

In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures;

(3) make available for public inspection all final orders, decisions, and opinions, in accordance with the provisions of chapter 73 of the laws of 1963 as amended and supplemented (*C. 47:1A-1* et seq.);

(4) publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rule-making activities for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rule-making action and a synopsis of the subject matter and the objective or purpose of the agency's proposed rules.

In a manner prescribed by the Director of the Office of Administrative Law, each agency shall appropriately publicize that copies of its calendar are available to interested persons for a reasonable fee. The amount of the fee shall be set by the director.

An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rule-making activities. Any amendment which involves the addition of any rule-making activity to an agency's calendar shall provide that the agency shall take no action on that matter until at least 45 days following the first publication of the amended calendar in which the announcement of that proposed rule-making activity first appears.

The provisions of this paragraph shall not apply to rule-making:

(a) required or authorized by federal law when failure to adopt rules in a timely manner will prejudice the State;

(b) subject to a specific statutory authorization requiring promulgation in a lesser time period;

(c) involving an imminent peril subject to provisions of subsection (c) of section 4 of P.L. 1968, c. 410 (*C. 52:14B-4*);

(d) for which the agency has published a notice of pre-proposal of a rule in accordance with rules adopted by the Director of the Office of Administrative Law; or

(e) for which a comment period of at least 60 days is provided.

A proposed rule falling within any of the exceptions to the provisions of this subsection shall so indicate in the notice of proposal.

HISTORY: L. 1968, c. 410, § 3; amended 2001, c. 5, § 1, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

Adoption, amendment, repeal of rules, see *52:14B-4*.

Administrative Code:

1. *N.J.A.C. 1:30-1.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Definitions.

2. *N.J.A.C. 1:30-5.4*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Opportunity to be heard.

3. *N.J.A.C. 1:30-5.5*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Public hearings.

4. *N.J.A.C. 2:1*, CHAPTER 1. ADMINISTRATION, 2, Chapter 1 -- Chapter Notes.

5. *N.J.A.C. 6A:2*, CHAPTER 2. COMMISSIONER, 6A, Chapter 2 -- Chapter Notes.

6. *N.J.A.C. 7:1D*, CHAPTER 1D. GENERAL PRACTICE AND PROCEDURE, 7, Chapter 1D -- Chapter Notes.

7. *N.J.A.C. 7:1D-5.4*, CHAPTER 1D. GENERAL PRACTICE AND PROCEDURE, Notice of rulemaking calendar.

8. *N.J.A.C. 10:1*, CHAPTER 1. ORGANIZATIONAL RULES; RULES OF PRACTICE; PETITION FOR RULEMAKING, 10, Chapter 1 -- Chapter Notes.

9. *N.J.A.C. 10:80*, CHAPTER 80. ORGANIZATION OF THE DIVISION OF FAMILY DEVELOPMENT, 10, Chapter 80 -- Chapter Notes.

10. *N.J.A.C. 10:91*, CHAPTER 91. ORGANIZATION AND GENERAL POLICY PROVISIONS OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED, 10, Chapter 91 -- Chapter Notes.

11. *N.J.A.C. 10:94*, CHAPTER 94. PREVENTION SERVICES PROGRAM OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED, 10, Chapter 94 -- Chapter Notes.

12. *N.J.A.C. 10:150*, CHAPTER 150. ORGANIZATION OF THE DIVISION OF THE DEAF AND HARD OF HEARING, 10, Chapter 150 -- Chapter Notes.

13. *N.J.A.C. 10:160*, CHAPTER 160. DIVISION OF ADDICTION SERVICES: ORGANIZATIONAL RULES, 10, Chapter 160 -- Chapter Notes.

14. *N.J.A.C. 13:1E*, CHAPTER 1E. DEPARTMENT OF LAW AND PUBLIC SAFETY, 13, Chapter 1E -- Chapter Notes.

15. *N.J.A.C. 15A:1*, CHAPTER 1. DEPARTMENT OF THE PUBLIC ADVOCATE, 15A, Chapter 1 -- Chapter Notes.

16. *N.J.A.C. 16:65*, CHAPTER 65. TRANSPORTATION UTILITIES, 16, Chapter 65 -- Chapter Notes.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 3 -- 1977, *1977 N.J. AG LEXIS 24*.

CASE NOTES

1. Neither *N.J. Stat. Ann. § 27:7-35.11* of the preclassification statute, which authorizes the Commissioner to establish such reasonable regulations as he may deem appropriate for controlling the qualifications of prospective bidders, nor *N.J. Stat. Ann. § 52:14B-3*, part of the Administrative Procedure Act that requires each agency to adopt certain rules, can be read expressly to call for a definition of moral responsibility regarding prospective bidders. *Trap Rock Indus. v. Kohl, 59 N.J. 471, 284 A.2d 161, 1971 N.J. LEXIS 202 (1971),* writ of certiorari denied by *405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796, 1972 U.S. LEXIS 2920 (1972),* questioned by *Waste Conversion v. Sims, 868 F. Supp. 643, 1994 U.S. Dist. LEXIS 16503 (D.N.J. 1994).*

2. New Jersey Racing Commission violated *N.J. Stat. Ann. § 52:14B-3(2)* of the New Jersey Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -25, because it did not adopt regulations describing the procedures governing submission and consideration of applications for shares of the New Jersey Casino Simulcasting Special Fund under *N.J. Stat. Ann. § 5:12-205(d).* In re Consider Distribution of Casino Simulcasting Special Fund (Accumulated in 2005), *398 N.J. Super. 7, 939 A.2d 230, 2008 N.J. Super. LEXIS 26 (App.Div. 2008).*

3. Neither *N.J. Stat. Ann. § 27:7-35.11* of the preclassification statute, which authorizes the Commissioner to establish such reasonable regulations as he may deem appropriate for controlling the qualifications of prospective bidders, nor *N.J. Stat. Ann. § 52:14B-3*, part of the Administrative Procedure Act that requires each agency to adopt certain rules, can be read expressly to call for a definition of moral responsibility regarding prospective bidders. *Trap Rock Indus. v. Kohl, 59 N.J. 471, 284 A.2d 161, 1971 N.J. LEXIS 202 (1971),* writ of certiorari denied by *405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796, 1972 U.S. LEXIS 2920 (1972),* questioned by *Waste Conversion v. Sims, 868 F. Supp. 643, 1994 U.S. Dist. LEXIS 16503 (D.N.J. 1994).*

4. Where a State Commissioner of Transportation suspended contractors' bids after the contractors were indicted on criminal charges, the suspensions were proper; neither *N.J. Stat. Ann. § 27:7-35.11*, which authorized the Commissioner to establish such reasonable regulations as he deemed appropriate for controlling the qualifications of prospective bidders, nor *N.J. Stat. Ann. § 52:14B-3* of the Administrative Procedure Act, which required each agency to adopt certain rules, could be read expressly to call for a definition of moral responsibility, as was argued by the contractors. *Trap Rock Indus. v. Kohl, 59 N.J. 471, 284 A.2d 161, 1971 N.J. LEXIS 202 (1971),* writ of certiorari denied by *405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796, 1972 U.S. LEXIS 2920 (1972),* questioned by *Waste Conversion v. Sims, 868 F. Supp. 643, 1994 U.S. Dist. LEXIS 16503 (D.N.J. 1994).*

5. Neither *N.J. Stat. Ann. § 27:7-35.11* of the preclassification statute, which authorizes the Commissioner to establish such reasonable regulations as he may deem appropriate for controlling the qualifications of prospective bidders, nor *N.J. Stat. Ann. § 52:14B-3*, part of the Administrative Procedure Act that requires each agency to adopt certain rules, can be read expressly to call for a definition of moral responsibility regarding prospective bidders. *Trap Rock Indus. v. Kohl, 59 N.J. 471, 284 A.2d 161, 1971 N.J. LEXIS 202 (1971),* writ of certiorari denied by *405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796, 1972 U.S. LEXIS 2920 (1972),* questioned by *Waste Conversion v. Sims, 868 F. Supp. 643, 1994 U.S. Dist. LEXIS 16503 (D.N.J. 1994).*

LAW REVIEWS & JOURNALS

1. *30 Seton Hall L. Rev. 715,* A TRIBUTE TO JUSTICE ALAN B. HANDLER: Justice Alan B. Handler: The Jurist as Scholar, Teacher, Craftsman, and Statesman.

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N.J. Stat. § 52:14B-3.1 (2008)

§ 52:14B-3.1. Findings, declarations

The Legislature finds and declares that:

a. Under the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.) all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision;

b. Persons who have particularized property interests or who are directly affected by a permitting decision have constitutional and statutory rights and remedies;

c. To allow State agencies without specific statutory authorization to promulgate rules and regulations which afford third parties, who have no particularized property interests or who are not directly affected by a permitting decision, to appeal that decision would give rise to a chaotic unpredictability and instability that would be most disconcerting to New Jersey's business climate and would cripple economic development in our State; and

d. It is, therefore, altogether fitting and proper, and within the public interest, to prohibit State agencies from promulgating rules and regulations which would allow third party appeals of permit decisions unless specifically authorized to do so by federal law or State statute.

HISTORY: L. 1993, c. 359, § 1.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:1C-1.9*, CHAPTER 1C. NINETY-DAY CONSTRUCTION PERMITS, Appeals.

2. *N.J.A.C. 7:7-5.1*, CHAPTER 7. COASTAL PERMIT PROGRAM RULES, Hearing request.

3. *N.J.A.C. 7:7A-1.7*, CHAPTER 7A. FRESHWATER WETLANDS PROTECTION ACT RULES, Hearings and appeals.

4. *N.J.A.C. 7:13-18.1*, CHAPTER 13. FLOOD HAZARD AREA CONTROL ACT RULES, Requests for adjudicatory hearings.

5. *N.J.A.C. 7:14A-22.24*, CHAPTER 14A. POLLUTANT DISCHARGE ELIMINATION SYSTEM, Requests for adjudicatory hearings.

6. *N.J.A.C. 7:14B-10.8*, CHAPTER 14B. UNDERGROUND STORAGE TANKS, Grounds for denial or revocation of permits.

7. *N.J.A.C. 7:14D-3.1*, CHAPTER 14D. DETERMINATION OF ENVIRONMENTAL BENEFIT OF THE REUSE OF FURTHER TREATED EFFLUENT IN INDUSTRIAL FACILITIES, Requests for adjudicatory hearings.

8. *N.J.A.C. 7:19-7.4*, CHAPTER 19. WATER SUPPLY ALLOCATION PERMITS, Appeal procedure.

9. *N.J.A.C. 7:25-6.28*, CHAPTER 25. DIVISION OF FISH AND WILDLIFE RULES, Requests for adjudicatory hearings.

10. *N.J.A.C. 7:25-14.21*, CHAPTER 25. DIVISION OF FISH AND WILDLIFE RULES, Request for adjudicatory hearing.

11. *N.J.A.C. 7:25-18.17*, CHAPTER 25. DIVISION OF FISH AND WILDLIFE RULES, Request for adjudicatory hearing.

12. *N.J.A.C. 7:38-1.5*, CHAPTER 38. HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES, Requests for adjudicatory hearings.

13. *N.J.A.C. 7:62-4.4*, CHAPTER 62. LANDSCAPE IRRIGATION CONTRACTORS, Enforcement.

14. *N.J.A.C. 19:4-4.19*, NEW JERSEY MEADOWLANDS COMMISSION, Appeals.

LexisNexis (R) Notes:

CASE NOTES

1. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

2. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

3. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

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N.J. Stat. § 52:14B-3.2 (2008)

§ 52:14B-3.2. Definitions

As used in this act:

"Permit decision" means a decision by a State agency to grant, deny, modify, suspend or revoke any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"State agency" or "agency" means and includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, councils, authorities, offices or officers within any such departments which are authorized to grant, deny, modify, suspend, or revoke a license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"Third party" means any person other than:

a. An applicant for any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law;

b. A State agency; or

c. A person who has particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

HISTORY: L. 1993, c. 359, § 2.

LexisNexis (R) Notes:

CASE NOTES

1. Under the expansive definition of a third party provided for in *N.J. Stat. Ann. § 52:14B-3.2(c)*, the grant of a variance by the New Jersey Meadowlands Commission constitutes a decision by a State of New Jersey agency to grant an agency approval or other form of permission required by law. Because *N.J. Stat. Ann. § 52:14B-3.3* bars a state agency from promulgating any rule or regulation that would allow a third party to appeal a permit decision, contestors to the grant of a variance permit are entitled to an Office of Administrative Law hearing only if they can show that they are not a third party within the intent § *52:14B-3.2(c). In re AMICO/Tunnel Carwash, 371 N.J. Super. 199, 852 A.2d 277, 2004 N.J. Super. LEXIS 317 (App.Div. 2004).*

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N.J. Stat. § 52:14B-3.3 (2008)

§ 52:14B-3.3. Appeal of permit decision by third party

a. Except as otherwise required by federal law or by a statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal a permit decision.

b. Nothing herein shall be construed as abrogating or otherwise limiting any person's constitutional and statutory rights to appeal a permit decision.

HISTORY: L. 1993, c. 359, § 3.

LexisNexis (R) Notes:

CASE NOTES

1. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

2. *N.J. Stat. Ann. § 52:14B-3.3(a)* withdraws the power of an administrative agency to adopt a rule or regulation that authorizes a hearing before the *Office of Administrative Law. In re AMICO/Tunnel Carwash, 371 N.J. Super. 199, 852 A.2d 277, 2004 N.J. Super. LEXIS 317 (App.Div. 2004).*

3. Definition of a third party, who is precluded from appealing a permit decision, excludes any person who has a particularized property interest sufficient to require a hearing on constitutional or statutory grounds. Adjoining landowners had no particularized property interest with regard to the decision of the New Jersey Meadowlands Commission, which approved a developer's variance applications to build a car wash on his land, as *N.J. Stat. Ann. § 52:14B-3.3(a)* abolished a third party's right, such as the adjoining landowners, to obtain a hearing as objectors. *In re AMICO/Tunnel Carwash, 371 N.J. Super. 199, 852 A.2d 277, 2004 N.J. Super. LEXIS 317 (App.Div. 2004).*

4. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

5. Because the neighbors received a trial-type hearing before a planning board under *N.J. Stat. Ann. § 40:55D-10(d)*, *N.J. Stat. Ann. § 52:14B-3.1*, and *N.J. Stat. Ann. § 52:14B-3.3* on a developer's proposed drainage system, and because the threat to their property was speculative, *USCS Const. Amend. 14, § 1* and *N.J. Const. art. I, para. 1* did not

require additional procedural safeguards by the environmental department in considering a wetlands permit. *In re Freshwater Wetlands Statewide Gen. Permits, 185 N.J. 452, 888 A.2d 441, 2006 N.J. LEXIS 6 (2006).*

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N.J. Stat. § 52:14B-4 (2008)

§ 52:14B-4. Adoption, amendment, repeal of rules

(a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer network. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (*C.52:14B-19*), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (*C.4:1C-10.3*), and a housing affordability impact statement and a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (*C.52:14B-4.1b*); and

(3) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30 day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30 day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, which shall be conducted in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L.1968, c.410 (*C.52:14B-3*) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph.

(4) Prepare for public distribution a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views and arguments contained in the submissions.

(b) A rule prescribing the organization of an agency may be adopted at any time without prior notice or hearing. Such rules shall be effective upon filing in accordance with section 5 of P.L.1968, c.410 (*C.52:14B-5*) or upon any later date specified by the agency.

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

(d) No rule hereafter adopted is valid unless adopted in substantial compliance with P.L.1968, c.410 (*C.52:14B-1* et seq.). A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of P.L.1968, c.410 (*C.52:14B-1* et seq.) shall be commenced within one year from the effective date of the rule.

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

(1) The substance or nature of the rule-making which is requested;

(2) The reasons for the request and the petitioner's interest in the request;

(3) References to the authority of the agency to take the requested action.

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice of the director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the director's notice, the director shall schedule and provide the public with a notice of that hearing at least 15 days prior thereto. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (*C.52:14F-5*), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L.1968, c.410 (*C.52:14B-4*), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with

a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (*C.52:14F-5*) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.

HISTORY: L. 1968, c. 410, § 4; amended 1981, c. 27, § 11; 1986, c. 169, § 7; 1995, c. 166; 1998, c. 48, § 4, eff. July 2, 1998; 2001, c. 5, § 2, eff. July 1, 2001; 2008, c. 46, § 3, eff. July 17, 2008.

NOTES:

Amendment Note:

2008 amendment, by Chapter 46, in (a)(2), deleted "and" preceding "an agriculture industry impact statement" and inserted "and a housing affordability impact statement and a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (*C.52:14B-4.1b*)"; in (b), substituted "section 5 of P.L.1968, c.410 (*C.52:14B-5*)" for "section 5 of this act"; and in (d), substituted "P.L.1968, c.410 (*C.52:14B-1* et seq.)" for "this act" twice.

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

New rule adoption process, see *4:1C-10.3*.

Rules and regulations; effective date of changes, see *12:7-34.50*.

Powers and duties of council, see *23:2B-5*.

Additional requirements for rule-making, see *52:14B-3*.

Regulatory flexibility analysis, see *52:14B-19*.

Definitions relative to certain mandate requirements, procedures for small municipalities, see *52:14B-25*.

State Uniform Construction Code; adoption, see *52:27D-123*.

Administrative Code:

1. *N.J.A.C. 1:1-21.1*, CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES, Transmission to the Office of Administrative Law.

2. *N.J.A.C. 1:14-2.1*, CHAPTER 14. BOARD OF PUBLIC UTILITIES, Definitions.

3. *N.J.A.C. 1:30*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, 1, Chapter 30 -- Chapter Notes.

4. *N.J.A.C. 1:30-1.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Definitions.

5. *N.J.A.C. 1:30-3.3*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Exceptions.

6. *N.J.A.C. 1:30-5.3*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Informal public input; notice of pre-proposal.

7. *N.J.A.C. 1:30-5.6*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Rulemaking record.

8. *N.J.A.C. 1:30-6.5*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Emergency rule adoption and concurrent proposal.

9. *N.J.A.C. 1:30-6.6*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Effective date and promulgation of adopted rule.

10. *N.J.A.C. 3:3-4.1*, CHAPTER 3. DEPARTMENT ORGANIZATION, Scope.

11. *N.J.A.C. 3:3-4.2*, CHAPTER 3. DEPARTMENT ORGANIZATION, Procedure for petitioner.

12. *N.J.A.C. 5:2-2.1*, CHAPTER 2. ORGANIZATIONAL RULES, Scope.

13. *N.J.A.C. 5:2-2.2*, CHAPTER 2. ORGANIZATIONAL RULES, Form of petition.

14. *N.J.A.C. 5A:1-1.8*, CHAPTER 1. DEPARTMENT OF MILITARY AND VETERANS AFFAIRS ORGANIZATIONAL RULES, Procedure to petition for a rule.

15. *N.J.A.C. 6A:2-2.1*, CHAPTER 2. COMMISSIONER, Organizational structure.

16. *N.J.A.C. 6A:6-1.1*, CHAPTER 6. STATE BOARD OF EDUCATION RULEMAKING PROCESS, Scope.

17. *N.J.A.C. 7:1D-1.1*, CHAPTER 1D. GENERAL PRACTICE AND PROCEDURE, Procedure to petition for a rule.

18. *N.J.A.C. 7:1D-5.2*, CHAPTER 1D. GENERAL PRACTICE AND PROCEDURE, Public hearing on a proposed rule.

19. *N.J.A.C. 7:9C-1.10*, CHAPTER 9C. GROUND WATER QUALITY STANDARDS, Procedures for reclassification of ground water.

20. *N.J.A.C. 7:26A-7.9*, CHAPTER 26A. RECYCLING RULES, Petitions to designate other wastes as universal wastes.

21. *N.J.A.C. 7:27-25.6*, CHAPTER 27. AIR POLLUTION CONTROL, Petition for rulemaking in the case of imminent supply shortage.

22. *N.J.A.C. 10:30*, CHAPTER 30. DIVISION OF MENTAL HEALTH SERVICES: ORGANIZATIONAL RULES, 10, Chapter 30 -- Chapter Notes.

23. *N.J.A.C. 10:40*, CHAPTER 40. DIVISION OF DEVELOPMENTAL DISABILITIES ORGANIZATIONAL RULES, 10, Chapter 40— Chapter Notes.

24. *N.J.A.C. 10:49-10.2*, CHAPTER 49. ADMINISTRATION MANUAL, Notices.

25. *N.J.A.C. 10:80*, CHAPTER 80. ORGANIZATION OF THE DIVISION OF FAMILY DEVELOPMENT, 10, Chapter 80 -- Chapter Notes.

26. *N.J.A.C. 11:1-15.1*, CHAPTER 1. ADMINISTRATION, Scope.

27. *N.J.A.C. 11:1-15.2*, CHAPTER 1. ADMINISTRATION, Procedure for petitioner.

28. *N.J.A.C. 11:3-35A.7*, CHAPTER 3. AUTOMOBILE INSURANCE, Determination of an uncompetitive market.

29. *N.J.A.C. 11:5-10.2*, CHAPTER 5. REAL ESTATE COMMISSION, Notice of proposed adoption of new rule, or proposed amendment or repeal of existing rule.

30. *N.J.A.C. 11:5-10.5*, CHAPTER 5. REAL ESTATE COMMISSION, Petitions for rulemaking--scope.

31. *N.J.A.C. 11:5-10.6*, CHAPTER 5. REAL ESTATE COMMISSION, Procedure for the submission of petitions for rulemaking.

32. *N.J.A.C. 11:20-19.1*, CHAPTER 20. INDIVIDUAL HEALTH COVERAGE PROGRAM, Scope.

33. *N.J.A.C. 11:20-19.2*, CHAPTER 20. INDIVIDUAL HEALTH COVERAGE PROGRAM, Procedure for petitioner.

34. *N.J.A.C. 11:21-18.1*, CHAPTER 21. SMALL EMPLOYER HEALTH BENEFITS PROGRAM, Scope.

35. *N.J.A.C. 11:21-18.2*, CHAPTER 21. SMALL EMPLOYER HEALTH BENEFITS PROGRAM, Procedure for petitioner.

36. *N.J.A.C. 12:6*, CHAPTER 6. RULEMAKING, 12, Chapter 6 -- Chapter Notes.

37. *N.J.A.C. 12:6-1.1*, CHAPTER 6. RULEMAKING, Scope.

38. *N.J.A.C. 12:6-1.2*, CHAPTER 6. RULEMAKING, Procedure for petitioner.

39. *N.J.A.C. 12:100-3A.1*, CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES, Adoption of standards in compliance with applicable Federal standards.

40. *N.J.A.C. 12:100-3A.3*, CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES, Adoption of emergency temporary standards.

41. *N.J.A.C. 13:1D*, CHAPTER 1D. PETITIONS FOR RULES, 13, Chapter 1D -- Chapter Notes.

42. *N.J.A.C. 13:1D-1.1*, CHAPTER 1D. PETITIONS FOR RULES, Scope.

43. *N.J.A.C. 13:1E*, CHAPTER 1E. DEPARTMENT OF LAW AND PUBLIC SAFETY, 13, Chapter 1E -- Chapter Notes.

44. *N.J.A.C. 13:45A-19.1*, CHAPTER 45A. ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS, Petition for promulgating, amending or repealing rules.

45. *N.J.A.C. 13:62-2.5*, CHAPTER 62. MOTOR VEHICLE RACE TRACK RULES, Demonstration events.

46. *N.J.A.C. 13:75-1.29*, CHAPTER 75. RULES RELATING TO PRACTICE AND PROCEDURE BEFORE THE NEW JERSEY VICTIMS OF CRIME COMPENSATION BOARD, Procedure to request Board action to promulgate, amend or repeal rules.

47. *N.J.A.C. 16:1A*, CHAPTER 1A. ADMINISTRATION, ORGANIZATION, RECORDS MANAGEMENT AND INFORMATION REQUESTS, 16, Chapter 1A -- Chapter Notes.

48. *N.J.A.C. 18:1-2.2*, CHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION, Form of petition.

49. *N.J.A.C. 18:1-2.4*, CHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION, Sufficient public interest; notice to be given.

50. *N.J.A.C. 18:1-2.5*, CHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION, Sufficient public interest; public hearings.

51. *N.J.A.C. 19:3-1.1*, NEW JERSEY MEADOWLANDS COMMISSION, Rulemaking.

52. *N.J.A.C. 19:9-6.1*, NEW JERSEY TURNPIKE AUTHORITY, Scope.

53. *N.J.A.C. 19:9-6.2*, NEW JERSEY TURNPIKE AUTHORITY, Procedure for petitioner.

54. *N.J.A.C. 19:30-1.6*, NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Petitions for rules.

55. *N.J.A.C. 19:30-1.7*, NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Procedure for petitioner.

56. *N.J.A.C. 19:61-5.4*, STATE ETHICS COMMISSION, Procedures to request Commission action to promulgate, amend or repeal rules.

57. *N.J.A.C. 19:40-3.6*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Petitions for rulemaking.

58. *N.J.A.C. 19:42*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, 19, Chapter 42 -- Chapter Notes.

59. *N.J.A.C. 19:42-7.1*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Hearings on regulations.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 7 -- 1978, *1978 N.J. AG LEXIS 6.*

CASE NOTES

1. Where a party had 16 days notice that a public hearing was going to be conducted, the notice was sufficient within the confines of *N.J. Stat. Ann. § 52:14B-4(a)(3)* and thus no violation occurred. *In re Order of the Comm'r of Ins. v. New Jersey Auto. Full Ins. Underwriting Ass'n, 273 N.J. Super. 181, 641 A.2d 562, 1994 N.J. Super. LEXIS 235 (App.Div. 1994).*

2. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation. The rule was invalid under of *N.J. Stat. Ann. § 52:14B-4(d)* because it was not adopted in compliance with the notice and hearing requirements of the *Administrative Procedures Act. Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

3. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator, as: (1) the mercury rules at issue were sustainable under the DEP's broad authority to issue health-based regulations under *N.J. Stat. Ann. § 26:2C-8*; (2) the DEP did not act arbitrarily nor unreasonably since the record supported a finding that mercury emission-control technology was reasonably available to melters and the DEP relied on a considerable volume of scientific evidence that no one reasonably contested; and (3) the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007).*

4. Agencies are accorded wide latitude in improvising appropriate procedures to effectuate their regulatory jurisdiction and possess the ability to be flexible and responsive to changing conditions; this flexibility includes the ability to select those procedures most appropriate to enable the agency to implement legislative policy, and in that regard, an agency has discretion to choose between rulemaking, adjudication, or an informal disposition in discharging its statutory duty. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

5. The purpose of the notice requirement is to give those affected by the proposed rule an opportunity to participate in the rule-making process not just as a matter of fairness but also as a means of informing regulators of possibly unanticipated dimensions of a contemplated rule. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

6. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

7. Test protocol for determining the accuracy and operability of breathalyzers used to measure blood alcohol concentrations was not subject to the formal rulemaking procedures contained in *N.J. Stat. Ann. § 52:14B-4* of the *Administrative Procedure Act. State v. Garthe, 145 N.J. 1, 678 A.2d 153, 1996 N.J. LEXIS 794 (1996).*

8. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to

cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

9. Emergency adoption of a solid waste flow redirection order must conform with the emergency rulemaking procedures of the Administrative Procedure Act and, thus, the emergency waste flow redirection order challenged on appeal was invalidated where it was adopted pursuant to *N.J. Admin. Code § 7:26-6.7,* without compliance with the procedural requirements of *N.J. Stat. Ann. § 52:14B-4(c). In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

10. Characteristics of an administrative rulemaking are that it (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. *In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

11. Waste flow redirection order has all of the features of an administrative rule because it (1) applies to a large regulated class involved in solid waste generation, collection and disposal, (2) applies generally and uniformly to classes of solid waste generators, collectors and disposal sites, (3) operates prospectively only, (4) prescribes rules for waste disposal that are not expressly provided or clearly inferable in the Solid Waste Management Act, *N.J. Stat. Ann. § 13:1E-1* et seq., (5) constitutes a material and significant change of past agency policy, and (6) reflects a decision on solid waste regulatory policy. *In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

12. *N.J. Admin. Code § 7:26-6.7* purportedly authorizes the Department of Environmental Protection, with the approval of the New Jersey Board of Public Utilities, to adopt emergency solid waste flow orders without the concurrence of the Governor and provides that such orders may remain in effect for an indefinite period of time; however, there is nothing in the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the Solid Waste Management Act, *N.J. Stat. Ann. § 13:1E-1* et seq., Solid Waste Utility Control Act, *N.J. Stat. Ann. § 48:13A-1* et seq., or the court's decision in *A.A. Mastrangelo, Inc. v. Commissioner of the Dept. of Envtl. Protection, 449 A.2d 516 (1982),* which suggests that waste flow redirection orders are exempt from the emergency rulemaking procedures set forth in *N.J. Stat. Ann. § 52:14B-4(c)* and, therefore, *N.J. Admin. Code § 7:26-6.7* conflicts with *N.J. Stat. Ann. § 52:14B-4(c). In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

13. *N.J. Stat. Ann. § 52:14B-4(a)(3)* required defendant agency to allow plaintiff aerosol air freshener and manufacturer, as an interested person, "reasonable opportunity to submit data, reviews, or arguments" prior to the adoption of any rule. *In re Adoption of Regulations Governing Volatile Organic Substances etc., 239 N.J. Super. 407, 571 A.2d 971, 1990 N.J. Super. LEXIS 85 (App.Div. 1990).*

14. Failure of the Commissioner and the Department of Education to comply with the Administrative Procedure Act in promulgating agency rules rendered its guidelines, covering the admission of students with AIDS into regular classrooms, null and void and of no force and effect, pursuant to *N.J. Stat. Ann. § 52:14B-4(d). Board of Education v. Cooperman, 209 N.J. Super. 174, 507 A.2d 253, 1986 N.J. Super. LEXIS 1207 (App.Div. 1986),* modified by *105 N.J. 587, 523 A.2d 655, 1987 N.J. LEXIS 300,* 60 A.L.R.4th 1 (1987).

15. Procedures which must be followed to promulgate, amend or repeal an agency rule under *N.J. Stat. Ann. § 52:14B-4(d),* are quite detailed, and failure to comply with this procedure renders the rule invalid. *Shapiro v. Albanese, 194 N.J. Super. 418, 477 A.2d 352, 1984 N.J. Super. LEXIS 1011 (App.Div. 1984).*

16. New Jersey Division of Taxation was not required by *N.J. Stat. Ann. § 52:14B-4* to promulgate a rule prior to making an assessment against a New York corporation that earned interest income from loans secured by New Jersey real estate, where the Division had sufficient statutory guidance to make the assessment and there was no previous statutory interpretation. *Chemical Realty Corp. v. Taxation Div. Director, 5 N.J. Tax 581, 1983 N.J. Tax LEXIS 34 (Tax Ct. 1983),* affirmed by *6 N.J. Tax 448, 1984 N.J. Tax LEXIS 56 (App.Div. 1984).*

17. Because N.J. Admin. Code tit. 6, § 8-6.2 required classifications to be based in part on annual reports submitted by each district board pursuant to N.J. Admin. Code tit. 6, § 8-6.1(b), and required that notice be given to district boards and others annually, § 6:8-6.2 could not have been changed or suspended by resolution of respondent state board without complying with the rule making procedures of *N.J. Stat. Ann. § 52:14B-4(a). Iuppo v. Burke, 162 N.J. Super. 538, 394 A.2d 96, 1978 N.J. Super. LEXIS 1095 (App.Div. 1978).*

18. Action by the New Jersey Natural Resource Council (Council) of the Division of Marine Services of the New Jersey Department of Environmental Protection for the grant of a license to an electric company to lay a submarine cable under tideland waters was not an exercise of the Council's rule making function as defined in *N.J. Stat. Ann. § 52:14B-2(e)* of the New Jersey Administrative Procedure Act (Act), *N.J. Stat. Ann. § 52:14B-1* et seq.; thus, the notice and hearing provisions of *N.J. Stat. Ann. § 52:14B-4(a)* of the Act did not *apply. Atlantic City Electric Co. v. Bardin, 145 N.J. Super. 438, 368 A.2d 366, 1976 N.J. Super. LEXIS 631, 7 Envtl. L. Rep. 20297 (App.Div. 1976).*

19. In an action that challenged the promulgation of a welfare rule, the court held that proper notice was given in accordance with *N.J. Stat. Ann. § 52:14B-4(a).* The Administrative Procedure Act was followed, and there was no error in upholding the rule. *Motyka v. McCorkle, 58 N.J. 165, 276 A.2d 129, 1971 N.J. LEXIS 237 (1971).*

20. Agencies are accorded wide latitude in improvising appropriate procedures to effectuate their regulatory jurisdiction and possess the ability to be flexible and responsive to changing conditions; this flexibility includes the ability to select those procedures most appropriate to enable the agency to implement legislative policy, and in that regard, an agency has discretion to choose between rulemaking, adjudication, or an informal disposition in discharging its statutory duty. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

21. The purpose of the notice requirement is to give those affected by the proposed rule an opportunity to participate in the rule-making process not just as a matter of fairness but also as a means of informing regulators of possibly unanticipated dimensions of a contemplated rule. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

22. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002).*

23. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a),* which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by

the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

24. Challenge of Horseshoe crab harvesters' association to a judgment of the superior court extending Department of Environmental Protection's emergency regulation restricting the harvesting of horseshoe crabs was moot where the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-4(c)*, gave the agency extraordinary power to respond to emergencies and there was no need to debate if there was one emergency or two. *Delaware Bay Waterman's Ass'n v. New Jersey Dep't of Envtl. Protection, 153 N.J. 345, 709 A.2d 192, 1998 N.J. LEXIS 248 (1998).*

25. Issuance by the state department of environmental protection of a 60-day emergency amendment creating a total ban on the taking of horseshoe crabs following a prior 60-day amendment was in violation of *N. J. Stat. Ann. § 52:14B-4(c)* because the agency could not adopt a rule to protect the public health that would be effective for a period of more than 60 days absent the passage of a resolution by the state legislature. *Delaware Bay Waterman's Ass'n v. New Jersey Dep't of Envtl. Protection, 304 N.J. Super. 20, 697 A.2d 957, 1997 N.J. Super. LEXIS 364 (App.Div. 1997).*

26. The Commissioner of the New Jersey Department of Insurance's pronouncement that asbestos exclusions were not permitted and, in effect were contrary to New Jersey law, constituted improper rulemaking where the rulemaking procedures under *N.J. Stat. Ann. § 52:14B-4* were not followed. *In re Disapproval of Commercial Ins. Policy Forms etc., 264 N.J. Super. 228, 624 A.2d 587, 1993 N.J. Super. LEXIS 157 (App.Div. 1993).*

27. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

28. New Jersey Department of Banking and Insurance, Division of Insurance's order upholding the promulgation by the New Jersey Commissioner of Insurance of a physicians' fee schedule for automobile personal injury protection purposes was reversed, because after the notice and comment mandated by *N.J. Stat. Ann. § 52:14B-4(a)(3)* was carried out, the Commissioner decided to simplify the schedule, and published a final schedule, which included no hospital fee schedule at all as required by *N.J. Stat. Ann. § 39:6A-4.6*, and other changes that were far more significant than the type of changes that the Commissioner was authorized to make without re-proposing a regulation and holding a new notice and comment period pursuant to *N.J. Stat. Ann. § 52:14B-4(a)(3). In re Commissioner's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 817 A.2d 355, 2003 N.J. Super. LEXIS 81 (App.Div. 2003).*

29. Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, provides that prior to the adoption, amendment or repeal of any rule, an agency shall provide notice of the terms or substance of its intended action, under *N.J. Stat. Ann. § 52:14B-4(a)(1)*, and the purpose of this procedure is to give those affected by the proposed rule an opportunity to participate in the rule-making process not just as a matter of fairness but also as a means of informing regulators of possibly unanticipated dimensions of a contemplated rule. *In re Coastal Permit Program Rules, 354 N.J. Super. 293, 807 A.2d 198, 2002 N.J. Super. LEXIS 259 (App.Div. 2002).*

30. Challenge of Horseshoe crab harvesters' association to a judgment of the superior court extending Department of Environmental Protection's emergency regulation restricting the harvesting of horseshoe crabs was moot where the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-4(c)*, gave the agency extraordinary power to respond to emergencies and there was no need to debate if there was one emergency or two. *Delaware Bay Waterman's Ass'n v. New Jersey Dep't of Envtl. Protection, 153 N.J. 345, 709 A.2d 192, 1998 N.J. LEXIS 248 (1998).*

31. Appeal was dismissed without prejudice when appellant landlord filed a civil action to prevent a housing agency and builder from constructing a low income rental housing project on grounds of federal housing and civil rights violations where appellant had landlord the availability of a rule-making petition under the statute that was the most effective means of addressing the issue and ensuring participation by all interested parties, and which exhausted all administrative remedies. *Murnick v. New Jersey Hous. & Mortg. Fin. Agency, 309 N.J. Super. 292, 706 A.2d 1187, 1998 N.J. Super. LEXIS 103 (App.Div. 1998).*

32. Although not ultra vires, an amendment to a county's solid waste management plan and a redirection order implementing the amendment, which was issued by the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU), and which required the county's non-municipal waste to be processed and shipped out of state, were not validly adopted because the amendment was not enacted in accordance with prescribed procedures. The DEP and the BPU failed to proceed with formal notice, comment, and hold open hearings on the amendment in conformity

with the rule-making procedures of the Administrative Procedure Act, *N.J.Stat. Ann.§ 52:14B-4* and *N.J.A.C. 1:30*, as required by the DEP's own rules, former *N.J.A.C. 7:26-6.6. In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

33. In a challenge to an amendment to a county's solid waste management plan, the appellate court rejected the argument of the Department of Environmental Protection (DEP) that because its adoption of the rulemaking requirements of the Administrative Procedure Act (APA), *N.J.Stat. Ann.§ 52:14B-4* and *N.J.A.C. 1:30*, was itself discretionary, the DEP was free to disregard its own rules of procedure, former *N.J.A.C.§ 7:26-6.6*, which adopted the APA requirements. Under *N.J.Stat. Ann.§ 52:14B-2*, an agency's decision to abandon or modify its own procedural regulations had to be accomplished through rule-making. *In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

34. *N.J. Stat. Ann. § 52:14B-4(a)(3)* requires an agency to allow "all interested persons reasonable opportunity to submit data, views, or arguments" prior to the adoption of any rule. *In re Petition of Hackensack Water Co., 249 N.J. Super. 164, 592 A.2d 250, 1991 N.J. Super. LEXIS 196 (App.Div. 1991).*

35. The very process of rulemaking contemplates public notice and public disclosure of an agency's regulatory objectives; when an administrative regulation disguises an aspect of the agency's true regulatory purpose, it cannot be sustained as a proper exercise of the rulemaking power. *Lower Main Street Associates v. New Jersey Housing & Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798, 1989 N.J. LEXIS 20 (1989).*

36. Intoxicated Driver Resource Center rules were invalid because they were not enacted pursuant to *N.J. Stat. Ann. §§ 52:14B-4* and *52:14B-7* because notice of the adoption of the rules was not published in the New Jersey Register, the rules did not appear in the New Jersey Administrative Code, and the rules adopted were confidential. *State v. Klemmer, 237 N.J. Super. 32, 566 A.2d 836, 1989 N.J. Super. LEXIS 413 (Law Div. 1989).*

37. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have made a public statement of the purpose and effect of the rule, the authority pursuant to which it was adopted or its expected socio-economic impact as required by *N.J. Stat. Ann. § 52:14B-4(a)(2). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

38. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission, under *N.J. Stat. Ann. § 52:14B-4(a)(4)*, should have addressed the comments of objectors to option chosen and to proponants of other options, or responded to the data, views, and arguments contained in those submissions. *New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

39. Department of Environmental Protection must provide affected parties the opportunity for notice and comment in compliance with *N.J. Stat. Ann. § 52:14B-4* prior to determining the scope of the affected public's participation in remedial investigations and feasibility studies. *Woodland Private Study Group v. State, Dep't of Environmental Protection, 109 N.J. 62, 533 A.2d 387, 1987 N.J. LEXIS 373, 27 Env't Rep. Cas. (BNA) 1834, 18 Envtl. L. Rep. 20263 (1987).*

40. Although Administrative Order 69 did not entirely eliminate participation of the regulated public, it imposed severe restrictions and conditions on that participation and, therefore, had a substantial impact on a legitimate interest of the regulated public, and could not be viewed as an intra-agency statement immune from rulemaking procedures of the *Administrative Procedure Act. Woodland Private Study Group v. State, Dep't of Environmental Protection, 109 N.J. 62, 533 A.2d 387, 1987 N.J. LEXIS 373, 27 Env't Rep. Cas. (BNA) 1834, 18 Envtl. L. Rep. 20263 (1987).*

41. Hospital could not maintain challenge to administrative regulations regarding the reimbursement of long-term facilities under the Medicaid program, where the hospital had notice of the regulations and had been afforded an opportunity to present evidence and arguments in opposition to the proposed regulations, where hospital's challenge was advanced more than two years after the regulations were implemented, and where the hospital failed to present evidence sufficient to overcome the presumptions of validity and reasonableness. *Bergen Pines County Hospital v. New Jersey Dep't of Human Services, 96 N.J. 456, 476 A.2d 784, 1984 N.J. LEXIS 2715 (1984).*

42. Regulations promulgated and adopted by the Department of Treasury under the Spill Fund and Compensation Act, *N.J. Stat. Ann. § 58:10-23.11h*, were deemed invalid and without force because the Department failed to justify its non-consideration of corporation's written comments; specifically, the spill fund director and the treasury department failed to justify their non-compliance with the clearly stated requirements of *N.J. Stat. Ann. § 52:14B-4(a)(1)* after

erroneously determining that written comments in response to the proposed regulations were untimely. *Exxon Corp. v. Hunt, 190 N.J. Super. 131, 462 A.2d 193, 1983 N.J. Super. LEXIS 887 (App.Div. 1983)*, affirmed by *97 N.J. 526, 481 A.2d 271, 1984 N.J. LEXIS 2729, 21 Env't Rep. Cas. (BNA) 1794, 14 Envtl. L. Rep. 20923 (1984)*.

43. Insurance commissioner did not violate *N.J. Stat. Ann. § 52:14B-4* in adopting rules concerning service and placement fees because the substantive changes did not require new notice to interested persons nor a further opportunity for them to be heard; the rules were adopted in compliance with the statutory provisions. *Insurance Brokers Asso. v. Sheeran, 162 N.J. Super. 34, 392 A.2d 203, 1978 N.J. Super. LEXIS 1047 (App.Div. 1978)*.

44. Defendant's action, which included adequate formal notice and opportunity to submit statements and arguments, was sufficient to satisfy *N.J. Stat. Ann. § 52:14B-4(a)*, and rendered the procedural issue moot. *Association of New Jersey State College Faculties, Inc. v. Dungan, 64 N.J. 338, 316 A.2d 425, 1974 N.J. LEXIS 222, 85 L.R.R.M. (BNA) 2625, 73 Lab. Cas. (CCH) P53269 (1974)*.

45. In an action that challenged the promulgation of a welfare rule, the court held that proper notice was given in accordance with *N.J. Stat. Ann. § 52:14B-4(a)*. The Administrative Procedure Act was followed, and there was no error in upholding the rule. *Motyka v. McCorkle, 58 N.J. 165, 276 A.2d 129, 1971 N.J. LEXIS 237 (1971)*.

46. The very process of rulemaking contemplates public notice and public disclosure of an agency's regulatory objectives; when an administrative regulation disguises an aspect of the agency's true regulatory purpose, it cannot be sustained as a proper exercise of the rulemaking power. *Lower Main Street Associates v. New Jersey Housing & Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798, 1989 N.J. LEXIS 20 (1989)*.

47. In determining whether agency action constitutes rulemaking courts inquire whether the agency action: (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the Administrative Procedures Act is questioned, for example, in adopting orders, guidelines, or directives; however, not all of these factors must be present for an agency action to constitute rulemaking, but rather the factors are balanced according to weight. *Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002)*.

48. Although public access is an essential component of historic-site tax exemption, in applicant's appeal challenging the denial of historic-site tax exemption, because the applicant satisfied all of the relevant standards in effect when it perfected its petition for tax-exempt status, it was entitled to certification as a tax-exempt historic site since the Commissioner of the Department of Environmental Protection acted arbitrarily in applying more stringent standards regarding public access that had not been implemented by formal rulemaking requirements at the time the applicant perfected its application. *University Cottage Club of Princeton New Jersey Corp. v. New Jersey Dept. of Environmental Protection, 191 N.J. 38, 921 A.2d 1122, 2007 N.J. LEXIS 595 (2007)*.

49. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator, as: (1) the mercury rules at issue were sustainable under the DEP's broad authority to issue health-based regulations under *N.J. Stat. Ann. § 26:2C-8*; (2) the DEP did not act arbitrarily nor unreasonably since the record supported a finding that mercury emission-control technology was reasonably available to melters and the DEP relied on a considerable volume of scientific evidence that no one reasonably contested; and (3) the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007)*.

50. Plaintiff's motion for preliminary injunctive relief on the issue of irreparable harm was denied without prejudice; the remedy available to them under *N.J. Stat. Ann. § 52:14B-4(f)* was available during the six years since the enactment of 1993 Omnibus Budget Reconciliation Act, if plaintiffs believed that irreparable injury would have resulted from defendants' failure to implement official regulations governing undue hardship hearing. *Johnson v. Guhl, 91 F.*

Supp. 2d 754, 2000 U.S. Dist. LEXIS 4485, 68 Soc. Sec. Rep. Service 469 (D.N.J. 2000), dismissed by *166 F. Supp. 2d 42, 2001 U.S. Dist. LEXIS 16058, 76* Soc. Sec. Rep. Service 332 (D.N.J. 2001).

51. Test protocol for determining the accuracy and operability of breathalyzers used to measure blood alcohol concentrations was not subject to the formal rulemaking procedures contained in *N.J. Stat. Ann. § 52:14B-4* of the *Administrative Procedure Act. State v. Garthe, 145 N.J. 1, 678 A.2d 153, 1996 N.J. LEXIS 794 (1996).*

52. Guidelines issued by the Attorney General, and required by Megan's Law, constituted administrative rules which should have been adopted in compliance with the Administrative Procedures Act; since the guidelines were intended to cover all persons convicted of certain sex offenses at the guidelines had to be applied generally and uniformly to all similarly situated sex offenders; attorney general's failure to comply with the Administrative Procedure Act rendered the guidelines invalid. *Doe v. Poritz, 283 N.J. Super. 372, 661 A.2d 1335, 1995 N.J. Super. LEXIS 260 (Law Div. 1995),* modified by *142 N.J. 1, 662 A.2d 367, 1995 N.J. LEXIS 519,* 36 A.L.R.5th 711 (1995).

53. Defendant's action, which included adequate formal notice and opportunity to submit statements and arguments, was sufficient to satisfy *N.J. Stat. Ann. § 52:14B-4(a)*, and rendered the procedural issue moot. *Association of New Jersey State College Faculties, Inc. v. Dungan, 64 N.J. 338, 316 A.2d 425, 1974 N.J. LEXIS 222, 85 L.R.R.M. (BNA) 2625, 73 Lab. Cas. (CCH) P53269 (1974).*

54. State Department of Education properly denied a petition for an amendment to administrative rule *N.J. Admin. Code § 6A:3-5.1(a)*, which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, *N.J. Stat. Ann. §§ 52:14B-1* to -15, since notice of the rule proposal was published in the New Jersey Register, the public was given 30 days in which to comment on the rule proposal, and it was adopted only after a comprehensive review of all rules pertaining to the determination of controversies and disputes arising under the school laws; further tenured employees were not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ., 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).*

55. Division of Taxation order to all motor fuel retailers warning that issuance of any giveaways, even if not conditioned on purchase, would be illegal constituted a rule or regulation. The rule was invalid under of *N.J. Stat. Ann. § 52:14B-4(d)* because it was not adopted in compliance with the notice and hearing requirements of the *Administrative Procedures Act. Glaser v. Downes, 126 N.J. Super. 10, 312 A.2d 654, 1973 N.J. Super. LEXIS 380 (App.Div. 1973).*

56. The Commissioner of the New Jersey Department of Insurance's pronouncement that asbestos exclusions were not permitted and, in effect were contrary to New Jersey law, constituted improper rulemaking where the rulemaking procedures under *N.J. Stat. Ann. § 52:14B-4* were not followed. *In re Disapproval of Commercial Ins. Policy Forms etc., 264 N.J. Super. 228, 624 A.2d 587, 1993 N.J. Super. LEXIS 157 (App.Div. 1993).*

57. New Jersey Department of Environmental Protection violated the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-4(d)*, by failing to adopt regulations adopting proper standards under the Industrial Site Recovery Act; landowner was therefore entitled to be treated on a case-by-case basis. *Federal Pac. Elec. Co. v. New Jersey Dep't of Envtl. Protection, 334 N.J. Super. 323, 759 A.2d 851, 2000 N.J. Super. LEXIS 351, 31 Envtl. L. Rep. 20165 (App.Div. 2000).*

58. Action by the New Jersey Natural Resource Council (Council) of the Division of Marine Services of the New Jersey Department of Environmental Protection for the grant of a license to an electric company to lay a submarine cable under tideland waters was not an exercise of the Council's rule making function as defined in *N.J. Stat. Ann. § 52:14B-2(e)* of the New Jersey Administrative Procedure Act (Act), *N.J. Stat. Ann. § 52:14B-1* et seq.; thus, the notice and hearing provisions of *N.J. Stat. Ann. § 52:14B-4(a)* of the Act did not apply. *Atlantic City Electric Co. v. Bardin, 145 N.J. Super. 438, 368 A.2d 366, 1976 N.J. Super. LEXIS 631, 7 Envtl. L. Rep. 20297 (App.Div. 1976).*

59. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

60. Challenge of Horseshoe crab harvesters' association to a judgment of the superior court extending Department of Environmental Protection's emergency regulation restricting the harvesting of horseshoe crabs was moot where the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-4(c)*, gave the agency extraordinary power to respond to emergencies and there was no need to debate if there was one emergency or two. *Delaware Bay Waterman's Ass'n v. New Jersey Dep't of Envtl. Protection, 153 N.J. 345, 709 A.2d 192, 1998 N.J. LEXIS 248 (1998).*

61. Although not ultra vires, an amendment to a county's solid waste management plan and a redirection order implementing the amendment, which was issued by the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU), and which required the county's non-municipal waste to be processed and shipped out of state, were not validly adopted because the amendment was not enacted in accordance with prescribed procedures. The DEP and the BPU failed to proceed with formal notice, comment, and hold open hearings on the amendment in conformity with the rule-making procedures of the Administrative Procedure Act, *N.J.Stat. Ann.§ 52:14B-4* and *N.J.A.C. 1:30*, as required by the DEP's own rules, former *N.J.A.C. 7:26-6.6. In re Certain Amendments to the Adopted & Approved Solid Waste Management Plan, 133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

62. Emergency adoption of a solid waste flow redirection order must conform with the emergency rulemaking procedures of the Administrative Procedure Act and, thus, the emergency waste flow redirection order challenged on appeal was invalidated where it was adopted pursuant to *N.J. Admin. Code § 7:26-6.7*, without compliance with the procedural requirements of *N.J. Stat. Ann. § 52:14B-4(c). In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

63. Waste flow redirection order has all of the features of an administrative rule because it (1) applies to a large regulated class involved in solid waste generation, collection and disposal, (2) applies generally and uniformly to classes of solid waste generators, collectors and disposal sites, (3) operates prospectively only, (4) prescribes rules for waste disposal that are not expressly provided or clearly inferable in the Solid Waste Management Act, *N.J. Stat. Ann. § 13:1E-1* et seq., (5) constitutes a material and significant change of past agency policy, and (6) reflects a decision on solid waste regulatory policy. *In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

64. *N.J. Admin. Code § 7:26-6.7* purportedly authorizes the Department of Environmental Protection, with the approval of the New Jersey Board of Public Utilities, to adopt emergency solid waste flow orders without the concurrence of the Governor and provides that such orders may remain in effect for an indefinite period of time; however, there is nothing in the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq., the Solid Waste Management Act, *N.J. Stat. Ann. § 13:1E-1* et seq., Solid Waste Utility Control Act, *N.J. Stat. Ann. § 48:13A-1* et seq., or the court's decision in *A.A. Mastrangelo, Inc. v. Commissioner of the Dept. of Envtl. Protection, 449 A.2d 516 (1982),* which suggests that waste flow redirection orders are exempt from the emergency rulemaking procedures set forth in *N.J. Stat. Ann. § 52:14B-4(c)* and, therefore, *N.J. Admin. Code § 7:26-6.7* conflicts with *N.J. Stat. Ann. § 52:14B-4(c). In re Certain Amendments to Adopted & Approved Solid Waste Management Plan, 258 N.J. Super. 290, 609 A.2d 501, 1992 N.J. Super. LEXIS 285 (App.Div. 1992),* affirmed in part and reversed in part by *133 N.J. 206, 627 A.2d 614, 1993 N.J. LEXIS 717 (1993).*

65. Only procedures that affect the conduct of a portion of the public require public notice, and because State Police procedures to test breathalyzer machines do not shape the conduct of the public, these procedures need not comply with the promulgation requirements of the Administrative Procedures Act, i.e., public notice. Similarly, changes in the Alcotest 7110 MKIII C breath test instrument software/firmware would not change the conduct of the affected public and therefore public notice is not required. *State v. Foley, 370 N.J. Super. 341, 851 A.2d 123, 2003 N.J. Super. LEXIS 423 (Law Div. 2003),* criticized by *State v. Chun, 2007 N.J. LEXIS 39* (N.J. Feb. 13, 2007).

66. There was no merit to defendant's argument that *N.J. Admin. Code tit. 13:70, § 14A.12* was improperly adopted because the regulation was adopted pursuant to the notice and hearing requirements of *N.J. Stat. Ann. § 52:14B-4*; in addition, he failed to challenge the regulation on procedural ground within one year of its effective date and was therefore, barred under *N.J. Stat. Ann. § 52:14B-4(d). State v. Dolce, 178 N.J. Super. 275, 428 A.2d 947, 1981 N.J. Super. LEXIS 512 (App.Div. 1981).*

67. There was no merit to defendant's argument that *N.J. Admin. Code tit. 13:70, § 14A.12* was improperly adopted because the regulation was adopted pursuant to the notice and hearing requirements of *N.J. Stat. Ann. § 52:14B-4*; in addition, he failed to challenge the regulation on procedural ground within one year of its effective date and was

therefore, barred under *N.J. Stat. Ann. § 52:14B-4(d). State v. Dolce, 178 N.J. Super. 275, 428 A.2d 947, 1981 N.J. Super. LEXIS 512 (App.Div. 1981).*

68. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have made a public statement of the purpose and effect of the rule, the authority pursuant to which it was adopted or its expected socio-economic impact as required by *N.J. Stat. Ann. § 52:14B-4(a)(2). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

69. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission, under *N.J. Stat. Ann. § 52:14B-4(a)(4)*, should have addressed the comments of objectors to option chosen and to proponants of other options, or responded to the data, views, and arguments contained in those submissions. *New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

70. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission should have made a public statement of the purpose and effect of the rule, the authority pursuant to which it was adopted or its expected socio-economic impact as required by *N.J. Stat. Ann. § 52:14B-4(a)(2). New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

71. In allocating 91 percent of reductions in Medicare payments under Gramm-Rudman to the hospitals, the hospital rate setting commission, under *N.J. Stat. Ann. § 52:14B-4(a)(4)*, should have addressed the comments of objectors to option chosen and to proponants of other options, or responded to the data, views, and arguments contained in those submissions. *New Jersey Hospital Ass'n v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).*

72. The Commissioner of the New Jersey Department of Insurance's pronouncement that asbestos exclusions were not permitted and, in effect were contrary to New Jersey law, constituted improper rulemaking where the rulemaking procedures under *N.J. Stat. Ann. § 52:14B-4* were not followed. *In re Disapproval of Commercial Ins. Policy Forms etc., 264 N.J. Super. 228, 624 A.2d 587, 1993 N.J. Super. LEXIS 157 (App.Div. 1993).*

73. Insurance commissioner did not violate *N.J. Stat. Ann. § 52:14B-4* in adopting rules concerning service and placement fees because the substantive changes did not require new notice to interested persons nor a further opportunity for them to be heard; the rules were adopted in compliance with the statutory provisions. *Insurance Brokers Asso. v. Sheeran, 162 N.J. Super. 34, 392 A.2d 203, 1978 N.J. Super. LEXIS 1047 (App.Div. 1978).*

74. New Jersey Department of Banking and Insurance, Division of Insurance's order upholding the promulgation by the New Jersey Commissioner of Insurance of a physicians' fee schedule for automobile personal injury protection purposes was reversed, because after the notice and comment mandated by *N.J. Stat. Ann. § 52:14B-4(a)(3)* was carried out, the Commissioner decided to simplify the schedule, and published a final schedule, which included no hospital fee schedule at all as required by *N.J. Stat. Ann. § 39:6A-4.6*, and other changes that were far more significant than the type of changes that the Commissioner was authorized to make without re-proposing a regulation and holding a new notice and comment period pursuant to *N.J. Stat. Ann. § 52:14B-4(a)(3). In re Commissioner's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 817 A.2d 355, 2003 N.J. Super. LEXIS 81 (App.Div. 2003).*

75. New Jersey Department of Banking and Insurance, Division of Insurance's order upholding the promulgation by the New Jersey Commissioner of Insurance of a physicians' fee schedule for automobile personal injury protection purposes was reversed, because after the notice and comment mandated by *N.J. Stat. Ann. § 52:14B-4(a)(3)* was carried out, the Commissioner decided to simplify the schedule, and published a final schedule, which included no hospital fee schedule at all as required by *N.J. Stat. Ann. § 39:6A-4.6*, and other changes that were far more significant than the type of changes that the Commissioner was authorized to make without re-proposing a regulation and holding a new notice and comment period pursuant to *N.J. Stat. Ann. § 52:14B-4(a)(3). In re Commissioner's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 817 A.2d 355, 2003 N.J. Super. LEXIS 81 (App.Div. 2003).*

76. When the New Jersey Commissioner of Banking and Insurance revised its regulations governing fee schedules for personal injury protection coverage under automobile insurance policies to include only 92 current procedural terminology codes instead of the originally proposed 953 codes, that was a significant enough modification of the original proposal so that re-proposal, with a new notice and comment period, was required. *In re Commissioner's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 817 A.2d 355, 2003 N.J. Super. LEXIS 81 (App.Div. 2003).*

77. New Jersey Division of Taxation was not required by *N.J. Stat. Ann. § 52:14B-4* to promulgate a rule prior to making an assessment against a New York corporation that earned interest income from loans secured by New Jersey real estate, where the Division had sufficient statutory guidance to make the assessment and there was no previous statutory interpretation. *Chemical Realty Corp. v. Taxation Div. Director, 5 N.J. Tax 581, 1983 N.J. Tax LEXIS 34 (Tax Ct. 1983),* affirmed by *6 N.J. Tax 448, 1984 N.J. Tax LEXIS 56 (App.Div. 1984).*

78. Although public access is an essential component of historic-site tax exemption, in applicant's appeal challenging the denial of historic-site tax exemption, because the applicant satisfied all of the relevant standards in effect when it perfected its petition for tax-exempt status, it was entitled to certification as a tax-exempt historic site since the Commissioner of the Department of Environmental Protection acted arbitrarily in applying more stringent standards regarding public access that had not been implemented by formal rulemaking requirements at the time the applicant perfected its application. *University Cottage Club of Princeton New Jersey Corp. v. New Jersey Dept. of Environmental Protection, 191 N.J. 38, 921 A.2d 1122, 2007 N.J. LEXIS 595 (2007).*

LAW REVIEWS & JOURNALS

1. *7 Seton Hall Const. L.J. 525,* COMMENT: MEGAN'S LAW AS APPLIED TO JUVENILES: PROTECTING CHILDREN AT THE EXPENSE OF CHILDREN?

2. *7 Seton Hall Const. L.J. 913,* COMMENT: MEGAN'S LAW: PROTECTING THE VULNERABLE OR UNCONSTITUTIONALLY PUNISHING SEX OFFENDERS?

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N.J. Stat. § 52:14B-4.1 (2008)

§ 52:14B-4.1. Rules, submission to Legislature; referral to committee

Every rule hereafter proposed by a State agency shall be submitted by the Office of Administrative Law to the Senate and General Assembly within two business days of its receipt by the office, and the President of the Senate and the Speaker of the General Assembly shall immediately refer the proposed rule to the appropriate committee in each House.

HISTORY: L. 1981, c. 27, § 1; amended 2001, c. 5, § 6, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

Maximum charges; value, determination and award of prizes, see *5:8-107*.

LexisNexis (R) Notes:

CASE NOTES

1. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

2. Legislative veto provision in the Legislative Oversight Act, *N.J. Stat. Ann. §§ 52:14B-4.1* to *52:14B-4.9*, violated the separation of powers principle embodied in *N.J. Const. art. III, para. 1* by excessively interfering with the functions of the executive branch and violated the presentment clause requirement that changes in legislative policy be effected by a majority vote of both houses of the legislature and approval by the governor, or, after executive veto, by a two-thirds vote of both houses, as set forth in *N.J. Const. art. V, § 1, para. 14. General Assembly of New Jersey v. Byrne, 90 N.J. 376, 448 A.2d 438, 1982 N.J. LEXIS 2165 (1982),* questioned by *Kimmelman v. Burgio, 204 N.J. Super. 44, 497 A.2d 890, 1985 N.J. Super. LEXIS 1421 (App.Div. 1985).*

3. Legislative veto provision in the Legislative Oversight Act, *N.J. Stat. Ann. §§ 52:14B-4.1* to *52:14B-4.9*, violated the separation of powers principle embodied in *N.J. Const. art. III, para. 1* by excessively interfering with the functions of the executive branch and violated the presentment clause requirement that changes in legislative policy be effected by a majority vote of both houses of the legislature and approval by the governor, or, after executive veto, by a two-thirds vote of both houses, as set forth in *N.J. Const. art. V, § 1, para. 14. General Assembly of New Jersey v. Byrne, 90 N.J. 376, 448 A.2d 438, 1982 N.J. LEXIS 2165 (1982),* questioned by *Kimmelman v. Burgio, 204 N.J. Super. 44, 497 A.2d 890, 1985 N.J. Super. LEXIS 1421 (App.Div. 1985).*

4. Decision of the Commissioner of the Department of Environmental Protection not to implement the 2005 Comprehensive Black Bear Management Plan (CBBMP) was affirmed since the policy was not adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (APA); because the 2005 CBBMP set guidelines as to when and if a hunt can occur, it implicated matters of general administrative policy, warranting rulemaking pursuant to the *APA. New Jersey Animal Rights Alliance v. New Jersey Dept. of Environmental Protection, 396 N.J. Super. 358, 934 A.2d 52, 2007 N.J. Super. LEXIS 324 (App.Div. 2007).*

5. Legislative veto provision in the Legislative Oversight Act, *N.J. Stat. Ann. §§ 52:14B-4.1* to *52:14B-4.9*, violated the separation of powers principle embodied in *N.J. Const. art. III, para. 1* by excessively interfering with the functions of the executive branch and violated the presentment clause requirement that changes in legislative policy be effected by a majority vote of both houses of the legislature and approval by the governor, or, after executive veto, by a two-thirds vote of both houses, as set forth in *N.J. Const. art. V, § 1, para. 14. General Assembly of New Jersey v. Byrne, 90 N.J. 376, 448 A.2d 438, 1982 N.J. LEXIS 2165 (1982),* questioned by *Kimmelman v. Burgio, 204 N.J. Super. 44, 497 A.2d 890, 1985 N.J. Super. LEXIS 1421 (App.Div. 1985).*

LAW REVIEWS & JOURNALS

1. *25 Seton Hall Legis. J. 1,* PERSPECTIVE: THE EVOLUTION OF NEW JERSEY'S GUBERNATORIAL POWER.

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N.J. Stat. § 52:14B-4.1a (2008)

§ 52:14B-4.1a. Compliance with interagency rules required; OAL review for clarity

a. The director is authorized to refuse to accept from an agency a notice of proposal or notice of adoption which adopts, readopts or amends a rule or regulation, if the director determines that the rule or regulation and its accompanying materials do not comply satisfactorily with the interagency rules of the director. The State agency shall not be authorized to adopt, readopt or amend a rule or regulation where notice of proposal or notice of adoption is refused by the director in accordance with this provision, except by proposing the adoption, readoption or amendment in compliance with agency rules.

b. The Office of Administrative Law, upon its review and determination, shall not accept for publication any notice of intention to adopt, readopt or amend a rule or regulation, a proposed rule, summary of the proposed rule, regulatory impact analysis, or other accompanying materials which lacks a standard of clarity.

As used in this section, "standard of clarity" means the document is written in a reasonably simple and understandable manner which is easily readable. The document is drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise. The document conforms to commonly accepted principles of grammar. The document contains sentences that are as short as practical, and is organized in a sensible manner. The document does not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language. Terms of art and words with multiple meanings that may be misinterpreted are defined. The document is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

c. The provisions of subsection b. of this section shall not apply to any administrative rule that a State agency adopts to conform to a model code, federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall append to the proposed rule for publication a written statement describing the rule which complies with subsection b. of this section.

d. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the repromulgation, without amendment, of any rule or provision of a rule.

HISTORY: L. 2001, c. 5, § 9.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

Filing of rules; concurrent resolution of the Legislature; effect of publication, see *52:14B-5*.

Expiration of rules in five years; continuation, see *52:14B-5.1*.

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N.J. Stat. § 52:14B-4.1b (2008)

§ 52:14B-4.1b. Housing affordability impact analysis

a. In proposing a rule for adoption, the agency involved shall issue a housing affordability impact analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*). Each housing affordability impact analysis shall contain:

(1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply; and

(2) A description of the estimated increase or decrease in the average cost of housing which will be affected by the regulation.

This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*).

b. In proposing a rule for adoption, the agency involved shall issue a smart growth development impact analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*). Each smart growth development impact analysis shall contain:

(1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply;

(2) A description of the estimated increase or decrease in the availability of affordable housing which will be affected by the regulation; and

(3) A description as to whether the proposed rule will affect in any manner new construction within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*).

For the purposes of complying with this subsection, and in order to avoid duplicative action, an agency may consider a series of closely related rules as one rule.

c. For the purposes of this section, "types" means housing groups distinguished by the following categories: housing reserved for occupancy by very low, low and moderate and middle income households, respectively; single family, two-family, and multi-family housing; rental housing and for-sale housing.

HISTORY: L. 2008, c. 46, § 31, eff. July 17, 2008.

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N.J. Stat. § 52:14B-4.2 (2008)

§ 52:14B-4.2. Repealed by L. 2001, c. 5, § 11, effective July 1, 2001

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N.J. Stat. § 52:14B-4.3 (2008)

§ 52:14B-4.3. Concurrent resolution of Legislature to invalidate rules in whole or in part

If, pursuant to *Article V, section 4, paragraph 6 of the New Jersey Constitution*, the Senate and General Assembly adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation, in whole or in part, from taking effect, the presiding officer of the House of final adoption shall cause the concurrent resolution to be transmitted to the Office of Administrative Law for publication in the New Jersey Register and the New Jersey Administrative Code as an annotation to the rule or regulation.

HISTORY: L. 1981, c. 27, § 3; amended 2001, c. 5, § 7, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

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N.J. Stat. § 52:14B-4.4 (2008)

§ 52:14B-4.4. Repealed by L. 2001, c. 5, § 11, effective July 1, 2001

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N.J. Stat. § 52:14B-4.5 (2008)

§ 52:14B-4.5. Repealed by L. 2001, c. 5, § 11, effective July 1, 2001

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N.J. Stat. § 52:14B-4.6 (2008)

§ 52:14B-4.6. Repealed by L. 2001, c. 5, § 11, effective July 1, 2001

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N.J. Stat. § 52:14B-4.7 (2008)

§ 52:14B-4.7. Repealed by L. 2001, c. 5, § 11, effective July 1, 2001

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N.J. Stat. § 52:14B-4.8 (2008)

§ 52:14B-4.8. Votes on concurrent resolutions; recordation

A vote by the Senate or General Assembly on a concurrent resolution on any action authorized by this act shall be a recorded vote.

HISTORY: L. 1981, c. 27, 8.

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N.J. Stat. § 52:14B-4.9 (2008)

§ 52:14B-4.9. Proposed rule which revises, rescinds or replaces proposed, existing or suspended rule as new rule

Any rule proposed by a State agency which revises, rescinds or replaces either (1) any proposed or existing rule or (2) any rule which has been suspended shall be considered as a new rule and shall be subject to the provisions of this act and the act to which it is a supplement.

HISTORY: L. 1981, c. 27, 9.

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N.J. Stat. § 52:14B-5 (2008)

§ 52:14B-5. Filing of rules; concurrent resolution of the Legislature; effect of publication

(a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) Deleted by amendment, P.L. 2001, c. 5.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act and which meets all of the requirements and standards of P.L. 2001, c. 5 (*C. 52:14B-4.1a* et al.); (2) endorse upon the certified copy of each rule accepted for filing pursuant to this act the date and time upon which such rule was filed; (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection; and (4) accept for publication a duly adopted concurrent resolution of the Legislature invalidating any rule or regulation, in whole or in part, or prohibiting the proposed rule or regulation, in whole or in part, from taking effect.

(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements of this act and of interagency rules of the director relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

(e) The publication of a rule in the New Jersey Administrative Code or the New Jersey Register shall be deemed to establish the rebuttable presumption that the rule was duly filed and that the text of the rule as so published is the text of the rule adopted. Judicial notice shall be taken of the text of each rule published in the New Jersey Administrative Code or the New Jersey Register.

HISTORY: L. 1968, c. 410, § 5; amended 1978, c. 67, § 7; 1981, c. 27, § 12; 1993, c. 343, § 2; 2001, c. 5, § 3, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

Board actions subject to provisions of section; "action" defined; procedure, see *17B:27A-16.1*.

Board actions subject to provisions of section; "action" defined; procedure, see *17B:27A-51*.

Adoption of standards, see *34:6A-30*.

Compilation of list of valid diagnostic tests used in treatment of persons sustaining bodily injury, see *39:6A-4.7*.

Administrative Code:

1. *N.J.A.C. 7:50-7.8*, CHAPTER 50. PINELANDS COMPREHENSIVE MANAGEMENT PLAN, Filing with Secretary of State.

2. *N.J.A.C. 12:100-3A.1*, CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES, Adoption of standards in compliance with applicable Federal standards.

3. *N.J.A.C. 12:100-3A.3*, CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES, Adoption of emergency temporary standards.

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N.J. Stat. § 52:14B-5.1 (2008)

§ 52:14B-5.1. Expiration of rules in five years; continuation

a. Every rule in effect on the enactment date of P.L. 2001, c. 5 (*C. 52:14B-4.1a* et al.) shall expire five years following the effective date of this act unless a sooner expiration date has been established for the rule.

b. Every rule adopted on or after the effective date of P.L. 2001, c. 5 (*C. 52:14B-4.1a* et al.) shall expire five years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

c. An agency may continue in effect an expiring rule for a five year period by duly proposing and readopting the rule prior to its expiration. Upon the filing of a notice of proposed readoption, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

d. The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

e. This section shall not apply to any rule repealing a rule or any rule prescribed by federal law or whose expiration would violate any other federal or State law, in which case the federal or State law shall be cited in the publication of the rule.

HISTORY: L. 2001, c. 5, § 10, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Administrative Code:

1. *N.J.A.C. 1:30-1.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Definitions.

2. *N.J.A.C. 1:30-6.6*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Effective date and promulgation of adopted rule.

3. *N.J.A.C. 13:37*, CHAPTER 37. NEW JERSEY BOARD OF NURSING, 13, Chapter 37 -- Chapter Notes.

4. *N.J.A.C. 13:44*, CHAPTER 44. STATE BOARD OF VETERINARY MEDICAL EXAMINERS, 13, Chapter 44 -- Chapter Notes.

5. *N.J.A.C. 13:44D*, CHAPTER 44D. PUBLIC MOVERS AND WAREHOUSEMEN, 13, Chapter 44D -- Chapter Notes.

6. *N.J.A.C. 13:47E*, CHAPTER 47E. WEIGHMASTERS; WEIGHTS AND MEASURES, 13, Chapter 47E -- Chapter Notes.

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N.J. Stat. § 52:14B-6 (2008)

§ 52:14B-6. Repealed by L. 1978, c. 67, § 12

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N.J. Stat. § 52:14B-7 (2008)

§ 52:14B-7. New Jersey Administrative Code; New Jersey Register; publication

(a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the manner in which a copy thereof may be obtained. The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services, the State Library and to such other State agencies and public officials as the director may designate free of charge. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) (Deleted by amendment, P.L.1993, c.343).

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; the director may further divide or combine existing parts, paragraphs and sections and may provide for appropriate digests, indices and other related material. The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but shall recommend any such changes as the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

HISTORY: L. 1968, c. 410, § 7; Amended by 1973, c. 227, § 1; L.1993, c. 343, § 7.

NOTES:

Administrative Code:

1. *N.J.A.C. 1:30*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, 1, Chapter 30 -- Chapter Notes.

2. *N.J.A.C. 1:30-1.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Definitions.

3. *N.J.A.C. 1:30-1.14*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Publication filing deadlines.

4. *N.J.A.C. 1:30-2.8*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Appendices.

5. *N.J.A.C. 1:30-5.2*, CHAPTER 30. RULES FOR AGENCY RULEMAKING, Publication and distribution of notice of proposal.

6. *N.J.A.C. 6A:6-1.2*, CHAPTER 6. STATE BOARD OF EDUCATION RULEMAKING PROCESS, Definitions.

LexisNexis (R) Notes:

CASE NOTES

1. Intoxicated Driver Resource Center rules were invalid because they were not enacted pursuant to *N.J. Stat. Ann. §§ 52:14B-4* and *52:14B-7* because notice of the adoption of the rules was not published in the New Jersey Register, the rules did not appear in the New Jersey Administrative Code, and the rules adopted were confidential. *State v. Klemmer, 237 N.J. Super. 32, 566 A.2d 836, 1989 N.J. Super. LEXIS 413 (Law Div. 1989).*

LAW REVIEWS & JOURNALS

1. *18 Seton Hall Legis. J. 59,* FIXING THE FISCAL POLICE AND FIRETRAP: A CRITIQUE OF NEW JERSEY'S COMPULSORY INTEREST ARBITRATION ACT.

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N.J. Stat. § 52:14B-8 (2008)

§ 52:14B-8. Declaratory rulings

Subject to the provisions of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e), an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions.

HISTORY: L. 1968, c. 410, 8.

NOTES:

Cross References:

Notice posting; penalties for violation, see *43:21-11.2*.

Administrative Code:

1. *N.J.A.C. 5:71-2.8*, CHAPTER 71. FIRE CODE ENFORCEMENT, Amendments to the Code.

2. *N.J.A.C. 6A:3-2.1*, CHAPTER 3. CONTROVERSIES AND DISPUTES, Petition for declaratory ruling.

3. *N.J.A.C. 13:2-36.1*, CHAPTER 2. DIVISION OF ALCOHOLIC BEVERAGE CONTROL, Advisory opinions.

4. *N.J.A.C. 19:40-3.7*, SUBTITLE K. CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY, Declaratory rulings.

LexisNexis (R) Notes:

CASE NOTES

1. Pursuant to *N.J. Stat. Ann. § 52:14B-8*, issuance of a declaratory ruling by an agency is discretionary. *United Sav. Bank v. State, 360 N.J. Super. 520, 823 A.2d 873, 2003 N.J. Super. LEXIS 189 (App.Div. 2003).*

2. Real Estate Commission (Commission), in conducting a hearing on whether a real estate broker who had received a commission from the seller could also receive compensation from the buyer for placing the buyer's purchase money mortgage, did not satisfy the procedural requirements of *N.J. Stat. Ann. § 52:14B-8*; the Commission did not afford interested parties, including home buyers and the Commissioner of Banking, notice or a full opportunity to be

heard. *Mortgage Bankers Asso. v. New Jersey Real Estate Com., 200 N.J. Super. 584, 491 A.2d 1317, 1985 N.J. Super. LEXIS 1272 (App.Div. 1985)*, reversed by *102 N.J. 176, 506 A.2d 733, 1986 N.J. LEXIS 884 (1986).*

3. Memorandum issued by the New Jersey Department of Education regarding mentoring new teachers was not a rulemaking under New Jersey Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* to -25, as it merely conveyed information about a legislative funding decision and proposed steps to cope with that development; except to notify local school officials of the fact of legislative action suspending state funding of mentoring fees for new teachers, the memorandum adopted no new substantive standards within the agency's power to promulgate, and, except to advise the local officials of the necessary effects of the legislative action and to recommend alternative approaches while state funding remained suspended, the memorandum established no new procedural requirements for administering the program. *New Jersey Educ. Ass'n v. Librera, 366 N.J. Super. 9, 840 A.2d 266, 2004 N.J. Super. LEXIS 20 (App.Div. 2004).*

4. New Jersey Casino Control Commission properly denied a gambler's request to be removed from the lifetime self-exclusion list as the fact that the gambler was also excluded from affiliated out-of-state casinos was a collateral consequence that did not negate his voluntary request to be placed on the list. *In re Petition of S.D., 399 N.J. Super. 107, 943 A.2d 188, 2008 N.J. Super. LEXIS 65 (App.Div. 2008).*

5. Provision of New Jersey's Administrative Procedure Act permitting any interested person to challenge the applicability of any statute or rule enforced or administered by an agency, *N.J. Stat. Ann. § 52:14B-8*, requires liberal application of criteria to determine standing, particularly in taxpayer suits, in furtherance of the principles embodied in the Declaratory Judgment Act, *N.J. Stat. Ann. §§ 2A:16-50, 2A:16-53*, and is not to be applied in a wooden fashion to preclude expeditious relief when there is a genuine conflict. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

6. Commissioner of Education erred in holding that education association lacked standing to challenge Board policy limiting the employment of supplemental teachers to two consecutive years; it was incorrect to view the education association as lacking standing on the ground that no current employee of the Board and none of the education association's present members were affected by the implementation of the policy because only a substantial likelihood of some harm visited upon a plaintiff in the event of an unfavorable decision is needed for the purposes of standing. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

7. Where a plaintiff association had an obvious though indirect interest in the effect upon others of statutory and administrative regulations, that indirect interest met the requirements for standing, and the Commissioner of Education erred in finding that the education association lacked standing to challenge the policy of the Board of Education limiting the employment of supplemental teachers to two consecutive years; the association's relationship to the Board policy was not that of a total stranger or casual interloper, and its interest in protecting the employment status of prospective members who would, under the adopted policy, be denied an opportunity to acquire tenure, was an adequate basis for according it representational standing in a suit challenging the validity of the policy. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

8. Commissioner of Education erred in holding that two tenured part-time supplemental teachers employed by the Board of Education lacked standing to challenge Board policy limiting the employment of supplemental teachers to two consecutive years where, to the extent their status as residents and taxpayers of the school district was not itself an adequate basis for according standing, their professional status and involvement satisfied any additional requirement that might exist for a private interest. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

9. Commissioner of Education erred in holding that education association lacked standing to challenge Board policy limiting the employment of supplemental teachers to two consecutive years; it was incorrect to view the education association as lacking standing on the ground that no current employee of the Board and none of the education association's present members were affected by the implementation of the policy because only a substantial likelihood of some harm visited upon a plaintiff in the event of an unfavorable decision is needed for the purposes of standing. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

10. Where a plaintiff association had an obvious though indirect interest in the effect upon others of statutory and administrative regulations, that indirect interest met the requirements for standing, and the Commissioner of Education erred in finding that the education association lacked standing to challenge the policy of the Board of Education limiting

the employment of supplemental teachers to two consecutive years; the association's relationship to the Board policy was not that of a total stranger or casual interloper, and its interest in protecting the employment status of prospective members who would, under the adopted policy, be denied an opportunity to acquire tenure, was an adequate basis for according it representational standing in a suit challenging the validity of the policy. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

11. Quasi-legislative acts of local and regional boards of education are generally subject to the jurisdiction of the Commissioner of Education to hear and determine all controversies and disputes arising under the school laws; thus, procedurally, challenges to the facial validity of school board policies or to their validity as applied resemble proceedings brought under *N.J. Stat. Ann. § 52:14B-8. Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

12. Quasi-legislative acts of local and regional boards of education are generally subject to the jurisdiction of the Commissioner of Education to hear and determine all controversies and disputes arising under the school laws; thus, procedurally, challenges to the facial validity of school board policies or to their validity as applied resemble proceedings brought under *N.J. Stat. Ann. § 52:14B-8. Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

13. Commissioner of Education erred in holding that education association lacked standing to challenge Board policy limiting the employment of supplemental teachers to two consecutive years; it was incorrect to view the education association as lacking standing on the ground that no current employee of the Board and none of the education association's present members were affected by the implementation of the policy because only a substantial likelihood of some harm visited upon a plaintiff in the event of an unfavorable decision is needed for the purposes of standing. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

14. Where a plaintiff association had an obvious though indirect interest in the effect upon others of statutory and administrative regulations, that indirect interest met the requirements for standing, and the Commissioner of Education erred in finding that the education association lacked standing to challenge the policy of the Board of Education limiting the employment of supplemental teachers to two consecutive years; the association's relationship to the Board policy was not that of a total stranger or casual interloper, and its interest in protecting the employment status of prospective members who would, under the adopted policy, be denied an opportunity to acquire tenure, was an adequate basis for according it representational standing in a suit challenging the validity of the policy. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

15. Commissioner of Education erred in holding that two tenured part-time supplemental teachers employed by the Board of Education lacked standing to challenge Board policy limiting the employment of supplemental teachers to two consecutive years where, to the extent their status as residents and taxpayers of the school district was not itself an adequate basis for according standing, their professional status and involvement satisfied any additional requirement that might exist for a private interest. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

16. Provision of New Jersey's Administrative Procedure Act permitting any interested person to challenge the applicability of any statute or rule enforced or administered by an agency, *N.J. Stat. Ann. § 52:14B-8*, requires liberal application of criteria to determine standing, particularly in taxpayer suits, in furtherance of the principles embodied in the Declaratory Judgment Act, *N.J. Stat. Ann. §§ 2A:16-50, 2A:16-53*, and is not to be applied in a wooden fashion to preclude expeditious relief when there is a genuine conflict. *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

17. Quasi-legislative acts of local and regional boards of education are generally subject to the jurisdiction of the Commissioner of Education to hear and determine all controversies and disputes arising under the school laws; thus, procedurally, challenges to the facial validity of school board policies or to their validity as applied resemble proceedings brought under *N.J. Stat. Ann. § 52:14B-8. Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 665 A.2d 776, 1995 N.J. Super. LEXIS 491 (App.Div. 1995).*

18. New Jersey Casino Control Commission properly denied a gambler's request to be removed from the lifetime self-exclusion list as the fact that the gambler was also excluded from affiliated out-of-state casinos was a collateral consequence that did not negate his voluntary request to be placed on the list. *In re Petition of S.D., 399 N.J. Super. 107, 943 A.2d 188, 2008 N.J. Super. LEXIS 65 (App.Div. 2008).*

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N.J. Stat. § 52:14B-9 (2008)

§ 52:14B-9. Notice and hearing in contested cases

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include in addition to such other information as may be deemed appropriate:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond, appear and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party at the expense of such party.

(f) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(g) Unless otherwise provided by any law, agencies may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing.

HISTORY: L. 1968, c. 410, 9.

NOTES:

Cross References:

Powers, duties of Director and Chief Administrative Law Judge, see *52:14F-5*.

Administrative Code:

1. *N.J.A.C. 7:26H-5.6*, CHAPTER 26H. SOLID WASTE UTILITY REGULATIONS, Annual fee.

2. *N.J.A.C. 10:120A-1.3*, CHAPTER 120A. DISPUTE RESOLUTION, Definitions.

3. *N.J.A.C. 10:140-1.4*, CHAPTER 140. PERSONAL ASSISTANCE SERVICES PROGRAM, Definitions.

4. *N.J.A.C. 11:15-1.17*, CHAPTER 15. GROUP SELF-INSURANCE, Revocation of certificate of approval.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 22 -- 1979, *1979 N.J. AG LEXIS 6.*

CASE NOTES

1. Where the Director of the Division of Youth and Family Services received and considered comments from counsel for a parent of a child who was being released from a residential program, the parent was not denied her right to counsel or to a fair hearing; however, the director's decision to release the child was vacated due to the inadequacy of the record supporting the decision. *Drake v. Department of Human Services, Div. of Youth & Family Services, 186 N.J. Super. 532, 453 A.2d 254, 1982 N.J. Super. LEXIS 946 (App.Div. 1982).*

2. Inmate's due process rights secured by both the Federal and New Jersey Constitutions were not violated upon his placement, without a hearing, into a Modified Activities Program upon the discovery of pornography in his possession, nor was *N.J. Stat. Ann. § 52:14B-9*, the contested case provision of the New Jersey Administrative Procedure Act, applicable. *M.X.L. v. New Jersey Dept. of Human Services/New Jersey Dept. of Corrections, 379 N.J. Super. 37, 876 A.2d 869, 2005 N.J. Super. LEXIS 220 (App.Div. 2005).*

3. Where state trooper was dismissed for an unprovoked attack on a prisoner at a detention center following hearing conducted pursuant to *N.J. Stat. Ann. § 52:14B-9*, the penalty was supported by evidence in the record and was not error. *Division of State Police v. Jiras, 305 N.J. Super. 476, 702 A.2d 1298, 1997 N.J. Super. LEXIS 445 (App.Div. 1997).*

4. An adjudicatory procedure is typically a contested proceeding that may require a trial-type hearing, *N.J. Stat. Ann. § 52:14B-9(a)*, and thus resembles judicial action because it determines the rights of specific individuals or a limited group of individuals. *In re Issuance of Permit by Dep't of Environmental Protection etc., 120 N.J. 164, 576 A.2d 784, 1990 N.J. LEXIS 93 (1990).*

5. Where race track judges imposed a penalty and disqualification on a harness race driver who finished first in the race for his actions during a race, in an appeal of that determination to the racing commission, a one-day mailgram notice of the hearing to the owners of the horses that came in second and third did not fulfill the requirement for reasonable notice of the hearing. *Pitts v. Division of New Jersey Racing Com., 185 N.J. Super. 190, 447 A.2d 1348, 1982 N.J. Super. LEXIS 844 (App.Div. 1982).*

6. An administrator was entitled to a hearing to resolve the contested factual issue concerning the originality of his suggestion that was submitted to the state employee awards program; he also should have been afforded the opportunity to respond to all issues involved. *Gasior v. State, Dep't of Civil Service, State Awards Program, 154 N.J. Super. 568, 382 A.2d 60, 1977 N.J. Super. LEXIS 1209 (App.Div. 1977).*

7. Where the Director of the Division of Youth and Family Services received and considered comments from counsel for a parent of a child who was being released from a residential program, the parent was not denied her right to counsel or to a fair hearing; however, the director's decision to release the child was vacated due to the inadequacy of the record supporting the decision. *Drake v. Department of Human Services, Div. of Youth & Family Services, 186 N.J. Super. 532, 453 A.2d 254, 1982 N.J. Super. LEXIS 946 (App.Div. 1982).*

8. Notice of violation of the Solid Waste Management Act issued by the Department of Environmental Protection, which orders the immediate cessation of operation of a solid waste facility, is an order of abatement within the intent of *N.J. Stat. Ann. §13:1E-9(c)*, which entitles the recipient to an administrative hearing to challenge the violation. *Gloucester County Imp. Authority v. New Jersey Dep't of Environmental Protection, 391 N.J. Super. 244, 917 A.2d 833, 2007 N.J. Super. LEXIS 79 (App.Div. 2007).*

9. Where race track judges imposed a penalty and disqualification on a harness race driver who finished first in the race for his actions during a race, in an appeal of that determination to the racing commission, a one-day mailgram notice of the hearing to the owners of the horses that came in second and third did not fulfill the requirement for

reasonable notice of the hearing. *Pitts v. Division of New Jersey Racing Com., 185 N.J. Super. 190, 447 A.2d 1348, 1982 N.J. Super. LEXIS 844 (App.Div. 1982).*

10. An administrator was entitled to a hearing to resolve the contested factual issue concerning the originality of his suggestion that was submitted to the state employee awards program; he also should have been afforded the opportunity to respond to all issues involved. *Gasior v. State, Dep't of Civil Service, State Awards Program, 154 N.J. Super. 568, 382 A.2d 60, 1977 N.J. Super. LEXIS 1209 (App.Div. 1977).*

11. Board of Public Utilities is required under *N.J. Stat. Ann. § 52:14B-9* to limit its consideration to the record made before an administrative law judge (ALJ), including, under *N.J. Stat. Ann. § 52:14B-10(c)*, the recommended report and decision of the *ALJ. New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 460 A.2d 1057, 1983 N.J. Super. LEXIS 845 (App.Div. 1983).*

12. *N.J. Admin. Code tit. 19, § 46-1.32*, prohibiting a licensed casino from acquiring more than 50 percent of its slot machines from any one manufacturer, was a valid exercise of the Casino Control Commission's power under *N.J. Stat. Ann. § 5:12-69* and *N.J. Stat. Ann. § 5:12-70(i)* of the Casino Control Act, did not violate antitrust laws, pursuant to *N.J. Stat. Ann. § 56:9-5(c)*, and complied with the Administrative Procedure Act requirements of *N.J. Stat. Ann. § 52:14B-9(c). Bally Mfg. Corp. v. New Jersey Casino Control Com., 85 N.J. 325, 426 A.2d 1000, 1981 N.J. LEXIS 1600, 1981-1 Trade Cas. (CCH) P63957 (1981),* appeal dismissed by *454 U.S. 804, 102 S. Ct. 77, 70 L. Ed. 2d 74, 1981 U.S. LEXIS 3041, 50 U.S.L.W. 3243 (1981).*

13. Court affirmed trial court's order refusing to enjoin state health benefits commission from attempting to arbitrate its dispute with board of education; board was required to exhaust its administrative remedies prior to judicial review and commission properly asserted its authority to adjudicate the controversy administratively under *N.J. Stat. Ann. § 52:14B-9*, where the legislature expressly delegated this authority to commission. *Board of Educ. v. State Health Benefits Comm'n, 314 N.J. Super. 486, 715 A.2d 358, 1998 N.J. Super. LEXIS 377 (App.Div. 1998).*

14. Although the New Jersey Board of Public Utilities issued a decision on securitization, i.e., the structuring and pricing of transition bonds, which were used to reduce stranded costs, without conducting hearings, given the provisions of *N.J. Stat. Ann. § 52:14B-9, N.J. Stat. Ann. § 52:14B-2*, and *N.J. Stat. Ann. § 48:3-64*, and the fact that *N.J. Stat. Ann. § 48:3-64* did not require a hearing and referred back to *N.J. Stat. Ann. § 48:3-62*, which did not require a hearing, and *N.J. Stat. Ann. § 48:3-64* did not refer back to *N.J. Stat. Ann. § 48:3-61*, which did require a hearing, the failure of the Board to conduct a hearing was not error. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000),* affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

15. Court affirmed trial court's order refusing to enjoin state health benefits commission from attempting to arbitrate its dispute with board of education; board was required to exhaust its administrative remedies prior to judicial review and commission properly asserted its authority to adjudicate the controversy administratively under *N.J. Stat. Ann. § 52:14B-9*, where the legislature expressly delegated this authority to commission. *Board of Educ. v. State Health Benefits Comm'n, 314 N.J. Super. 486, 715 A.2d 358, 1998 N.J. Super. LEXIS 377 (App.Div. 1998).*

16. *N.J. Admin. Code tit. 19, § 46-1.32*, prohibiting a licensed casino from acquiring more than 50 percent of its slot machines from any one manufacturer, was a valid exercise of the Casino Control Commission's power under *N.J. Stat. Ann. § 5:12-69* and *N.J. Stat. Ann. § 5:12-70(i)* of the Casino Control Act, did not violate antitrust laws, pursuant to *N.J. Stat. Ann. § 56:9-5(c)*, and complied with the Administrative Procedure Act requirements of *N.J. Stat. Ann. § 52:14B-9(c). Bally Mfg. Corp. v. New Jersey Casino Control Com., 85 N.J. 325, 426 A.2d 1000, 1981 N.J. LEXIS 1600, 1981-1 Trade Cas. (CCH) P63957 (1981),* appeal dismissed by *454 U.S. 804, 102 S. Ct. 77, 70 L. Ed. 2d 74, 1981 U.S. LEXIS 3041, 50 U.S.L.W. 3243 (1981).*

17. Inmate's due process rights secured by both the Federal and New Jersey Constitutions were not violated upon his placement, without a hearing, into a Modified Activities Program upon the discovery of pornography in his possession, nor was *N.J. Stat. Ann. § 52:14B-9*, the contested case provision of the New Jersey Administrative Procedure Act, applicable. *M.X.L. v. New Jersey Dept. of Human Services/New Jersey Dept. of Corrections, 379 N.J. Super. 37, 876 A.2d 869, 2005 N.J. Super. LEXIS 220 (App.Div. 2005).*

18. Inmate's due process rights secured by both the Federal and New Jersey Constitutions were not violated upon his placement, without a hearing, into a Modified Activities Program upon the discovery of pornography in his possession, nor was *N.J. Stat. Ann. § 52:14B-9*, the contested case provision of the New Jersey Administrative Procedure Act, applicable. *M.X.L. v. New Jersey Dept. of Human Services/New Jersey Dept. of Corrections, 379 N.J. Super. 37, 876 A.2d 869, 2005 N.J. Super. LEXIS 220 (App.Div. 2005).*

19. Neither procedural due process nor the APA required the N.J. Board of Public Utilities to provide particularized notice of its specific intention to make a policy determination with respect to accelerated amortization of deferred energy balance, and the resolution of the unique policy question presented in the aftermath of the Three Mile Island incident would not have been aided by the furnishing of a more explicit notice on the matter. *In re Petition of Jersey Cent. Power & Light Co., 85 N.J. 520, 428 A.2d 498, 1981 N.J. LEXIS 1603 (1981).*

20. Although the New Jersey Board of Public Utilities issued a decision on securitization, i.e., the structuring and pricing of transition bonds, which were used to reduce stranded costs, without conducting hearings, given the provisions of *N.J. Stat. Ann. § 52:14B-9*, *N.J. Stat. Ann. § 52:14B-2*, and *N.J. Stat. Ann. § 48:3-64*, and the fact that *N.J. Stat. Ann. § 48:3-64* did not require a hearing and referred back to *N.J. Stat. Ann. § 48:3-62*, which did not require a hearing, and *N.J. Stat. Ann. § 48:3-64* did not refer back to *N.J. Stat. Ann. § 48:3-61*, which did require a hearing, the failure of the Board to conduct a hearing was not error. *In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000)*, affirmed by *167 N.J. 377, 771 A.2d 1163, 2001 N.J. LEXIS 526 (2001).*

21. Public hearing was mandated by *N.J. Stat. Ann. §§ 48:2-21*, and *52:14B-9* in water company's request to pass the cost of acquisition of another company to the ratepayers. *In re Green Island Water Co., 177 N.J. Super. 601, 427 A.2d 595, 1980 N.J. Super. LEXIS 777 (App.Div. 1980).*

22. Pursuant to *N.J. Stat. Ann. § 52:14B-9*, respondent department was not required to gain the approval of an administrative law judge of a settlement agreement with a property owner regarding the delineation of wetlands. *Ocean County Chapter Inc. of the Izaak Walton League of Am. v. Department of Envtl. Protection & Energy, 303 N.J. Super. 1, 696 A.2d 25, 1997 N.J. Super. LEXIS 325 (App.Div. 1997).*

23. Notice of violation of the Solid Waste Management Act issued by the Department of Environmental Protection, which orders the immediate cessation of operation of a solid waste facility, is an order of abatement within the intent of *N.J. Stat. Ann. §13:1E-9(c)*, which entitles the recipient to an administrative hearing to challenge the violation. *Gloucester County Imp. Authority v. New Jersey Dep't of Environmental Protection, 391 N.J. Super. 244, 917 A.2d 833, 2007 N.J. Super. LEXIS 79 (App.Div. 2007).*

24. Township was not entitled by *N.J. Stat. Ann. § 52:14B-9(a)* to a hearing before the department regarding the issuance of a certificate of registration of a solid waste disposal facility because the issuance was not a contested matter under the *Administrative Procedure Act. Little Falls v. Bardin, 173 N.J. Super. 397, 414 A.2d 559, 1979 N.J. Super. LEXIS 1027 (App.Div. 1979).*

25. *N.J. Admin. Code tit. 19, § 46-1.32*, prohibiting a licensed casino from acquiring more than 50 percent of its slot machines from any one manufacturer, was a valid exercise of the Casino Control Commission's power under *N.J. Stat. Ann. § 5:12-69* and *N.J. Stat. Ann. § 5:12-70(i)* of the Casino Control Act, did not violate antitrust laws, pursuant to *N.J. Stat. Ann. § 56:9-5(c)*, and complied with the Administrative Procedure Act requirements of *N.J. Stat. Ann. § 52:14B-9(c). Bally Mfg. Corp. v. New Jersey Casino Control Com., 85 N.J. 325, 426 A.2d 1000, 1981 N.J. LEXIS 1600, 1981-1 Trade Cas. (CCH) P63957 (1981)*, appeal dismissed by *454 U.S. 804, 102 S. Ct. 77, 70 L. Ed. 2d 74, 1981 U.S. LEXIS 3041, 50 U.S.L.W. 3243 (1981).*

26. Where state trooper was dismissed for an unprovoked attack on a prisoner at a detention center following hearing conducted pursuant to *N.J. Stat. Ann. § 52:14B-9*, the penalty was supported by evidence in the record and was not error. *Division of State Police v. Jiras, 305 N.J. Super. 476, 702 A.2d 1298, 1997 N.J. Super. LEXIS 445 (App.Div. 1997).*

27. Where race track judges imposed a penalty and disqualification on a harness race driver who finished first in the race for his actions during a race, in an appeal of that determination to the racing commission, a one-day mailgram notice of the hearing to the owners of the horses that came in second and third did not fulfill the requirement for reasonable notice of the hearing. *Pitts v. Division of New Jersey Racing Com., 185 N.J. Super. 190, 447 A.2d 1348, 1982 N.J. Super. LEXIS 844 (App.Div. 1982).*

28. Public hearing was mandated by *N.J. Stat. Ann. §§ 48:2-21*, and *52:14B-9* in water company's request to pass the cost of acquisition of another company to the ratepayers. *In re Green Island Water Co., 177 N.J. Super. 601, 427 A.2d 595, 1980 N.J. Super. LEXIS 777 (App.Div. 1980).*

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LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS
CHAPTER 14B. ADMINISTRATIVE PROCEDURE AND REGULATORY FLEXIBILITY

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:14B-10 (2008)

§ 52:14B-10. Evidence; judicial notice; recommended report and decision; final decision; effective date

In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended

report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

HISTORY: L. 1986, c. 410, § 10; amended 1971, c. 217, § 4; 1978, c. 67, § 8; 1993, c. 343, § 3; 2001, c. 5, § 4, eff. July 1, 2001.

NOTES:

Effective Dates:

Section 12 of L. 2001, c. 5 provides: "This act shall take effect on the first day of the sixth month following enactment but shall not apply to any rule proposed in the New Jersey Register or to any contested case filed prior to the effective date." Chapter 5, L. 2001, was approved on January 16, 2001.

Cross References:

Sanitary landfill facility on property of state college; prohibition of approval; termination of contractual right or regulatory approval; reimbursement, see *13:1E-5.3*.

Suspension, revocation of license, see *26:1A-43*.

Public hearings, see *48:2-32.6*.

Final decision or order, see *48:2-32.7*.

Powers, duties of Director and Chief Administrative Law Judge, see *52:14F-5*.

Construction of act, see *52:14F-7*.

Delegated local agency authorized to issue civil administrative penalty; hearing, see *58:10A-10.5*.

Administrative Code:

1. *N.J.A.C. 1:1-2.1*, CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES, Definitions.

2. *N.J.A.C. 1:1-18.2*, CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES, Oral initial decision.

3. *N.J.A.C. 1:1-18.3*, CHAPTER 1. UNIFORM ADMINISTRATIVE PROCEDURE RULES, Written initial decision.

4. *N.J.A.C. 1:21-18.1*, CHAPTER 21. TRADE SECRET CLAIMS, Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials.

5. *N.J.A.C. 1:31-1.1*, CHAPTER 31. ORGANIZATION OF THE OFFICE OF ADMINISTRATIVE LAW, Functions of the Office.

6. *N.J.A.C. 3:1-2.14*, CHAPTER 1. GENERAL PROVISIONS, Procedure for oral presentation.

7. *N.J.A.C. 4A:2*, CHAPTER 2. APPEALS, DISCIPLINE AND SEPARATIONS, 4A, Chapter 2 -- Chapter Notes.

8. *N.J.A.C. 5:80-9.10*, CHAPTER 80. NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, Increase subject to hearing.

9. *N.J.A.C. 7:1-1.4*, CHAPTER 1. DEPARTMENT ORGANIZATION, Effect of delegation of authority.

10. *N.J.A.C. 7:1C-1.9*, CHAPTER 1C. NINETY-DAY CONSTRUCTION PERMITS, Appeals.

11. *N.J.A.C. 10:37G-2.7*, CHAPTER 37G. SHORT TERM CARE FACILITY STANDARDS, Designation and redesignation.

12. *N.J.A.C. 10:42A-3.1*, CHAPTER 42A LIFE-THREATENING EMERGENCIES, Enforcement.

13. *N.J.A.C. 10:48-1.5*, CHAPTER 48. APPEAL PROCEDURE, Definitions.

14. *N.J.A.C. 10:48-7.1*, CHAPTER 48. APPEAL PROCEDURE, Office of Administrative Law.

15. *N.J.A.C. 10:91-6.2*, CHAPTER 91. ORGANIZATION AND GENERAL POLICY PROVISIONS OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED, Administrative review.

16. *N.J.A.C. 10:120A-1.3*, CHAPTER 120A. DISPUTE RESOLUTION, Definitions.

17. *N.J.A.C. 12A:10-2.2*, CHAPTER 10. GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, Obligation to provide information and penalties for failure to provide complete and accurate information.

18. *N.J.A.C. 12A:10A-2.2*, CHAPTER 10A. STATE CONSTRUCTION CONTRACTS FOR SMALL BUSINESSES, Obligation to provide information and penalties for failure to provide complete and accurate information.

19. *N.J.A.C. 12A:11-1.10*, CHAPTER 11. WOMEN-OWNED AND MINORITY-OWNED BUSINESSES, Obligations to provide information and penalties for failure to provide complete and accurate information.

20. *N.J.A.C. 17:13-2.2*, CHAPTER 13. GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, Obligation to provide information and penalties for failure to provide complete and accurate information.

21. *N.J.A.C. 17:14-2.2*, CHAPTER 14. STATE CONSTRUCTION CONTRACTS FOR SMALL BUSINESSES, Obligation to provide information and penalties for failure to provide complete and accurate information.

22. *N.J.A.C. 17:43-1.7*, CHAPTER 43. OFFSET OF STATE LOTTERY PRIZES TO SATISFY DEFAULTED FEDERAL AND STATE STUDENT LOANS, Right to hearing.

23. *N.J.A.C. 19:61-3.1*, STATE ETHICS COMMISSION, Allegations; procedure.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 6 -- 1979, *1979 N.J. AG LEXIS 22.*

2. FORMAL OPINION No. 10 -- 1979, *1979 N.J. AG LEXIS 18.*

3. FORMAL OPINION No. 15 -- 1979, *1979 N.J. AG LEXIS 13.*

4. FORMAL OPINION No. 22 -- 1979, *1979 N.J. AG LEXIS 6.*

CASE NOTES

1. Board of trustees of the New Jersey Public Employees Retirement System (Board) did not comply with the *N.J. Stat. Ann. § 52:14B-10(d)* directive to make findings of fact and conclusions of law when it decided that a retired employee was ineligible for benefits, where the Board's decision stated that the Board adopted all of the findings of fact and conclusions of law of the New Jersey deputy attorney general who presented the case as an advocate for the *Board. Stevens v. Board of Trustees of the Pub. Emples. Retirement Sys., 294 N.J. Super. 643, 684 A.2d 104, 1996 N.J. Super. LEXIS 433 (App.Div. 1996).*

2. Health commissioner's decision revoking a nursing home administrator's license for abusive language and conduct toward her patients was reversed and remanded with directions to the administrative law judge for detailed findings of basic facts and a further statement of his reasoning process; his first findings of fact were in a highly conclusory form which amounted to judgments. *State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 477 A.2d 363, 1984 N.J. Super. LEXIS 1020 (App.Div. 1984).*

3. Hearing under the Administrative Procedure Act (APA) is required where there are disputed adjudicative facts, when the party is entitled to de novo administrative or judicial review, when some urgency requires temporary action pending hearing, or when the advantages of a trial-type hearing clearly outweigh the disadvantages; the APA requires a "trial-type" hearing in a "contested case" pursuant to *N.J. Stat. Ann. § 52:14B-10(c). New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

4. Administrative-appeals procedure used by the New Jersey Division of Youth and Family Services (DYFS) do not adequately address or protect a person from an improper or erroneous listing in the Central Registry pursuant to *N.J. Stat. Ann. § 9:6-8.10* and therefore, DYFS was required to augment its procedures to provide additional process to address the deficiencies. Based on the adjudicatory nature of listings in the Central Registry, these cases had to be regarded as essentially equivalent to "contested matters" under *N.J. Stat. Ann. § 52:14B-10(c). New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

5. Racing commission members' acceptance of an ex parte communication made orally outside the presence of a harness racing driver and trainer against whom a penalty had been imposed for violations of *N.J. Admin. Code, 13:71-20.10(b)*, causing the penalty to be increased, was violative of *N.J. Stat. Ann. § 52:14B-10(d)* that a final decision of a state administrative agency had to be based only upon the evidence of record at the hearing. *New Jersey Racing Comm'n v. Silverman, 303 N.J. Super. 293, 696 A.2d 771, 1997 N.J. Super. LEXIS 333 (App.Div. 1997).*

6. Acting Director of DMAHS erred in disallowing resubmitted claims by Medicaid services provider because the provider did not present "documentary evidence" that the claims had been filed and because DMAHS had historically required a higher standard of proof of timely filing of a claim than "general business practice" evidence; under *N.J. Stat. Ann. § 52:14B-10(a)*, parties to a proceeding before an administrative agency are not bound by the rules of evidence and, in the absence of a regulation requiring "documentary proof" of mailing or mandating that all submissions be sent by certified mail, the traditional preponderance of the evidence standard applied. *SSI Medical Servs. v. HHS, Div. of Medical Assistance & Health Servs., 146 N.J. 614, 685 A.2d 1, 1996 N.J. LEXIS 1079 (1996).*

7. Administrative law judge's decision finding that the Board of Trustees of the New Jersey Public Employees Retirement System (Board) improperly invalidated a municipal employee's retirement, was deemed adopted by the Board pursuant to *N.J. Stat. Ann. § 52:14B-10(c)*, where the Board took no action to contest or modify the decision within 45 days after the Board received the decision. *Mastro v. Board of Trustees, 266 N.J. Super. 445, 630 A.2d 289, 1993 N.J. Super. LEXIS 738 (App.Div. 1993).*

8. Hearsay evidence was permitted in administrative hearings under *N.J. Stat. Ann. § 52:14B-10(a)* but an adjudication may not be based solely on hearsay but must be supported by a residuum of legal and competent evidence; where the evidence petitioner prisoner objected to was not in fact hearsay, but admissible as declarations against interest and as business records, prisoner's adjudication of guilt for offering an official or a staff member a bribe or anything of value was sufficiently supported by the evidence. *Negron v. New Jersey Dep't of Corrections, 220 N.J. Super. 425, 532 A.2d 735, 1987 N.J. Super. LEXIS 1329 (App.Div. 1987).*

9. Decision of the Civil Service Commission entered into the record was final under *N.J. Stat. Ann. § 52:14B-10(d)* in employee's appeal of his termination for insubordination. *Belleville v. Coppla, 187 N.J. Super. 147, 453 A.2d 1344, 1982 N.J. Super. LEXIS 960 (App.Div. 1982)*, criticized by *Cliff v. Morris County Bd. of Social Services, 197 N.J. Super. 307, 484 A.2d 1275, 1984 N.J. Super. LEXIS 1235 (App.Div. 1984).*

10. Pursuant to *N.J. Stat. Ann. § 52:14B-10(c)* an initial decision can, by operation of law, become the final decision in a contested case. *Hayes v. Gulli, 175 N.J. Super. 294, 418 A.2d 295, 1980 N.J. Super. LEXIS 650 (Ch.Div. 1980).*

11. *N.J. Stat. Ann. § 52:14B-10* expressly adopts the universally accepted doctrine that in administrative agency hearings the parties shall not be bound by rules of evidence, whether statutory, common-law, or adopted by rules of court. *Application of Howard Sav. Bank, 143 N.J. Super. 1, 362 A.2d 592, 1976 N.J. Super. LEXIS 712 (App.Div. 1976).*

12. Objectors to an application for a wetlands permit had no right to cross-examine witness because the proceedings did not constitute a contested case under the Administrative Procedures Act (APA), *N.J. Stat. Ann. § 52:14B-1* et seq.; the objectors were not entitled to file exceptions to the hearing officer's recommended findings and had no right to

examine agency documents under the APA, specifically *N.J. Stat. Ann. § 52:14B-10(b)* and (c). *In re Department of Environmental Protection Decision on Application of Triarch Corp., 139 N.J. Super. 514, 354 A.2d 652, 1976 N.J. Super. LEXIS 1009 (App.Div. 1976).*

13. Decisional law that administrative due process is applicable to hearings before the commissioner of education has been codified by the Administrative Procedure Act, particularly *N.J. Stat. Ann. § 52:14B-10(c)*, stating that when a person not empowered to render an administrative adjudication is designated by the head of the agency as the presiding officer, his report containing recommended findings of fact and conclusions of law shall be filed with the agency and delivered to the parties of record; and an opportunity shall be afforded each party of record to file exceptions, objections and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may order. *Winston v. Board of Education, 125 N.J. Super. 131, 309 A.2d 89, 1973 N.J. Super. LEXIS 428, 84 L.R.R.M. (BNA) 2762 (App.Div. 1973)*, affirmed by *64 N.J. 582, 319 A.2d 226, 1974 N.J. LEXIS 244, 87 L.R.R.M. (BNA) 2661, 75 Lab. Cas. (CCH) P53521 (1974).*

14. A New Jersey plaintiff was entitled to bring an action against the executive director of the New Jersey Commision for the Blind and Visually Impaired, asserting that he was unlawfully denied rehabilitative services and benefits to which he was entitled under Title I of the Rehabilitation Act of 1973, even though he had availed himself only of informal review of the Commission's decision in accordance with regulations promulagated pursuant to *N.J. Stat. Ann. § 34:16-31* and *N.J. Stat. Ann. § 52:14B-10* because both plaintiff and the director agreed that a formal review was pointless in light of the fact that a final determination had been made. *Ryans v. New Jersey Com. for Blind & Visually Impaired, 542 F. Supp. 841, 1982 U.S. Dist. LEXIS 13364, 29 Empl. Prac. Dec. (CCH) P32957 (D.N.J. 1982).*

15. Where racing commission members changed a penalty from a 15-day license suspension to 45 days based on an ex parte communication after a harness horse racing trainer and driver had been found in violation of N.J. Admin. Code 13:17-20.10(b), *N.J. Stat. Ann. § 52:14B-10(c)* was invoked to reverse the decision if it proceeded in bad faith, or with inexcusable negligence, or gross indifference. *New Jersey Racing Comm'n v. Silverman, 303 N.J. Super. 293, 696 A.2d 771, 1997 N.J. Super. LEXIS 333 (App.Div. 1997).*

16. Racing commission members' acceptance of an ex parte communication made orally outside the presence of a harness racing driver and trainer against whom a penalty had been imposed for violations of *N.J. Admin. Code, 13:71-20.10(b)*, causing the penalty to be increased, was violative of *N.J. Stat. Ann. § 52:14B-10(d)* that a final decision of a state administrative agency had to be based only upon the evidence of record at the hearing. *New Jersey Racing Comm'n v. Silverman, 303 N.J. Super. 293, 696 A.2d 771, 1997 N.J. Super. LEXIS 333 (App.Div. 1997).*

17. Department of agencies breached the New Jersey Administrative Procedure Act when it denied an administrator's request to provide him with a specific internal memorandum, which the administrator believed supported his claim that his suggestion submitted to the state employee awards program was original. *Gasior v. State, Dep't of Civil Service, State Awards Program, 154 N.J. Super. 568, 382 A.2d 60, 1977 N.J. Super. LEXIS 1209 (App.Div. 1977).*

18. In denying an administrator's award eligibility request for a submitted suggestion, the state employee awards program failed to comply with the requirement of the New Jersey Administrative Procedure Act that concise and explicit findings of underlying facts be made; the program's stated reasons for rejecting the administrator's suggestion, that the suggestion was not original and that the program had previously considered the idea on its own initiative, were so general as to preclude a meaningful judicial review. *Gasior v. State, Dep't of Civil Service, State Awards Program, 154 N.J. Super. 568, 382 A.2d 60, 1977 N.J. Super. LEXIS 1209 (App.Div. 1977).*

19. When an administrative law judge (ALJ) found that a retiree and the retiree's employer credibly testified that the retiree and the employer were given incorrect information by an employee of the government agency responsible for administering the retiree's disability retirement pension, indicating the retiree could accept a job the employee offered without losing the retiree's pension, the Board of Trustees of the Public Employees' Retirement System had to accept these findings under *N.J. Stat. Ann. § 52:14B-10(c)*, because: (1) the Board's only asserted reason for not accepting the findings was that it was unable to refute the testimony of the retiree and employer, but this was irrelevant under the statutory standard for rejection of an ALJ's credibility findings; and (2) the findings were not arbitrary, capricious or unsupported by the record, so the Board and a reviewing court were required to accept the findings. *In re Frank, 2007 N.J. Super. LEXIS 236 (App.Div. July 12 2007).*

20. In administrative proceedings, no agency head may reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record, under *N.J. Stat. Ann. § 52:14B-10(c). In re Frank, 2007 N.J. Super. LEXIS 236 (App.Div. July 12 2007).*

21. When the New Jersey Racing Commission rejected the decisions of an administrative law judge, which found that the Commission failed to prove that a horse trainer and a horse driver had engaged in the misconduct of kicking a horse and "reversal of form," and reinstated the suspensions that the administrative law judge had ordered, but failed to issue final decisions within the time period prescribed by *N.J. Stat. Ann. § 52:14B-10(c)*, the administrative law judge's decisions were "deemed adopted" as the Commission's final decisions. *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

22. Application of the "deemed adopted" provision of *N.J. Stat. Ann. § 52:14B-10(c)* does not require a showing of prejudice; thus, in order to avoid its application, an agency must show that it proceeded in "good faith," and that there was not "inexcusable negligence" or "gross indifference" in satisfying its responsibilities under §§ 54:14B-10(c) and (d). *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

23. Final sentence of *N.J. Stat. Ann. § 52:14B-10(c)*, which provides that for good cause shown, upon certification by the director and agency head, the time limits established may be subject to extension, clearly contemplates that any extension of the 45-day period for issuance of a final agency decision shall be under the supervision of the *New Jersey Office of Administrative Law. Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

24. Where defendant, the Board of Trustees of Ramapo College of New Jersey, failed to take any action on an administrative law judge's (ALJ) recommended decision within the 45-days allowed by *N.J. Stat. Ann. § 52:14B-10(c)*, and failed to seek an extension within that period to take such action, the ALJ's decision in favor of plaintiff director was deemed adopted as the final agency decision under N.J. Stat. Ann. § 42:14B-10(c) and the board had no authority to ignore procedure and issue a late decision. *Newman v. Ramapo College of N.J., 349 N.J. Super. 196, 793 A.2d 120, 2002 N.J. Super. LEXIS 153 (App.Div. 2002).*

25. While the physician challenged the constitutionality of the administrative procedure codified in *N.J. Stat. Ann. § 52:14B-10(c)* and argued that the Board's failure to take evidence and hear testimony itself deprived him of a meaningful right to be heard, the Court of Appeals held that the procedure for administrative adjudications established by § *52:14B-10(c)* did not violate the physician's right to due process of law because it was permissible for a decision to be based solely on a considered review of the evidence and legal arguments and that there was likewise no equal protection violation. *Guerrero v. New Jersey, 643 F.2d 148, 1981 U.S. App. LEXIS 19738 (3d Cir. N.J. 1981).*

26. Constitutional questions necessary to the complete resolution of contested case issues may be considered, in the first instance, in an administrative proceeding. Constitutional questions should not be considered in a vacuum in the absence of a well-developed record isolating the essential factual issues at their basis and including findings of fact. *Jones v. Department of Community Affairs, Div. of Codes and Standards, Bureau of Rooming and Boarding House Standards, 395 N.J. Super. 632, 930 A.2d 477, 2007 N.J. Super. LEXIS 296 (App.Div. 2007).*

27. In an administrative action involving alleged violations of the Rooming and Boarding House Act of 1979, *N.J. Stat. Ann. §§ 55:13B-1* to -21, the administrative agency was permitted to address constitutional questions raised by plaintiffs necessary to the complete resolution of the contested case and, therefore, the case was remanded for such consideration by the administrative law judge and the development of a thorough record for appellate purposes. *Jones v. Department of Community Affairs, Div. of Codes and Standards, Bureau of Rooming and Boarding House Standards, 395 N.J. Super. 632, 930 A.2d 477, 2007 N.J. Super. LEXIS 296 (App.Div. 2007).*

28. When an administrative law judge (ALJ) found that a retiree and the retiree's employer credibly testified that the retiree and the employer were given incorrect information by an employee of the government agency responsible for administering the retiree's disability retirement pension, indicating the retiree could accept a job the employee offered without losing the retiree's pension, the Board of Trustees of the Public Employees' Retirement System had to accept these findings under *N.J. Stat. Ann. § 52:14B-10(c)*, because: (1) the Board's only asserted reason for not accepting the findings was that it was unable to refute the testimony of the retiree and employer, but this was irrelevant under the statutory standard for rejection of an ALJ's credibility findings; and (2) the findings were not arbitrary, capricious or unsupported by the record, so the Board and a reviewing court were required to accept the findings. *In re Frank, 2007 N.J. Super. LEXIS 236 (App.Div. July 12 2007).*

29. In administrative proceedings, no agency head may reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record, under *N.J. Stat. Ann. § 52:14B-10(c). In re Frank, 2007 N.J. Super. LEXIS 236 (App.Div. July 12 2007).*

30. Administrative law judge's recommendation for removal of a county employee was not automatically sustained under the "deemed-adopted" provision of *N.J. Stat. Ann. § 52:14B-10(c)*, even though the New Jersey Department of Personnel's Merit System Board gave its final disposition more than 45 days after its adjourned deadline, because the delay in filing the final decision did not prejudice either party and resulted from excusable neglect. *Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).*

31. Purpose of *N.J. Stat. Ann. § 52:14B-10(c)* was fulfilled in a case wherein a property owner was seeking the protection of the Right to Farm Act, *N.J. Stat. Ann. § 4:1C-1* to *N.J. Stat. Ann. § 4:1C-10.4*, via the issuance by the State Agriculture Development Committee of its own final decision rejecting the conclusions of the Administrative Law Judge and mailing of that decision within the mandated 45-day period in an envelope postmarked July 29, 2004. The fact that the decision was postmarked on the 45th day after the ALJ's initial decision, but not transmitted to the Governor's office until 71 days after the ALJ's decision, did not nullify the decision since the purpose of the statute was satisfied. *In re Tavalario, 386 N.J. Super. 435, 901 A.2d 963, 2006 N.J. Super. LEXIS 183 (App.Div. 2006).*

32. Where an administrative law judge determined the salary of a school district employee for retirement purposes, pursuant to *N.J. Stat. Ann. § 43:15A-6(r)* and *N.J. Admin. Code tit. 17, § 2-4.1(a)*, after evaluating the credibility of lay witnesses, *N.J. Stat. Ann. § 52:14B-10(c)* did not permit the agency to reverse that finding unless it was insufficient or arbitrary. *Cavalieri v. Board of Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 847 A.2d 592, 2004 N.J. Super. LEXIS 165 (App.Div. 2004).*

33. Final decision, issued by the Commissioner of the New Jersey Department of Environmental Protection following the granting of nine 45-day extensions of time in a public utility rate setting proceeding, which affirmed a summary order issued over a year earlier was affirmed because the Commissioner did not act in bad faith and was not inexcusably negligent or grossly indifferent; furthermore, the proceeding was very complex and there was a voluminous record. *Penpac, Inc. v. Passaic County Utilities Authority, 367 N.J. Super. 487, 843 A.2d 1153, 2004 N.J. Super. LEXIS 102 (App.Div. 2004).*

34. Where an administrative law judge (ALJ) determined that the New Jersey Racing Commission had failed to provide sufficient proof as to charges against a horse trainer and a horse driver and the ALJ's initial decision indicated that they should not be suspended, but the Commission did not render its final decision in a timely manner pursuant to the 45-day statutory period of *N.J. Stat. Ann. § 52:14B-10(c)*, (d), the ALJ's order was "deemed approved," where the matters were uncomplicated, short, and mostly factual, and the final decisions of the Commission which were issued seven months and one year later were found to constitute "inexcusable negligence" and "gross indifference" to its responsibilities under the policies of the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-1* et seq. *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

35. When the New Jersey Racing Commission rejected the decisions of an administrative law judge, which found that the Commission failed to prove that a horse trainer and a horse driver had engaged in the misconduct of kicking a horse and "reversal of form," and reinstated the suspensions that the administrative law judge had ordered, but failed to issue final decisions within the time period prescribed by *N.J. Stat. Ann. § 52:14B-10(c)*, the administrative law judge's decisions were "deemed adopted" as the Commission's final decisions. *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

36. Application of the "deemed adopted" provision of *N.J. Stat. Ann. § 52:14B-10(c)* does not require a showing of prejudice; thus, in order to avoid its application, an agency must show that it proceeded in "good faith," and that there was not "inexcusable negligence" or "gross indifference" in satisfying its responsibilities under §§ 54:14B-10(c) and (d). *Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

37. Final sentence of *N.J. Stat. Ann. § 52:14B-10(c)*, which provides that for good cause shown, upon certification by the director and agency head, the time limits established may be subject to extension, clearly contemplates that any extension of the 45-day period for issuance of a final agency decision shall be under the supervision of the *New Jersey Office of Administrative Law. Capone v. New Jersey Racing Comm'n, 358 N.J. Super. 339, 817 A.2d 995, 2003 N.J. Super. LEXIS 101 (App.Div. 2003).*

38. Grant of an extension to the House Commission to respond to an administrative law judge's decision was not in error; in light of the unique nature of the Commission, its inaction could not be considered gross indifference or bad faith, and the automatic-approval provision of *N.J. Stat. Ann. § 52:14B-10(c)* simply for the sake of agency efficiency. *Matturri v. Bd. of Trs. of the Judicial Ret. Sys., 173 N.J. 368, 802 A.2d 496, 2002 N.J. LEXIS 1084 (2002).*

39. Where an administrative law judge's (ALJ) determination of a claimant's date of eligibility for Medicaid benefits hinged on the credibility of a lay witness, and the director of the Division of Medical Assistance and Health Services, New Jersey, rejected the ALJ's determination regarding the eligibility date without explanation, the reviewing court remanded the matter to the division for findings and conclusions, as *N.J. Stat. Ann. § 52:14B-10(c)* of the Administrative Procedure Act required the director to explain why the ALJ's findings of the credibility of the lay witness were arbitrary or unsupported by the record. *S.D. v. Div. of Med. Assistance & Health Servs., 349 N.J. Super. 480, 793 A.2d 871, 2002 N.J. Super. LEXIS 173 (App.Div. 2002).*

40. Where defendant, the Board of Trustees of Ramapo College of New Jersey, failed to take any action on an administrative law judge's (ALJ) recommended decision within the 45-days allowed by *N.J. Stat. Ann. § 52:14B-10(c)*, and failed to seek an extension within that period to take such action, the ALJ's decision in favor of plaintiff director was deemed adopted as the final agency decision under N.J. Stat. Ann. § 42:14B-10(c) and the board had no authority to ignore procedure and issue a late decision. *Newman v. Ramapo College of N.J., 349 N.J. Super. 196, 793 A.2d 120, 2002 N.J. Super. LEXIS 153 (App.Div. 2002).*

41. Although the agency may adopt, reject or modify the administrative law judge's (ALJ) findings, the decision of the ALJ would be deemed adopted as the final decision of the agency unless the agency modified or rejected the report within 45 days of its receipt under *N.J. Stat. Ann. § 52:14B-10(c)*; in an employment case where the employee physically abused a patient, the court held that the lower court exceeded its scope of review by failing to defer to the ALJ's findings of fact. *In re Taylor, 158 N.J. 644, 731 A.2d 35, 1999 N.J. LEXIS 831, 139 Lab. Cas. (CCH) P58721 (1999).*

42. Where racing commission members changed a penalty from a 15-day license suspension to 45 days based on an ex parte communication after a harness horse racing trainer and driver had been found in violation of N.J. Admin. Code 13:17-20.10(b), *N.J. Stat. Ann. § 52:14B-10(c)* was invoked to reverse the decision if it proceeded in bad faith, or with inexcusable negligence, or gross indifference. *New Jersey Racing Comm'n v. Silverman, 303 N.J. Super. 293, 696 A.2d 771, 1997 N.J. Super. LEXIS 333 (App.Div. 1997).*

43. Reviewing court held that the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-10*, did not create a substantive right for a prisoner to have an administrative hearing as to contested prison disciplinary procedures and sanctions. *Muslihuddin v. Johnson, 1990 N.J. Super. LEXIS 89 (App.Div. Mar. 20 1990).*

44. Where the Commissioner of Health (Commissioner) issued a certificate of need for the establishment of a nursing home subject to its conversion to a center for the treatment of patients with Acquired Immune Deficiency Syndrome, and, as a result of a lawsuit, the home was to be established for geriatric care, the Commissioner deviated in material respects from controlling statutes and regulations in issuing a certificate of need; the Commissioner failed to issue a written decision with the supporting rationale, as was required under *N.J. Stat. Ann. § 52:14B-10(d). In re Bloomingdale Convalescent Center, 233 N.J. Super. 46, 558 A.2d 19, 1989 N.J. Super. LEXIS 194 (App.Div. 1989).*

45. Objective of N.J. Stat. Ann. § 54:14B-10(c) is to encourage prompt consideration and disposition of contested cases; however, because this statutory limitation may result in the automatic approval of an administrative law judge's initial decision which is directly contrary to the agency head's decision, the statute's automatic approval mechanism should be applied with caution. *DiMaria v. Board of Trustees, 225 N.J. Super. 341, 542 A.2d 498, 1988 N.J. Super. LEXIS 198 (App.Div. 1988).*

46. Reviewing court was not required by N.J. Stat. Ann. § 54:14B-10(c) to set aside a decision by the Board of Trustees of the Public Employees' Retirement System that was timely but that did not include findings of facts and conclusions of law, because the usual remedy for an agency's failure to include the requisite findings of facts was to remand the matter to the agency to correct the deficiency, and if the legislature had intended to depart from that usual remedy, it would have expressed that departure in clear and unequivocal terms. *DiMaria v. Board of Trustees, 225 N.J. Super. 341, 542 A.2d 498, 1988 N.J. Super. LEXIS 198 (App.Div. 1988).*

47. If an administrative agency were to proceed in bad faith, or with inexcusable negligence, or gross indifference, or simply to take no action whatsoever that purports to adopt, reject or modify the recommended report of an administrative law judge (ALJ) during the 45-day period following the issuance of the ALJ's initial decision, the "deemed-approved" provision of *N.J. Stat. Ann. § 52:14B-10(c)* should be invoked; where the agency took action regarding the decision but that was legally ineffective due to a non-substantive error or procedural mistake made by the agency, the agency was permitted to take remedial steps to cure the deficiency and to issue a decision. *King v. New Jersey Racing Com., 103 N.J. 412, 511 A.2d 615, 1986 N.J. LEXIS 973 (1986).*

48. Board of Public Utilities is required under *N.J. Stat. Ann. § 52:14B-9* to limit its consideration to the record made before an administrative law judge (ALJ), including, under *N.J. Stat. Ann. § 52:14B-10(c)*, the recommended report and decision of the *ALJ. New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 460 A.2d 1057, 1983 N.J. Super. LEXIS 845 (App.Div. 1983).*

49. State agency has ultimate authority under *N.J. Stat. Ann. § 52:14B-10(c)*, upon a review of the record submitted by an administrative law judge (ALJ) to adopt, reject, or modify the recommended report and decision of the ALJ, and an appellate court is only entitled to review those findings and recommendations in its overview of the record for the purpose of determining whether or not the agency's findings are supported by substantial credible evidence. *New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 460 A.2d 1057, 1983 N.J. Super. LEXIS 845 (App.Div. 1983).*

50. Under *N.J. Stat. Ann. §§ 52:14-10(c), 52:14F-7(a)*, and *52:14F-8(b)*, an administrative law judge had no authority to refuse an order of the director of the motor vehicle bureau remanding a suspension hearing in order to allow additional testimony on behalf of the police to show that a driver had refused a breathalyzer test. *In re Kallen, 92 N.J. 14, 455 A.2d 460, 1983 N.J. LEXIS 2342 (1983).*

51. Where race track judges imposed a penalty and disqualification on a harness race driver who finished first in the race for his actions during a race, in an appeal of that determination to the racing commission, the final decision of the commission was required under *N.J. Stat. Ann. § 52:14B-10(d)* to include findings of fact and conclusions of law, separately stated and based only on the evidence of record at the hearing. *Pitts v. Division of New Jersey Racing Com., 185 N.J. Super. 190, 447 A.2d 1348, 1982 N.J. Super. LEXIS 844 (App.Div. 1982).*

52. Director of the Division of Building and Construction in the Department of the Treasury committed procedural errors in the review of the findings and conclusions of the hearing officer in debarment proceeding against a cable supplier because the burden of proof in N.J. Admin. Code tit. 17, § 13-8.1 et seq., was erroneously shifted to the cable supplier and the director based the decision on information outside the record of the hearing officer, in violation of *N.J. Stat. Ann. § 52:14B-10(d) In re Triangle PWC, Inc., 182 N.J. Super. 400, 442 A.2d 606, 1981 N.J. Super. LEXIS 796 (App.Div. 1981).*

53. While the physician challenged the constitutionality of the administrative procedure codified in *N.J. Stat. Ann. § 52:14B-10(c)* and argued that the Board's failure to take evidence and hear testimony itself deprived him of a meaningful right to be heard, the Court of Appeals held that the procedure for administrative adjudications established by *§ 52:14B-10(c)* did not violate the physician's right to due process of law because it was permissible for a decision to be based solely on a considered review of the evidence and legal arguments and that there was likewise no equal protection violation. *Guerrero v. New Jersey, 643 F.2d 148, 1981 U.S. App. LEXIS 19738 (3d Cir. N.J. 1981).*

54. Decisional law that administrative due process is applicable to hearings before the commissioner of education has been codified by the Administrative Procedure Act, particularly *N.J. Stat. Ann. § 52:14B-10(c)*, stating that when a person not empowered to render an administrative adjudication is designated by the head of the agency as the presiding officer, his report containing recommended findings of fact and conclusions of law shall be filed with the agency and delivered to the parties of record; and an opportunity shall be afforded each party of record to file exceptions, objections and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may order. *Winston v. Board of Education, 125 N.J. Super. 131, 309 A.2d 89, 1973 N.J. Super. LEXIS 428, 84 L.R.R.M. (BNA) 2762 (App.Div. 1973)*, affirmed by *64 N.J. 582, 319 A.2d 226, 1974 N.J. LEXIS 244, 87 L.R.R.M. (BNA) 2661, 75 Lab. Cas. (CCH) P53521 (1974).*

55. Although technically there was no "contested case" under *N.J. Stat. Ann. § 9:6-8.10a* when a mother's name was included on the Central Registry after a finding of child abuse because her rights, benefits, or other legal relations were not required to be determined by the agency either by the constitution or by statute, the case was tantamount to a "contested case," and therefore, a trial-type hearing was required under *N.J. Stat. Ann. § 52:14B-10(c)* in a situation where determinative facts were in dispute. *New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

56. Administrative-appeals procedure used by the New Jersey Division of Youth and Family Services (DYFS) do not adequately address or protect a person from an improper or erroneous listing in the Central Registry pursuant to *N.J. Stat. Ann. § 9:6-8.10* and therefore, DYFS was required to augment its procedures to provide additional process to address the deficiencies. Based on the adjudicatory nature of listings in the Central Registry, these cases had to be regarded as essentially equivalent to "contested matters" under *N.J. Stat. Ann. § 52:14B-10(c). New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

57. State agency has ultimate authority under *N.J. Stat. Ann. § 52:14B-10(c)*, upon a review of the record submitted by an administrative law judge (ALJ) to adopt, reject, or modify the recommended report and decision of the ALJ, and an appellate court is only entitled to review those findings and recommendations in its overview of the record for the purpose of determining whether or not the agency's findings are supported by substantial credible evidence. *New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 460 A.2d 1057, 1983 N.J. Super. LEXIS 845 (App.Div. 1983).*

58. Constitutional questions necessary to the complete resolution of contested case issues may be considered, in the first instance, in an administrative proceeding. Constitutional questions should not be considered in a vacuum in the absence of a well-developed record isolating the essential factual issues at their basis and including findings of fact. *Jones v. Department of Community Affairs, Div. of Codes and Standards, Bureau of Rooming and Boarding House Standards, 395 N.J. Super. 632, 930 A.2d 477, 2007 N.J. Super. LEXIS 296 (App.Div. 2007).*

59. In an administrative action involving alleged violations of the Rooming and Boarding House Act of 1979, *N.J. Stat. Ann. §§ 55:13B-1* to -21, the administrative agency was permitted to address constitutional questions raised by plaintiffs necessary to the complete resolution of the contested case and, therefore, the case was remanded for such consideration by the administrative law judge and the development of a thorough record for appellate purposes. *Jones v. Department of Community Affairs, Div. of Codes and Standards, Bureau of Rooming and Boarding House Standards, 395 N.J. Super. 632, 930 A.2d 477, 2007 N.J. Super. LEXIS 296 (App.Div. 2007).*

60. Pursuant to the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-10(a)* and N.J. Evid. R. 2(3), hearsay was admissible in administrative proceedings; therefore, there was no harm in using the hearsay reports to challenge a statistical study. *Newark v. Essex County Board of Taxation, 138 N.J. Super. 217, 350 A.2d 488, 1975 N.J. Super. LEXIS 510 (App.Div. 1975).*

61. Provisions of *N.J. Stat. Ann. § 52:14B-10(d)*, even if read into *N.J. Stat. Ann. § 52:14B-10(c)*, did not require the reviewing court to set aside an agency head's decision which was timely but failed to include findings of facts and conclusions of law nor to deem adopted in its place an administrative law judge's recommended decision which the agency head had rejected. *DiMaria v. Board of Trustees, 225 N.J. Super. 341, 542 A.2d 498, 1988 N.J. Super. LEXIS 198 (App.Div. 1988).*

62. By treating the principle of progressive discipline as a mandate of law and rejecting a Merit System Board's opinion terminating a police officer for sleeping on the job, the court erred by concluding that the punishment of removal for the sleeping charges was too severe and substituting its own reevaluation of the case for the Board's opinion that terminated the police officer from his position. *In re Carter, 191 N.J. 474, 924 A.2d 525, 2007 N.J. LEXIS 702, 26 I.E.R. Cas. (BNA) 612 (2007).*

63. State agency has ultimate authority under *N.J. Stat. Ann. § 52:14B-10(c)*, upon a review of the record submitted by an administrative law judge (ALJ) to adopt, reject, or modify the recommended report and decision of the ALJ, and an appellate court is only entitled to review those findings and recommendations in its overview of the record for the purpose of determining whether or not the agency's findings are supported by substantial credible evidence. *New Jersey Dep't of Public Advocate v. New Jersey Bd. of Public Utilities, 189 N.J. Super. 491, 460 A.2d 1057, 1983 N.J. Super. LEXIS 845 (App.Div. 1983).*

64. *N.J. Stat. Ann. § 52:14B-10(c)* requires that an administrative law judge's recommended findings of fact and conclusions of law must be based on a complete and fair review of all the relevant evidence. *Hayes v. Gulli, 175 N.J. Super. 294, 418 A.2d 295, 1980 N.J. Super. LEXIS 650 (Ch.Div. 1980).*

65. Board of medical examiners had the right to reject the hearing officer's decision not to suspend the doctor's license for receiving Medicaid payments that exceeded the nature of the services rendered where the board of medical examiner's findings were supported by substantial evidence; the board of medical examiners, however, did not have the right to impose cost. *In re Silberman, 169 N.J. Super. 243, 404 A.2d 1164, 1979 N.J. Super. LEXIS 843 (App.Div. 1979),* affirmed by *84 N.J. 303, 418 A.2d 266, 1980 N.J. LEXIS 1396 (1980).*

66. Law judge erred in granting summary judgment to a township and its employees (town) in a former employee's action under the New Jersey Law Against Discrimination, *N.J. Stat. Ann. 10:5-1* to -42 (LAD), because, even though the town had provided the employee with a hearing before she was terminated under *N.J. Stat. Ann. § 11A:2-13*, the loss of efficiency arising out of relitigating the same issues paled against the unfairness that would result if the employee was not permitted to pursue her LAD claim; thus, just as the employee would have been entitled to a decision based solely on the record before an Administrative Law Judge had she appealed to the Merit System Board, under *N.J. Stat. Ann. §*

52:14B-10, the town's decision to terminate her employment, she was similarly entitled to a decision on her LAD claim based solely on the record established in the superior court action. *Hennessey v. Winslow Tp., 368 N.J. Super. 443, 847 A.2d 1, 2004 N.J. Super. LEXIS 146, 15 Am. Disabilities Cas. (BNA) 903 (App.Div. 2004)*, affirmed by *183 N.J. 593, 875 A.2d 240, 2005 N.J. LEXIS 810, 12 Accom. Disabilities Dec. (CCH) P12-020, 16 Am. Disabilities Cas. (BNA) 1549 (2005).*

67. A New Jersey plaintiff was entitled to bring an action against the executive director of the New Jersey Commision for the Blind and Visually Impaired, asserting that he was unlawfully denied rehabilitative services and benefits to which he was entitled under Title I of the Rehabilitation Act of 1973, even though he had availed himself only of informal review of the Commission's decision in accordance with regulations promulagated pursuant to *N.J. Stat. Ann. § 34:16-31* and *N.J. Stat. Ann. § 52:14B-10* because both plaintiff and the director agreed that a formal review was pointless in light of the fact that a final determination had been made. *Ryans v. New Jersey Com. for Blind & Visually Impaired, 542 F. Supp. 841, 1982 U.S. Dist. LEXIS 13364, 29 Empl. Prac. Dec. (CCH) P32957 (D.N.J. 1982).*

68. While the physician challenged the constitutionality of the administrative procedure codified in *N.J. Stat. Ann. § 52:14B-10(c)* and argued that the Board's failure to take evidence and hear testimony itself deprived him of a meaningful right to be heard, the Court of Appeals held that the procedure for administrative adjudications established by § *52:14B-10(c)* did not violate the physician's right to due process of law because it was permissible for a decision to be based solely on a considered review of the evidence and legal arguments and that there was likewise no equal protection violation. *Guerrero v. New Jersey, 643 F.2d 148, 1981 U.S. App. LEXIS 19738 (3d Cir. N.J. 1981).*

69. A New Jersey plaintiff was entitled to bring an action against the executive director of the New Jersey Commision for the Blind and Visually Impaired, asserting that he was unlawfully denied rehabilitative services and benefits to which he was entitled under Title I of the Rehabilitation Act of 1973, even though he had availed himself only of informal review of the Commission's decision in accordance with regulations promulagated pursuant to *N.J. Stat. Ann. § 34:16-31* and *N.J. Stat. Ann. § 52:14B-10* because both plaintiff and the director agreed that a formal review was pointless in light of the fact that a final determination had been made. *Ryans v. New Jersey Com. for Blind & Visually Impaired, 542 F. Supp. 841, 1982 U.S. Dist. LEXIS 13364, 29 Empl. Prac. Dec. (CCH) P32957 (D.N.J. 1982).*

70. Because an occupational license is in the nature of a property right, any revocation or suspension of a harness racing driver's license must comply with the requirements of due process. *De Vitis v. New Jersey Racing Com., 202 N.J. Super. 484, 495 A.2d 457, 1985 N.J. Super. LEXIS 1357 (App.Div. 1985).*

71. In an appeal of substantiated child abuse findings, the procedure used by the New Jersey Division of Youth and Family Services denied the alleged abuser a trial-type hearing, in violation *N.J. Stat. Ann. § 52:14B-10(c)*, and did not adhere to principles of fundamental fairness and administrative due process. *New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

72. In light of a parolee's admissions of parole violations, the failure to furnish him with a copy of the hearing officer's report, a violation of *N.J. Stat. Ann. § 52:14B-10(c)*, did not constitute reversible error. *Underwood v. New Jersey State Parole Bd., 131 N.J. Super. 528, 330 A.2d 624, 1974 N.J. Super. LEXIS 498 (App.Div. 1974).*

73. In light of a parolee's admissions of parole violations, the failure to furnish him with a copy of the hearing officer's report, a violation of *N.J. Stat. Ann. § 52:14B-10(c)*, did not constitute reversible error. *Underwood v. New Jersey State Parole Bd., 131 N.J. Super. 528, 330 A.2d 624, 1974 N.J. Super. LEXIS 498 (App.Div. 1974).*

74. Decision of the State Board of Education finding teacher guilty of two counts of unnecessary force against a student was flawed because the Board failed to articulate the reasons for its rejection of the contrary findings of the Commissioner on those counts; the State Board simply adopted and reinstated the findings of the administrative law judge and failed to consider the record as supplemented by the Commissioner's decision. *In re Doyle, 201 N.J. Super. 347, 493 A.2d 54, 1985 N.J. Super. LEXIS 1283 (App.Div. 1985).*

75. Decision of the State Board of Education finding teacher guilty of two counts of unnecessary force against a student was flawed because the Board failed to articulate the reasons for its rejection of the contrary findings of the Commissioner on those counts; the State Board simply adopted and reinstated the findings of the administrative law judge and failed to consider the record as supplemented by the Commissioner's decision. *In re Doyle, 201 N.J. Super. 347, 493 A.2d 54, 1985 N.J. Super. LEXIS 1283 (App.Div. 1985).*

76. Hearsay evidence was permitted in administrative hearings under *N.J. Stat. Ann. § 52:14B-10(a)* but an adjudication may not be based solely on hearsay but must be supported by a residuum of legal and competent evidence; where the evidence petitioner prisoner objected to was not in fact hearsay, but admissible as declarations against interest

and as business records, prisoner's adjudication of guilt for offering an official or a staff member a bribe or anything of value was sufficiently supported by the evidence. *Negron v. New Jersey Dep't of Corrections, 220 N.J. Super. 425, 532 A.2d 735, 1987 N.J. Super. LEXIS 1329 (App.Div. 1987).*

77. Acting Director of DMAHS erred in disallowing resubmitted claims by Medicaid services provider because the provider did not present "documentary evidence" that the claims had been filed and because DMAHS had historically required a higher standard of proof of timely filing of a claim than "general business practice" evidence; under *N.J. Stat. Ann. § 52:14B-10(a)*, parties to a proceeding before an administrative agency are not bound by the rules of evidence and, in the absence of a regulation requiring "documentary proof" of mailing or mandating that all submissions be sent by certified mail, the traditional preponderance of the evidence standard applied. *SSI Medical Servs. v. HHS, Div. of Medical Assistance & Health Servs., 146 N.J. 614, 685 A.2d 1, 1996 N.J. LEXIS 1079 (1996).*

78. In an appeal of substantiated child abuse findings, the procedure used by the New Jersey Division of Youth and Family Services denied the alleged abuser a trial-type hearing, in violation *N.J. Stat. Ann. § 52:14B-10(c)*, and did not adhere to principles of fundamental fairness and administrative due process. *New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

79. Although technically there was no "contested case" under *N.J. Stat. Ann. § 9:6-8.10a* when a mother's name was included on the Central Registry after a finding of child abuse because her rights, benefits, or other legal relations were not required to be determined by the agency either by the constitution or by statute, the case was tantamount to a "contested case," and therefore, a trial-type hearing was required under *N.J. Stat. Ann. § 52:14B-10(c)* in a situation where determinative facts were in dispute. *New Jersey Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 715 A.2d 308, 1998 N.J. Super. LEXIS 351 (App.Div. 1998).*

80. Decision of the Merit System Board suspending a deputy municipal court administrator from her position for six months, instead of terminating her, was not arbitrary, capricious, or unreasonable given the circumstances of her arrest and guilty plea to reckless driving and disorderly conduct, which was found to be conduct unbecoming a public employee, but her unblemished record and long period of service supported a penalty short of termination; as the court administrator's position was not a confidential judicial position under the disciplinary authority of the Assignment Judge she was properly subjected to the Board's authority for disciplinary purposes. *Thurber v. City of Burlington, 191 N.J. 487, 924 A.2d 533, 2007 N.J. LEXIS 701, 26 I.E.R. Cas. (BNA) 1520 (2007).*

81. By treating the principle of progressive discipline as a mandate of law and rejecting a Merit System Board's opinion terminating a police officer for sleeping on the job, the court erred by concluding that the punishment of removal for the sleeping charges was too severe and substituting its own reevaluation of the case for the Board's opinion that terminated the police officer from his position. *In re Carter, 191 N.J. 474, 924 A.2d 525, 2007 N.J. LEXIS 702, 26 I.E.R. Cas. (BNA) 612 (2007).*

82. Administrative law judge's recommendation for removal of a county employee was not automatically sustained under the "deemed-adopted" provision of *N.J. Stat. Ann. § 52:14B-10(c)*, even though the New Jersey Department of Personnel's Merit System Board gave its final disposition more than 45 days after its adjourned deadline, because the delay in filing the final decision did not prejudice either party and resulted from excusable neglect. *Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).*

83. Decision of the Merit System Board suspending a deputy municipal court administrator from her position for six months, instead of terminating her, was not arbitrary, capricious, or unreasonable given the circumstances of her arrest and guilty plea to reckless driving and disorderly conduct, which was found to be conduct unbecoming a public employee, but her unblemished record and long period of service supported a penalty short of termination; as the court administrator's position was not a confidential judicial position under the disciplinary authority of the Assignment Judge she was properly subjected to the Board's authority for disciplinary purposes. *Thurber v. City of Burlington, 191 N.J. 487, 924 A.2d 533, 2007 N.J. LEXIS 701, 26 I.E.R. Cas. (BNA) 1520 (2007).*

84. Decision of the Civil Service Commission entered into the record was final under *N.J. Stat. Ann. § 52:14B-10(d)* in employee's appeal of his termination for insubordination. *Belleville v. Coppla, 187 N.J. Super. 147, 453 A.2d 1344, 1982 N.J. Super. LEXIS 960 (App.Div. 1982)*, criticized by *Cliff v. Morris County Bd. of Social Services, 197 N.J. Super. 307, 484 A.2d 1275, 1984 N.J. Super. LEXIS 1235 (App.Div. 1984).*

85. Where race track judges imposed a penalty and disqualification on a harness race driver who finished first in the race for his actions during a race, in an appeal of that determination to the racing commission, the final decision of the commission was required under *N.J. Stat. Ann. § 52:14B-10(d)* to include findings of fact and conclusions of law,

separately stated and based only on the evidence of record at the hearing. *Pitts v. Division of New Jersey Racing Com., 185 N.J. Super. 190, 447 A.2d 1348, 1982 N.J. Super. LEXIS 844 (App.Div. 1982).*

86. Because an occupational license is in the nature of a property right, any revocation or suspension of a harness racing driver's license must comply with the requirements of due process. *De Vitis v. New Jersey Racing Com., 202 N.J. Super. 484, 495 A.2d 457, 1985 N.J. Super. LEXIS 1357 (App.Div. 1985).*

87. Reviewing court held that the Administrative Procedure Act, *N.J. Stat. Ann. § 52:14B-10*, did not create a substantive right for a prisoner to have an administrative hearing as to contested prison disciplinary procedures and sanctions. *Muslihuddin v. Johnson, 1990 N.J. Super. LEXIS 89 (App.Div. Mar. 20 1990).*

88. Health commissioner's decision revoking a nursing home administrator's license for abusive language and conduct toward her patients was reversed and remanded with directions to the administrative law judge for detailed findings of basic facts and a further statement of his reasoning process; his first findings of fact were in a highly conclusory form which amounted to judgments. *State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 477 A.2d 363, 1984 N.J. Super. LEXIS 1020 (App.Div. 1984).*

PRACTICE GUIDES & TREATISES

1. *Employment Litigation in New Jersey § 9.06*[1], Exceptions to the ALJ's Initial Decision

LexisNexis 50 State Surveys, Legislation & Regulations

Administrative Procedures

26 of 41 DOCUMENTS

LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 3. EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS
CHAPTER 14B. ADMINISTRATIVE PROCEDURE AND REGULATORY FLEXIBILITY

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:14B-10.1 (2008)

§ 52:14B-10.1. Adjudication of certain contested cases

Any statute, rule or regulation to the contrary notwithstanding, all contested cases, as defined in section 2 of P.L.1968, c.410 (*C.52:14B-2*), except those cases in which criminal charges are also filed, arising under the Tenure Employees Hearing Law, article 2 of chapter 6 of Title 18A of the New Jersey Statutes, and referred to the Office of Administrative Law shall be adjudicated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.), in an expeditious and timely manner except as follows:

a. The discovery process shall begin immediately upon the notice of the referral of the case to the Office of Administrative Law and a discovery request shall be initiated by transmitting the request to a receiving party within 30 days of receipt of the notice of referral. Answers to a discovery request shall be made within 30 days of the receipt of the request, except that if the discovery is available only by motion, the answer shall be due within 30 days of receipt of an order granting the motion. Additional discovery shall be permitted by motion or upon the consent of the parties, but shall be filed with the administrative law judge within 10 days of the filing of the answers to interrogatories. The administrative law judge may extend discovery time by no more than 30 days for disputes over sufficiency, completion or other just cause.

b. The pre-hearing conference shall be held within 30 days of the referral of the case to the Office of Administrative Law.

c. The hearing shall be held within 30 days after the end of the discovery period.

d. Transcripts if ordered by the parties shall be provided within 15 days of the conclusion of the hearing and all briefs shall be submitted to the Administrative Law Judge within 30 days of the conclusion of the hearing or receipt of the transcripts by the parties, whichever is later.

HISTORY: L. 1998, c. 42, § 1, eff. June 30, 1998.

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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:14B-11 (2008)

§ 52:14B-11. Revocation, refusal to renew license, hearing required; exceptions

No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases. If a licensee has, in accordance with law and agency rules, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.

This section shall not apply (1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee to maintain insurance coverage as required by any law or regulation; or (4) where the suspension or refusal to renew a motor vehicle registration is based upon the failure of the vehicle to be presented for inspection or to satisfy the inspection requirements of chapter 8 of Title 39 of the Revised Statutes.

HISTORY: L. 1968, c. 410, § 11; amended 1995, c. 112, § 36.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:14A-2.8*, CHAPTER 14A. POLLUTANT DISCHARGE ELIMINATION SYSTEM, Administrative continuation of permits.

2. *N.J.A.C. 7:26-2.7*, CHAPTER 26. SOLID WASTE, Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 22 -- 1979, *1979 N.J. AG LEXIS 6.*

CASE NOTES

1. Physician whose license was revoked after he entered a guilty plea to a federal conspiracy charge, in a case in which he argued that he had no actual guilty knowledge of his wife's financial improprieties involving the practice's pension fund, was entitled to a plenary hearing on whether his license should be revoked for having committed a crime

involving moral turpitude. *In re Fanelli, 174 N.J. 165, 803 A.2d 1146, 2002 N.J. LEXIS 1109, 29 Employee Benefits Cas. (BNA) 1155 (2002).*

2. The trial court erred in affirming a decision of the state board of medical examiners which revoked the physician's license under *N.J. Stat. Ann. § 45:1-21* after he pled guilty to an offense that arguably implicated moral turpitude; pursuant to *N.J. Stat. Ann. § 52:14B-11* and *N.J. Stat. Ann. § 52:14B-2(b)*, the physician had a right to a plenary hearing at which he would be allowed to present evidence. *In re Fanelli, 174 N.J. 165, 803 A.2d 1146, 2002 N.J. LEXIS 1109, 29 Employee Benefits Cas. (BNA) 1155 (2002).*

3. Department of Health and Human Services' denial of hospital's application for renewal of its low-risk cardiac catheterization license without conducting a hearing to contest that refusal was improper as *N.J. Stat. Ann. § 52:14B-11* reflected a legislative determination that a licensee had to be afforded an opportunity for a hearing to contest a refusal to renew its license; an administrative agency could not deprive a licensee of that right by requiring, as a condition of initial licensure, that the licensee waive its right to hearing if the agency decided not to renew the license. *Christ Hosp. v. Department of Health & Senior Servs., 330 N.J. Super. 55, 748 A.2d 1156, 2000 N.J. Super. LEXIS 160 (App.Div. 2000).*

4. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

5. Where a statute does not specifically provide that a hearing is not required when an agency decides to revoke, suspend, or refuse to renew a license, then a hearing may be provided under the New Jersey Administrative Procedure Act, pursuant to *N.J. Stat. Ann. § 52:14B-11. New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

6. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

7. Temporary operating certificate issued to a foundry by the Department of Environmental Protection (DEP) pursuant to *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* that was continuously renewed thereafter constituted a license in which the foundry had a property interest, thereby entitling it to an administrative hearing pursuant to *N.J. Stat. Ann. § 52:14B-11* prior to a final DEP decision not to renew the temporary operating certificate or not to grant a full five-year operating certificate. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

8. Temporary operating certificate issued to a foundry by the Department of Environmental Protection (DEP) pursuant to *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* that was continuously renewed thereafter constituted a license in which the foundry had a property interest, thereby entitling it to an administrative hearing pursuant to *N.J. Stat. Ann. § 52:14B-11* prior to a final DEP decision not to renew the temporary operating certificate or not to grant a full five-year operating certificate. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

9. Temporary operating certificate issued to a foundry by the Department of Environmental Protection (DEP) pursuant to *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* that was continuously renewed thereafter constituted a license in which the foundry had a property interest, thereby entitling it to an administrative hearing pursuant to *N.J. Stat. Ann. § 52:14B-11* prior to a final DEP decision not to renew the temporary operating certificate or not to grant a full five-year operating certificate. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

10. In an action brought by a citizen's group against a corporation alleging violations of the Federal Water Pollution Control Act, *33 U.S.C.S. § 1365,* under a permit issued pursuant to *N.J. Stat. Ann. § 52:14B-11* and *N.J. Admin. Code § 7:14A-2.3*, all allegations not included in the statutory notice to the corporation prior to commencing the suit were dismissed on summary judgment. *Public Interest Research Group v. Hercules, Inc., 830 F. Supp. 1525, 1993 U.S. Dist. LEXIS 9486, 36 Env't Rep. Cas. (BNA) 1833, 24 Envtl. L. Rep. 20270 (D.N.J. 1993),* affirmed in part and reversed in part by *50 F.3d 1239, 1995 U.S. App. LEXIS 6619, 40 Env't Rep. Cas. (BNA) 1385, 25 Envtl. L. Rep. 20684 (3d Cir. N.J. 1995).*

11. Refining company issued a permit under *N.J. Stat. Ann. § 52:14B-11*, failed to establish the affirmative defenses of "bypass" and "upset" or a material issue of fact regarding the daily maximum violations left off the refining company's discharge monitoring reports and pH levels over the permit requirements in an action brought by environmental groups for violations of the *Federal Water Pollution Control Act. Public Interest Research Group v. United States Metals Refining Co., 681 F. Supp. 237, 1987 U.S. Dist. LEXIS 13392, 26 Env't Rep. Cas. (BNA) 2004, 18 Envtl. L. Rep. 21253 (D.N.J. 1987).*

12. The trial court erred in affirming a decision of the state board of medical examiners which revoked the physician's license under *N.J. Stat. Ann. § 45:1-21* after he pled guilty to an offense that arguably implicated moral turpitude; pursuant to *N.J. Stat. Ann. § 52:14B-11* and *N.J. Stat. Ann. § 52:14B-2(b)*, the physician had a right to a plenary hearing at which he would be allowed to present evidence. *In re Fanelli, 174 N.J. 165, 803 A.2d 1146, 2002 N.J. LEXIS 1109, 29 Employee Benefits Cas. (BNA) 1155 (2002).*

13. Foundry was entitled to an adjudicatory administrative hearing pursuant to the Administrative Procedure Act (APA), *N.J. Stat. Ann. § 52:14B-11*, before New Jersey Department of Environmental Protection revoked a temporary operating certificate issued pursuant to the Air Pollution Control Act (APCA), *N.J. Stat. Ann. § 26:2C-9.2(c)(3)* because nothing in the APCA defined "license," and a certificate was considered a license under the APA, *N.J. Stat. Ann. § 52:14B-2(f)*, and because the Department had routinely renewed the temporary certificate for over three years; thus, the foundry had been issued a form of approval and license that permitted it to operate its business and that permission could not be summarily revoked without a hearing. *New Jersey Dep't of Environmental Protection v. Atlantic States Cast Iron Pipe Co., 241 N.J. Super. 591, 575 A.2d 895, 1990 N.J. Super. LEXIS 205 (App.Div. 1990).*

14. Where a State Commissioner of Transportation suspended contractors' bids, under the authority of *N.J. Stat. Ann. § 27:7-35* after the contractors were indicted on criminal charges, the suspensions were proper; *N.J. Stat. Ann. § 52:14B-11* of the Administrative Procedure Act did not negate the power of suspension, because the Commissioner had the authority to suspend a license without first holding a hearing. *Trap Rock Indus. v. Kohl, 59 N.J. 471, 284 A.2d 161, 1971 N.J. LEXIS 202 (1971),* writ of certiorari denied by *405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796, 1972 U.S. LEXIS 2920 (1972),* questioned by *Waste Conversion v. Sims, 868 F. Supp. 643, 1994 U.S. Dist. LEXIS 16503 (D.N.J. 1994).*

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N.J. Stat. § 52:14B-12 (2008)

§ 52:14B-12. Administrative review

Whenever under statute or agency rule there is a mode of administrative review within an agency, such review shall remain unimpaired and any judicial review shall be from the final action of the agency. The administrative review within the agency need not comply with the requirements for the conduct of contested cases.

HISTORY: L. 1968, c. 410, 12.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:1-1.4*, CHAPTER 1. DEPARTMENT ORGANIZATION, Effect of delegation of authority.
2. *N.J.A.C. 7:3-4.2*, CHAPTER 3. FORESTRY, Application procedure.
3. *N.J.A.C. 10:6*, CHAPTER 6. HEARINGS, 10, Chapter 6 -- Chapter Notes.

LexisNexis (R) Notes:

LAW REVIEWS & JOURNALS

1. *18 Seton Hall Legis. J. 59,* FIXING THE FISCAL POLICE AND FIRETRAP: A CRITIQUE OF NEW JERSEY'S COMPULSORY INTEREST ARBITRATION ACT.

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N.J. Stat. § 52:14B-13 (2008)

§ 52:14B-13. Effect of act on prior proceedings

Nothing in this act shall be deemed to affect any agency proceeding initiated prior to the effective date hereof.

HISTORY: L. 1968, c. 410, 13.

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N.J. Stat. § 52:14B-14 (2008)

§ 52:14B-14. Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

HISTORY: L. 1968, c. 410, 14.

NOTES:

Administrative Code:

1. *N.J.A.C. 3:21-1.5*, CHAPTER 21. CREDIT UNIONS, Removal of designation.

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N.J. Stat. § 52:14B-15 (2008)

§ 52:14B-15. General repealer

All acts and parts of acts which are inconsistent with the provisions of this act are, to the extent of such inconsistency, hereby repealed; but such repeal shall not affect pending proceedings.

HISTORY: L. 1968, c. 410, 15.

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N.J. Stat. § 52:14B-16 (2008)

§ 52:14B-16. Short title

This act shall be known and may be cited as the "New Jersey Regulatory Flexibility Act."

HISTORY: L. 1986, c. 169, 1, eff. Dec. 4, 1986.

NOTES:

Administrative Code:

1. *N.J.A.C. 13:46-4.14*, CHAPTER 46. RULES GOVERNING BOXING, EXTREME WRESTLING AND SPARRING EXHIBITIONS AND PERFORMANCES, Procedures for licensure.

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N.J. Stat. § 52:14B-17 (2008)

§ 52:14B-17. "Small business" defined

As used in this act, "small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

HISTORY: L. 1986, c. 169, 2, eff. Dec. 4, 1986.

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N.J. Stat. § 52:14B-18 (2008)

§ 52:14B-18. Approaches

In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses of different types and of differing sizes. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses;

b. The use of performance rather than design standards; and

c. An exemption from coverage by the rule, or by any part thereof, for small businesses so long as the public health, safety, or general welfare is not endangered.

HISTORY: L. 1986, c. 169, 3, eff. Dec. 4, 1986.

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N.J. Stat. § 52:14B-19 (2008)

§ 52:14B-19. Regulatory flexibility analysis

In proposing a rule for adoption, the agency involved shall issue a regulatory flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (*C. 52:14B-4*). Each regulatory flexibility analysis shall contain:

a. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply;

b. A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small business is likely to need in order to comply with the requirements;

c. An estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in the costs for small businesses of different types and of differing sizes; and

d. An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small businesses.

This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small businesses. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (*C. 52:14B-4*).

HISTORY: L. 1986, c. 169, 4, eff. Dec. 4, 1986.

NOTES:

Cross References:

Adoption, amendment, repeal of rules, see *52:14B-4*.

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N.J. Stat. § 52:14B-20 (2008)

§ 52:14B-20. Considered one rule

In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with section 4 of this act.

HISTORY: L. 1986, c. 169, 5, eff. Dec. 4, 1986.

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N.J. Stat. § 52:14B-21 (2008)

§ 52:14B-21. Description of effects of rule

In complying with the provisions of section 4 of this act, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

HISTORY: L. 1986, c. 169, 6, eff. Dec. 4, 1986.

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N.J. Stat. § 52:14B-22 (2008)

§ 52:14B-22. State policy to reduce confusion, costs in complying with State regulations

It is the declared policy of the State to reduce, wherever practicable, confusion and costs involved in complying with State regulations. Confusion and costs are increased when there are multiple regulations of various governmental entities imposing unwarranted differing standards in the same area of regulated activity. It is in the public interest that State agencies consider applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts and determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.

HISTORY: L. 1995, c. 65, § 1.

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N.J. Stat. § 52:14B-23 (2008)

§ 52:14B-23. Administrative agency standards, statement relative to federal requirements

On or after the effective date of this act, each administrative agency that adopts, readopts or amends any rule or regulation described in section 3 of this act shall, in addition to all the requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

HISTORY: L. 1995, c. 65, § 2.

LexisNexis (R) Notes:

CASE NOTES

1. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator; inter alia, the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007).*

2. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator; inter alia, the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007).*

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N.J. Stat. § 52:14B-24 (2008)

§ 52:14B-24. Applicability of act relative to federal requirements

This act shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

HISTORY: L. 1995, c. 65, § 3.

LexisNexis (R) Notes:

CASE NOTES

1. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator; inter alia, the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007).*

2. First-ever regulations of the New Jersey Department of Environmental Protection (DEP), controlling mercury emissions from iron and steel melters -- the largest single source of atmospheric mercury emissions in New Jersey -- were upheld in an action brought by a steel manufacturers association and a mini-mill owner and operator; inter alia, the DEP provided a federal standards analysis as required by the Administrative Procedures Act, *N.J. Stat. Ann. § 52:14B-23* and *N.J. Stat. Ann. § 52:14B-24*. In re Amendments and New Regulations at *N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007).*

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N.J. Stat. § 52:14B-25 (2008)

§ 52:14B-25. Definitions relative to certain mandate requirements, procedures for small municipalities

a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to *Article IV, Section VII, paragraphs 8* and *10* of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;

(2) The use of performance rather than design standards; and

(3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*). Each State mandate flexibility analysis shall contain:

(1) An estimate of the number of small municipalities to which the proposed rule will apply;

(2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;

(3) An estimate of the annual cost to a small municipality of complying with the rule; and

(4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (*C.52:14B-4*).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

HISTORY: L. 2001, c. 342, § 13, eff. Jan 5, 2002.

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UNIFORM ETHICS CODE

FOREWORD

Pursuant to *N.J.S.A.* 52:13D-23, the State Ethics Commission has adopted this Uniform Ethics Code to govern and guide the conduct of State officers and employees and special State officers and employees in State agencies in the Executive branch of State Government.

The Uniform Ethics Code shall be the primary code of ethics for State agencies. It shall be supplemented by an agency code of ethics formulated with respect to the particular needs and problems of the agency to which said code is to apply. Each agency, in consultation with the Attorney General's Office, must review its enabling legislation to ensure that any agency-specific conflicts provisions are included in any supplemental agency code. An agency code must be approved by the Commission.

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UNIFORM ETHICS CODE

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I. DEFINITIONS

As used in this Uniform Ethics Code, and unless a different meaning clearly appears from the context, the following terms shall have the following meanings.

"Commission" means the State Ethics Commission, established in but not of the Department of Law and Public Safety pursuant to *N.J.S.A.* 52:13D-21.

"Conflicts Law" means the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq.

"Ethics Liaison Officer" means the individual(s) designated by the agency head to assist the State Ethics Commission in implementing and enforcing the Conflicts Law and related ethics codes.

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position.

"Gift" means any fee, commission, service, compensation, gratuity, or other thing of value of any kind. If an item has more than a nominal monetary value, it will be characterized as a gift. A gift includes admission to an event for which a member of the general public would be charged, a meal, transportation, or offer of employment.

"Head of a State agency" means, in the case of the Executive branch of government, except with respect to interstate agencies, the department head or, if the agency is not assigned to a department, the Governor.

"Immediate Family Member" means an individual's spouse, child, parent or sibling residing in the same household. *N.J.S.A.* 52:13D-13(i).

"Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c. 232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c. 110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

"Interested party" means: 1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority

of the State official's agency; 2. Any supplier, or employee, representative or agent thereof; 3. Any organization that advocates or represents the positions of its members to the State official's agency; or 4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Person" means any natural person, association or corporation.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software. *N.J.A.C.* 19:61-6.2.

"Relative," as used in section XIII, means an individual's spouse, and the individual's or his/her spouse's parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

"Special State officer or employee" means (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency, or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time.

"State agency" means any of the principal departments in the Executive branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

"State officer or employee" means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency.

"Supplier" means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State officer or employee's or special State officer or employee's agency, including, but not limited to, consultants, vendors and lessors.

"Unclassified office or position" means any office or position in the unclassified service of the civil service of the Executive branch of State government.

II. GENERAL STANDARDS OF CONDUCT

It is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among the public that such trust is being

violated. Accordingly, State officers and employees and special State officers and employees shall conform their conduct to the following standards.

1. No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his/her duties in the public interest.

2. No State officer or employee or special State officer or employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the Commission.

3. No State officer or employee or special State officer or employee should act in his/her official capacity in any matter wherein he/she has a direct or indirect personal financial interest that might reasonably be expected to impair his/her objectivity or independence of judgment.

4. No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his/her acts that he/she may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

Misuse of Official Position or Information

5. No State officer or employee or special State officer or employee should use or attempt to use his/her official position to secure unwarranted privileges or advantage for him/herself or others.

6. No State officer or employee or special State officer or employee, shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he/she receives or acquires in the course of and by reason of his/her official duties. No State officer or employee or special State officer or employee shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he/she receives or acquires in the course of and by reason of his/her official duties.

Representation/Appearance Before a State Agency

7. No State officer or employee, nor any partnership, firm or corporation in which he/she has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

8. No special State officer or employee, nor any partnership, firm or corporation in which he/she has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

   Nothing contained in this section shall be deemed to prohibit any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

   i. Pending before any court of record of this State,
   ii. In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),
   iii. In connection with the determination or review of transfer inheritance or estate taxes,
   iv. In connection with the filing of corporate or other documents in the office of the Secretary of State,
   v. Before the Division on Civil Rights or any successor thereof,
   vi. Before the New Jersey State Board of Mediation or any successor thereof,
   vii. Before the New Jersey Public Employment Relations Commission or any successor thereof,
   viii. Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P.L.1952, c.174, s.5 (C.39:6-65),or
   ix. Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

III. ACCEPTANCE OF GIFTS

No State officer or employee or special State officer or employee shall accept any gift, favor, service or other thing of value related in any way to the State official's public duties.

Upon the recommendation of the Special Counsel for Ethics Review and Compliance, the Commission has adopted a zero tolerance policy for acceptance of gifts. (See *Report of the Special Ethics Counsel to the Governor of the State of New Jersey*, dated March 14, 2005.) Accordingly, any gift that is offered to or received by a State officer or employee or special State officer or employee or, his/her spouse, immediate family member, partner or associate shall be immediately reported to the agency's Ethics Liaison Officer ("ELO"). Unless the State officer or employee or special State officer or employee is permitted to receive the gift or thing of value in accordance with the Commission's rules on attendance at events (see section IV), no State officer or employee or special State officer or employee or, his/her spouse, immediate family

member, partner or associate shall accept, either directly or indirectly, any gift, favor, service or other thing of value related in any way to the State official's public duties.

The exceptions to the zero tolerance rules for acceptance of gifts are set forth below.

1. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. The receipt of such complimentary articles is not required to be reported to the ELO.

2. A State officer or employee or special State officer or employee may receive a gift, favor, service or other thing of value from a vendor under the same terms and conditions as are offered or made available to members of the general public.

3. A State employee is permitted to give or receive a gift from a co-worker, a supervisor or a subordinate. The gift should not be excessive or inappropriate for a business environment. Such gift shall not be reported to the ELO.

4. In accordance with *N.J.S.A.* 52:13D-24, gift provisions do not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

The procedures for reporting receipt of a gift are set forth in Appendix A.

IV. ATTENDANCE AT EVENTS

Attendance at an event that is sponsored or co-sponsored by an entity other than the State must be approved by the agency's ELO.

A State employee must complete the form identified as "Request For Approval For Attendance At Event," prior to attendance.

A State employee shall not attend an event in his or her official capacity unless a legitimate State purpose will be served.

Costs associated with attendance at an event shall be paid or reimbursed in accordance with *N.J.S.A.* 52:13D-24 and *N.J.A.C.* 19:61-6.1 et seq.

A State employee is prohibited from accepting honoraria in connection with his/her attendance or participation at an event. *N.J.S.A.* 52:13D-24.

A State employee is prohibited from accepting entertainment, or reimbursement for entertainment, that is collateral to an event, such as a golf outing, tickets to a sporting event or a meal taken other than in a group setting with all attendees present.

The Commission's rules on attendance at an event and the form that must be completed prior to attendance at an event are set forth in Appendix B.

V. POLITICAL ACTIVITY

Upon giving notice to the agency ELO, a State employee may be involved in political activities unless:

1. the State employee is prohibited from such activities by State or federal statute or agency rule; or

2. the political activity conflicts with the employee's official duties.

Pursuant to *N.J.S.A.* 52:13D-14 and *N.J.S.A.* 52:13D-24, a State employee may accept a contribution to the campaign of an announced candidate for elective public office provided the contribution is not known to be given in lieu of a payment that is prohibited by the Conflicts Law. Further, a State employee is subject to the Department of Personnel's Administrative Code provisions governing political activity, *N.J.A.C.* 4A:10-1.2. Note that a State employee is not permitted to serve as a campaign treasurer on any campaign that is subject to the jurisdiction of the Election Law Enforcement Commission.

The Commission's Guidelines on Political Activities and the provisions of *N.J.A.C.* 4A:10-1.2 are set forth in Appendix C.

VI. OUTSIDE ACTIVITIES AND BUSINESS INTERESTS

No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his/her objectivity and independence of judgment in the exercise of his/her official duties.

A State officer or employee's participation in any service, activity or employment that is outside his/her official State duties may be prohibited by the Conflicts Law, other State or Federal law or regulation, or the code of ethics adopted by the employee's agency. Accordingly, a State officer or employee shall obtain the approval of the ELO prior to engaging in any of the following outside activities.

1. Commencement of any business, trade, profession or other compensated employment, including the acceptance of compensation for a speech or published work;

2. Uncompensated or volunteer work for or with any entity; or

3. Holding office or title in the governing or advisory board of any entity.

Notwithstanding the requirement to disclose outside employment and activities, a State agency may exempt disclosure of specific kinds of outside employment or activities if the agency is satisfied that such activity or employment does not present a conflict of interest.

A State officer or employee is not permitted to hold employment with, hold an interest in, or represent, appear for, or negotiate on behalf of a holder of or applicant for a casino license unless the Commission grants a waiver. A waiver is granted in circumstances where it is determined by the Commission that such casino activity will not interfere with the

responsibilities of the State officer or employee and will not create a conflict of interest or the appearance of such conflict. A special State officer or employee is prohibited from holding an interest in or representing, appearing for or negotiating on behalf of a holder of or applicant for a casino license, or any holding or intermediary company with respect thereto, in connection with any matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment with a casino license holder or applicant and, if so employed, may hold an interest in or represent, appear for or negotiate on behalf of his/her casino employer. *N.J.S.A.* 52:13D-17.2(b)

All State officers and employees shall complete the Outside Activity Questionnaire attached to this document as Appendix D, in accordance with the procedures adopted by his/her agency. These procedures shall, at a minimum, require that each current employee complete the questionnaire and that each new employee complete the questionnaire upon commencement of employment with the agency. The procedures shall also require that a State officer or employee amend his/her Outside Activity Questionnaire whenever there is a change in the employee's outside activity or State employment. A State agency shall require disclosure of additional information regarding the outside activities of its employees as necessary to address the particular needs and problems of the agency.

The agency ELO shall review all outside activity questionnaires and determine whether the outside activity is permissible in accordance with the Conflicts Law, the Uniform Ethics Code, the agency code of ethics or any other authority. A State officer or employee may appeal an agency ELO's decision to disapprove an outside activity. Such appeal shall be submitted in writing to the Commission within 60 days of the employee's receipt of the agency's decision. The appeal shall cite the relevant section(s) of the Conflicts Law, Uniform Ethics Code, agency code of ethics or other authority which supports the position of the employee that such outside activity should be permitted.

Each State agency shall develop a Conflict of Interest questionnaire for special State officers and employees of that agency. Each State agency shall develop a process for the review and retention of both Outside Activity Questionnaires and Conflict of Interest Questionnaires.

The Commission's Guidelines Governing Outside Activities are set forth in Appendix E.

Blind Trusts

A blind trust may be used by a State officer or employee, a special State officer or employee, his/her spouse or domestic partner or dependent children to avoid conflicts situations caused by financial interests. The trust must conform to the standards set forth in the Blind Trust Guidelines, Appendix F.

VII. OFFICIAL STATIONERY

Official stationery shall be used only in connection with the State agency's official business. The limitations on use of official stationery also apply to personal stationery paid for

by an officer or employee if it is imprinted with the agency office or the title of the State officer or employee.

A State officer or employee or special State officer may not use official stationery to promote a candidate for elective office, endorse a State vendor or contractor, express a personal opinion on a matter that is not related to his/her official duties, or to promote his/her financial or other self-interest.

Exceptions: A State officer or employee or special State officer or employee may use official stationery to write a letter of recommendation for, or respond to an inquiry about, a current or former colleague or employee. These permissible uses are only acceptable so long as the use of official stationery does not create an impression that the State officer or employee is engaged in an unwarranted use of his/her position. For example, it would not be appropriate for a State employee to recommend an individual for inclusion in a program over which the State employee has supervisory or regulatory authority. In addition, there must be a reasonable connection between the officer's or employee's official duties and the use and purpose of the letter.

A State agency may not use official stationery to solicit a contribution from any interested party. Solicitation of any other entity must be reviewed and approved by the agency's ELO.

The Commission's Guidelines with respect to the use of official stationery are set forth in Appendix G.

VIII. POST-EMPLOYMENT RESTRICTIONS

Seeking Future Employment

State officers or employees who have direct and substantial contact with any interested parties must refrain from circulating resumes or in any manner seeking employment with those individuals or entities while still in State service. If an employee is solicited for potential employment by an entity with which he/she has direct and substantial contact, that solicitation must be disclosed immediately to the employee's management and to the agency's ELO. Employees who do not have direct and substantial contact with interested parties may circulate resumes and enter into discussions regarding potential employment with those individuals or entities so long as they avoid any situations that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations shall not take place on State time.

Solicitation or discussion of employment with regulated entities, or their representatives, that have a specific cause, proceeding, application or other matter pending before the employee's agency is not permitted. There may be circumstances when solicitation or discussion of employment with respect to regulated entities, or their representatives, could be approved if no specific cause, proceeding, application or other matter is pending before the agency. These situations must be reviewed on a case-by-case basis before the employee proceeds with any job-seeking activities.

Lifetime Ban

At no time subsequent to the termination of his/her office or employment in any State agency may a former State officer or employee or special State officer or employee represent, appear for, negotiate on behalf of, or provide information or services not generally available to members of the public, or agree to perform any of those activities, for any party other than the State in connection with a specific cause, proceeding, application or matter with which the State officer or employee or special State officer or employee had been substantially and directly involved at any time during the course of his/her office or employment. *N.J.S.A.* 52:13D-17. This lifetime ban applies not only to the State officer or employee or special State officer or employee personally, but also to the partnership, firm or corporation under the following circumstances: (1) if the former State officer or employee or special State officer or employee is a shareholder, associate or professional employee of a firm organized as a professional service corporation or (2) if the former State officer or employee or special State officer or employee owns or controls more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm, association or partnership.

One-Year Ban – Certain State Officials

In accordance with the recommendation of the Special Counsel for Ethics Review and Compliance, a one-year ban on the activities described in this section shall apply to any head, deputy head or assistant head of any principal department, board, commission or authority, the Superintendent of State Police, the Governor's Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel, Director of Communications, Policy Counselor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor.

For one year after the termination of the State office or employment of any of the individuals noted above, he/she shall not represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of any person or party other than the State with or before any officer or employee of the State agency in which he/she served. The provisions of this subsection shall not apply to any partnership, firm or corporation in which he/she has an interest or is employed, or to any partner, officer, director or employee of such partnership, firm or corporation. Nothing contained in this section shall prohibit a State agency from contracting with a former State officer or employee to act on behalf of the State.

In addition, the governor and each head of a principal department in the Executive branch are prohibited, for one year after the termination of office or employment, from registering as a "governmental affairs agent," as that term is defined in *N.J.S.A.* 52:13C-20. *N.J.S.A.* 52:13C-21.4.

Two-Year Casino Employment Restriction

N.J.S.A. 52:13D-17.2 sets forth post-employment restrictions applicable to State officers or employees subject to financial disclosure by law or executive order, and State officers or employees or special State officers or employees with responsibility for matters affecting casino activities.

Such persons are prohibited from holding, directly or indirectly, an interest in, or holding employment with, a casino licensee or applicant for a casino license for a period of two years following the termination of their State employment. In addition, such persons may not represent, appear for, or negotiate on behalf of a casino. This prohibition applies to any business entity in which the person holds an interest or is otherwise associated, including the officers or employees of such business entity. This prohibition applies to the person's immediate family members unless granted a waiver by the Commission. See Section XIV, below. *N.J.S.A.* 52:13D-17.2(c).

Waivers

In accordance with *N.J.S.A.* 52:13D-17.2, the Commission may grant an exception from the above casino employment restrictions for a person's immediate family member or an employee who was terminated as a result of a reduction in force, (provided that the employee did not hold a policy-making management position during the five years prior to termination of employment) whenever it determines that such waiver will not create a conflict of interest or the appearance of a conflict of interest.

The Commission's Guidelines with respect to Post-Employment Restrictions are set forth in Appendix H.

IX. RECUSAL ON OFFICIAL MATTERS

A State officer or employee or special State officer or employee is required to recuse him/herself, for one year after commencing State service, on an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with the State officer or employee or special State officer or employee during the year prior to the employee's commencement of State service.

A State officer or employee or special State officer or employee is required to recuse him/herself on an official matter if he/she had any involvement in that matter, other than on behalf of the State, prior to commencement of his/her State service.

A State officer or employee or special State officer or employee is required to recuse him/herself on an official matter if he/she has a financial or personal interest that is incompatible with the proper discharge of his/her public duties.

An incompatible personal or financial interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his/her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he/she may be engaged in conduct violative of his/her trust as a State official.

Upon determining that a State official shall recuse him/herself on any matter, the State official shall execute the recusal in writing, and shall have no involvement with the subject matter of the recusal. If a State official cannot determine whether he/she should execute a letter of recusal in any matter, the State official shall contact his/her agency ELO or the Commission for guidance. A State official shall seek the advice of the State agency's counsel, agency ELO or the Commission as to the propriety of participation in a matter if any person requests that a State official recuse him/herself from that matter. Oral advice, followed up by a writing, shall be provided by the agency's counsel, the agency ELO or the Commission to avoid delay. Oral advice shall subsequently be memorialized by a writing or by inclusion in public minutes.

The Commission's regulations governing recusal, *N.J.A.C* 19:61-7.1 et seq., which include the required elements for a written recusal, are set forth in Appendix I.

X. CONTRACTS

With few exceptions, a State employee may not enter into a contractual agreement with the State.

An agency head, deputy head or assistant head is prohibited from engaging in any private business transactions with any employee in his/her agency.

Limitation on contracting by State officer or employee

Pursuant to *N.J.S.A.* 52:13D-19, no State officer or employee shall knowingly undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of $25.00 or more, made, entered into, awarded or granted by any State agency. The exceptions to this prohibition are set forth below. As used in this section, State officer or employee also includes his or her partners, any other person for the use or benefit of the State employee or on his or her account or any corporation which he/she controls or in which he/she owns or controls more than 1% of the stock.

Limitation on contracting by special State officer or employee

Pursuant to *N.J.S.A.* 52:13D-19, no special State officer or employee who has duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he/she is employed or an officer shall knowingly undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of $25.00 or more, made, entered into, awarded or granted by that State agency. The exceptions to this prohibition are set forth below. As used in this paragraph, special State officer or employee also includes his/her partners, any other person for the use or benefit of the special State employee or on his/her account or any corporation which he/she controls or in which he/she owns or controls more than 1% of the stock.

The restrictions contained above shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his/her partners or a corporation in which he/she owns or controls more than 1% of the stock.

Permissible Contracts with the State

(1) With the prior approval of the Commission, a State officer or employee or special State officer or employee is permitted to enter into the following:

(a) purchases, contracts, agreements or sales which are made or let after public notice and competitive bidding or which, in accordance with public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or

(b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to *N.J.S.A.* 52:27B-62.

(2) A State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he/she owns or controls more than 1% of the stock, assets or profits may enter into a contract or agreement with a State agency where the contract or agreement is for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics for authorizing these contracts or agreements that minimizes actual conflicts of interest, and the code of ethics was approved in accordance with *N.J.S.A.* 52:13D-23, and the contract or agreement complies with that code procedure.

(3) A State officer or employee or a special State officer or employee or his/her partners or any corporation or firm in which he/she owns or controls more than 1% of the stock, assets or profits may enter into a rental agreement with a State agency which operates a facility which rents space or provides services to assist small businesses which employ 50 people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

Please note that the Commission has never approved a request by a State officer or employee, or special State officer or employee, to enter into a contract with his/her own agency.

The Commission's Guidelines on Privatization, set forth in Appendix J, are applicable to a State employee's participation in an open competitive bid process for the privatization of services currently being provided by his/her agency.

XI. RETIREMENT GIFTS

A gift can be given to a State employee upon his/her retirement from State service. There are specific limits to the value of a permissible retirement gift. A State employee shall refer to Appendix K for the provisions governing retirement gifts.

XII. COMPENSATION FOR PUBLISHED WORKS

A State officer or employee or special State officer or employee may not solicit, receive, or agree to receive, compensation from sources other than the State for published work(s) created as part of his/her official duties on State time and/or using State resources.

However, a State officer or employee or special State officer or employee, other than a "designated State officer," (the Governor, cabinet-level officers and other principal administrative officers of the State) may, in connection with any service, advice, assistance, appearance, speech or other matter related to his/her official duties, receive or agree to receive, whether directly or indirectly, from sources other than the State, reasonable fees for published works on matters within his/her official duties not created on State time and/or using State resources.

In addition, a State officer or employee or special State officer or employee may accept compensation from sources other than the State for published work(s) on matters unrelated to his/her official duties created on his/her own time and with non-State resources.

Before agreeing to accept or accepting any compensation from a source other than the State for any published work, a State officer or employee or special State officer or employee must secure his/her State agency's approval to do so.

In determining whether to grant such approval, the State agency shall consider, among other things, whether the compensation is offered by an interested party, and whether the published work uses or discloses information not generally available to the public. The determination shall be consistent with applicable law and agency policy.

No State officer or employee or special State officer or employee may use his/her official title in soliciting compensation for a published work.

The Commission's Guidelines with respect to Published Works are set forth in Appendix L.

XIII. FAMILY MEMBERS - CONFLICTS OF INTEREST

1. No relative of the Governor may be employed in any unclassified office or position within the State.

2. No relative of a commissioner or department head may be employed in any unclassified office or position within the department over which the department head exercises authority.

3. A relative of an assistant or deputy department head may be employed in an unclassified office or position within the department in which the assistant or deputy serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

4. A relative of a head or assistant head of a division within a department may be employed in an unclassified office or position within the department in which the division head or assistant division head serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State may not be employed in any office or position in that entity.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency may not be employed in an office or position in that bi-state or multi-state agency, unless otherwise permitted by law.

7. No State officer or employee or special State officer or employee may supervise his/her relative, or exercise any authority with regard to personnel actions involving his/her relative

8. Each State agency shall require State officers and employees and special State officers and employees to disclose information sufficient for the agency to determine whether the employment of any individual within the agency is prohibited.

Cohabitation

The Commission has determined that the prohibition regarding personnel actions and the supervision of family members, set forth in paragraph 7 above, is applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations.

Dating Relationship

In the case of individuals involved in dating relationships, the Commission has found violations of the Conflicts Law in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship. Accordingly, a State officer or employee or special State officer or employee shall not have any involvement in his/her official capacity in any matter that pertains to or involves an individual with whom he/she has a dating relationship.

The Commission's guidelines with respect to "Official Interactions with Family Members/Cohabitants and Dating Relationships" is attached hereto as Exhibit M.

XIV. CASINO-RELATED FAMILY MEMBER RESTRICTIONS

Concurrent Employment Restriction

An immediate family member of a State officer or employee, or of any "person," as defined at *N.J.S.A.* 52:13D-17.2(a), may not hold directly or indirectly, an interest in, hold

employment with, or represent, appear for, or negotiate on behalf of a holder of, or applicant for, a casino license, or any holding or intermediate company with respect thereto.

However, an immediate family member of a State officer or employee or "person" may be employed by a casino in circumstances where it is determined by the Commission that such employment will not interfere with the responsibilities of the State officer or employee or "person" and will not create a conflict of interest or the appearance of such conflict. *N.J.S.A.* 52:13D-17.2(b).

Post-Employment Restriction

An immediate family member of a "person," as defined at *N.J.S.A.* 52:13D-17.2(a), may not hold, directly or indirectly, an interest in, hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any phase of casino development permitting, licensure, or any other matter related to casino activity, for a period of two years following the termination of the office or employment of such person.

However, an immediate family member of a "person" may be employed by a casino in circumstances where it is determined by the Commission that such employment will not interfere with the responsibilities of the "person" and will not create a conflict of interest or the appearance of such conflict. *N.J.S.A.* 52:13D-17.2(c)(1).

Casino post-employment restrictions that apply to State officials defined as "persons" are noted in section VIII.

XV. REPORTING COMPLAINTS

Allegations that a State officer or employee or special State officer or employee has violated a provision of this Uniform Code, the Conflicts Law, the Commission's rules, an agency code of ethics or any other standard within the jurisdiction of the Commission should be reported to the appropriate agency ELO or the Commission staff. Allegations should contain as much detailed information as possible and, if the complainant chooses to identify him/herself, should include contact information so that the ELO or Commission staff can obtain additional information if necessary. A complainant is not required to disclose his/her identity when reporting an alleged ethics violation.

XVI. PENALTIES

The Commission is empowered to impose the following penalties in accordance with specific provisions of the Conflicts Law. Note that violations committed by a former State officer or employee or special State officer or employee may be subject to penalties so long as the Commission's investigation of same was initiated not later than two years following termination of service.

1. *N.J.S.A.* 52:13D-17 provides that any person who willfully violates the general post-employment restrictions set forth in that provision is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both. In addition, for

violations occurring after March 15, 2006, any former State officer or employee or former special State officer or employee found by the Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 or more than $10,000.

2. *N.J.S.A.* 52:13D-17.2(h) provides that any person who willfully violates the casino-related post-employment restrictions set forth in Section 17.2 (c) is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both. In addition, for violations of Section 17.2(c) occurring after March 15, 2006, any former State officer or employee or former special State officer or employee found to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 or more than $10,000.

3. *N.J.S.A.* 52:13D-21(i) provides that any current or former State officer or employee or special State officer or employee found guilty by the Commission of violating any provision of the Conflicts Law, the Uniform Ethics Code, or any agency code of ethics, shall be fined not less than $500 nor more than $10,000, and may be suspended from office or employment by order of the Commission for a period not to exceed one year. In addition, for violations occurring after March 15, 2006, the State Ethics Commission may also order restitution, demotion, censure or reprimand.

This subsection further provides that if the Commission finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of the Conflicts Law, the Uniform Ethics Code or any agency code of ethics, it may order that person removed from office or employment and may further bar the person from holding any public office or employment in this State in any capacity whatsoever for a period not exceeding five years from the date on which the person was found guilty by the Commission.

This subsection further provides that the Commission may impose a penalty of $50 per day of violation for failure to file an appropriate financial disclosure statement required to be submitted to the Commission by law, regulation or executive order.

(See penalty provisions set forth at *N.J.A.C.* 19:61-3.1(j) and *N.J.A.C.* 19:61-5.6(c).)

4. *N.J.S.A.* 52:13D-23(d) provides that violations of the Uniform Ethics Code or any agency code of ethics shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. With respect to a person who is in the classified civil service, the procedure leading to such removal or discipline shall be governed by the Civil Service Act, *N.J.S.A.* 11A:1-1 et seq. and the Rules of the Department of Personnel. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the Commission.

5. *N.J.S.A.* 52:13D-26 provides that any person who willfully induces or attempts to induce a State officer or employee or special State officer or employee to violate any of the provisions of the Conflicts Law is a disorderly person, and shall be subject to a fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

APPENDIX A

GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value related in any way to the State officer or employee's or special State officer or employee's public duties.

2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value related in any way to their public duties.

3. All officers and employees should be instructed that any gift or other thing of value offered to or by an officer or employee that is related in any way to his/her public duties must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such person or corporation must be reported immediately.

4. The Ethics Liaison Officer shall return a gift or thing of value that is related in any way to an officer or employee's public duties to the donor or shall otherwise appropriately dispose of it.

5. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement.

6. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

7. The assistance of the Director of the State Ethics Commission will be available to all Ethics Liaison Officers to aid them in individual cases.

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AppendixA.doc

APPENDIX B

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS, AND ACCEPTANCE OF THINGS OF VALUE

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

"Approval" means, for the purposes of N.J.A.C. 19:61-6.4 and 6.5, written permission from the department head to attend and/or participate in an event; and/or to accept direct or indirect benefits in connection with attendance.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, meals, accommodation, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, meals, accommodation, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;

2. Any supplier, or employee, representative or agent thereof;

3. Any organization that advocates or represents the positions of its members to the State official's agency; or

4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"Reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive.

"Supplier" means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State official's agency, including, but not limited to, consultants, vendors and lessors.

"Thing of value" includes, but is not limited to, compensation; money; a stock, bond, note or other investment in an entity; employment, offer of employment; gift; reward; honorarium; favor; goods, service; loan; forgiveness of indebtedness; gratuity; property or real property; labor; fee; commission; contribution; rebate or discount in the price of any thing of value; an automobile or other means of personal transportation; entertainment; meal; or any other thing of value offered to or solicited or accepted by a State official in connection with his or her official position.

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants approval to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the uniform ethics code and the agency code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;

2. The purpose of the event;

3. The identity of other expected participants;

4. Whether attendance and/or participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and

5. The monetary value and character of the costs and benefits provided by the sponsor, including whether the costs and benefits are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on the form provided in N.J.A.C. 19:61-6.8. Such forms shall be retained by the State agency for a period of five years from the date of approval of the form.

(c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may request that the Commission permit that such divisions rather than the department State agency be treated as agencies for the purposes of this subchapter. The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their separate treatment as agencies.

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) Except as provided in (c) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.

2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant, subject to the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed $500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The $500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) If an actual conflict or the appearance of a conflict could arise under the application of (c) above, (b) above shall govern.

(e) Approvals granted under (c) above must be forwarded to the Commission for review.

(f) The State official may pay his or her own expenses with his or her personal funds.

(g) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the $200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.

The Motor Vehicle Commission (MVC) is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several MVC employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the

employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore an interested party with respect to the MVC, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided and because the meetings are part of the employees' job responsibilities, the meetings are not "events" for the purposes of this subchapter.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. Direct or indirect benefits may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed $500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The $500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(c) An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(d) A State official making a speech or presentation at the event shall not accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement therefore.

Examples

An employee of the Commerce, Economic Growth and Tourism Commission has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at dinner on the final day of the meetings and has been offered a $500.00 honorarium. The employee may attend the meetings but is not permitted to accept an honorarium in

connection with his speech. He may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State, not to exceed the statutory limit of $500.00.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

19:61-6.6 Use of official title for private fundraising

A State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

19:61-6.7 Compensation for published work(s)

(a) A State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the uniform ethics code, the agency code of ethics, any applicable Executive Orders, the Commission's Guidelines for Secondary Employment, any other applicable guidelines or rules of the Commission, any applicable administrative policies of the agency, and the following conditions:

1. Whether compensation is being paid by an interested party;

2. Whether the published work(s) uses or discloses information not generally available to the public;

(c) The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State.

(d) The State official shall not use his or her official title in any way in soliciting compensation.

Examples

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered $500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered $500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

19:61-6.8 Approval request form

(a) State officials shall use the following form to request approval to attend events.

REQUEST FOR APPROVAL FOR ATTENDANCE AT EVENT

DEPARTMENT OF _____
Name _____ Division _____
Title _____ Telephone _____ FAX _____
E-mail address _____
Event _____
Sponsor _____
Is the sponsor an "interested party"? Yes ____ No ____
Is the State official a speaker, panel participant or resource person? Yes ___ No __
Is the sponsor an agency of the federal government, one or more other states or a political subdivision thereof? Yes ___ No ___
Is the sponsor a nonprofit organization? Yes ___ No ___
If Yes, is the employee or agency a member? Yes ___ No ___
Does the nonprofit organization have any contracts with the State? Yes ___ No ___
Location _____ Date(s) _____
Overnight accommodation required? Yes ____ No ____
Out-of-state travel required? Yes ____ No ____
Estimated cost? $_____
Agency to pay cost? Yes ____ No ____
Sponsor to pay cost? Yes ____ No ____
Employee to pay cost? Yes ____ No ____
Reason for attendance: _____
_____
Will sponsor offer an honorarium or fee? Yes ____ No ____

_____ _____
Employee Signature Date

NOTE: Any substitutions or changes of circumstances must be reported.

****

Attendance approved Yes ____ No ____ Note: Acceptance of honoraria or fees is not permitted.
Conditions: _____
_____
_____ _____
Signature Date

APPENDIX C

STATE EMPLOYEES' PARTICIPATION IN POLITICAL ACTIVITIES

Summarized below are Commission cases addressing State employees' participation in partisan political activities. The Commission permits involvement in partisan political activities provided that there is no provision in the Departmental code of ethics prohibiting such activities. (Election Law Enforcement Commission, State Ethics Commission and several other agency codes have specific provisions prohibiting such activities.) State employees, however, may not use State time or State resources in pursuit of such activities and must provide notice to the Departmental Ethics Liaison Officer.

Two sections of the Conflicts Law, *N.J.S.A.* 52:13D-14 and 24, address the acceptance and/or solicitation of campaign contributions.

Section 14 provides:

> No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

Section 24 provides:

> a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.
>
> ....
>
> c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

In Case No. 45-73, a member of the Commission on Legalized Games of Chance requested an opinion from the Commission as to whether the provisions of the Conflicts of Interest Law would restrict his involvement in political activities in the county where he resided. The Attorney General's Office was asked to review the request and issued an opinion which advised that the State official was permitted to engage in political activities, barring a prohibition against such activities in the Department's Code of Ethics.

In Case No. 201-75, the Commission referred a request for advice as to whether a member of a County Board of Taxation was permitted to become a candidate for and, if elected, hold an Assembly seat, to the Attorney General. Attorney General Opinion M75-2075 concluded that a member of a County Board of Taxation holds a State office of profit within the meaning of Article IV, Section V, Paragraph 4, of the New Jersey Constitution and, as such, was permitted to become a candidate for a seat in the Legislature, but, if elected, must resign as a County Board Member before taking his Legislative seat.

In Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.

In Case No. 756-79, the Commission determined that it would not be a conflict of interest for a member of a County Board of Taxation to simultaneously serve as a Commissioner on the County Tax Board and hold the position of County Chairman of a political party in the same county.

In Case No. 972-81, the Commission determined that a Housing Finance Agency ("HFA") employee was permitted to run for municipal office in a municipality where housing projects sponsored by the HFA were located. The employee was cautioned that, if elected, she should not have any dealings with any project located in East Orange as long as she was a member of the Council.

In Case No. 987-81, the Commission affirmed the Department of Labor Ethics Committee determination that the employee's position as a Democratic State Committeeman and Member of the Warren County Democratic Committee as well as his candidacy for the Lopatcong Township Council did not constitute a violation of the Conflicts of Interest Law. The Commission also concurred with the caveats imposed by the Department prohibiting the use of State time, stationery and telephones by the employee for his political activities and further extended this prohibition to include any other State resources.

In Case No. 34-85, two members of the Board of Dentistry were advised that *N.J.S.A.* 52:13D-24 expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

In May 1990, the Casino Control Commission ("CCC") requested an Advisory Opinion from the Commission as to whether certain political activities, if engaged in by members of the CCC, would violate ethical restrictions contained in the Casino Control Act or the CCC's Code of Ethics. Because this request

involved a statutory interpretation, the Attorney General's Office was asked to review it. An Opinion was received which stated that, given the directive in the Casino Control Act that the CCC promulgate a code of ethics modeled upon the Code of Judicial Conduct, it appeared that without a legislative change to the Casino Control Act, members of the CCC were prohibited from those political and partisan activities that are prohibited by the Code of Judicial Conduct.

In Case No. 17-95, a County Superintendent of Elections employee was advised that she was permitted to run for a council seat in a partisan political election because her responsibilities as Program Coordinator involved only student voter registration, the planning of educational programs and the handling of press releases and correspondence. The employee had no responsibilities in connection with the election process. She was advised, however, that she should have no involvement with student voter registration activities in the municipality in which she was a council candidate.

In 1997, in Case No. 29-97, the Commission considered the effect of section 16(b) of the Conflicts Law on State officers and employees who serve as campaign treasurers. Section 16(b) prohibits State officers and employees from representing, appearing for or negotiating on behalf of, or agreeing to perform any of those activities for, a party other than the State in connection with any matter pending before any State agency. The Commission's precedent has established that signing reports, making telephone calls, attending meetings and/or responding to inquiries by a State agency on behalf of a third party are acts of representation. Campaign reports must be signed by the campaign treasurer and submitted to the Election Law Enforcement Commission ("ELEC"), a State agency, and in the event of a complaint to ELEC, the treasurer would be required to appear in person or respond in writing to ELEC's inquiry. Thus, a State officer or employee is prohibited from serving as a campaign treasurer because the treasurer's duties include representing the campaign organization and/or the candidate before ELEC.

In Case No. 07-01, a County Superintendent of Elections employee was advised that his proposed participation in his friend's campaign for municipal office was not appropriate under the application of section 23(e)(5), activity which might reasonably be expected to impair objectivity and independence of judgment, and section 23(e)(7), appearance of impropriety. In his official capacity, the employee supervised a staff of 53 employees, represented the Superintendent of Elections at necessary functions, and assisted voters and interested parties by providing requested records.

The employee expected to participate in the following political activities: door-to-door campaigning, participating in phone bank work, coordinating volunteers, giving instructions on election procedures, staffing the campaign headquarters, participating in voter registration drives, attending rallies and fundraising events, and preparing mailings to registered voters.

In prohibiting the activity, the Commission balanced the State employee's interests with the public's interest in ensuring fair and unbiased elections.

In Case No. 05-03, the Commission considered an allegation that a Department of Community Affairs ("DCA") employee violated the Political Activities Prohibition of the DCA Code of Ethics when her name and picture appeared on a campaign mailer for a local mayoral candidate. The campaign mailer prominently featured the State employee in

her capacity as a former mayor. It did not mention her role with the State and did not reference any relationship between the municipality and the DCA. Section XI, Political Activities Prohibition, of the DCA Code provides as follows:

> An employee shall not directly or indirectly use or seek to use his authority or the influence of his position to control or modify the political action of another person. An employee during the hours of duty shall not engage in political activity; nor shall he at any other time participate in political activities, which would impair his usefulness in the position in which he is employed. A State employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

The Commission dismissed the allegation, noting that Section XI of the DCA Code of Ethics specifically states that a State employee retains the right to express opinions on political subjects and candidates. The State employee exercised that right when she endorsed the candidate in his election campaign.

Additional Restrictions. The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission and are printed here for the reader's information and convenience.

***N.J.A.C.* 4A:10-1.2 Political activity**

a. No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See *N.J.S.A.* 11A:2-23.

b. No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 et seq.):

   1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

   2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

   3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

c. The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

***N.J.A.C.* 4A:2-5.1 General provisions**

b. An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's

permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

July 1997
March 1998
September 2003
July 2004
June 2006
politics.doc

STATE OF NEW JERSEY OUTSIDE ACTIVITY QUESTIONNAIRE

Name:

Work Address:

Department:

Division/Bureau: **Telephone Number:**

Civil Service Title: **Functional Title (if different):**

Job Duties:

1. Are you currently engaged in any business, trade, profession and/or part-time or full-time employment outside of or in addition to your State employment?

If Yes, you must answer question 2.

Yes No

2. Name of Outside Employer(s) or Business(es). Please indicate if you are an owner, partner or corporate officer.

Address:

Type of Business:

Describe responsibilities:

Outside Employment (please specify):

Days Worked per Week:

Hours Worked: Per Day Per Week

Is your employment or business being performed for or with any other Department employee or official?

Yes No

Name of employee or official and title:

Does your outside employment or business require/cause you to have contacts with other NJ State agencies, vendors, consultants or casino license holders?

Yes No

If yes, explain.

3. Do you hold a license issued by a State agency that entitles you to engage in a particular business, profession, trade or occupation?

Yes No If yes, type of license

When was license issued: Active Inactive

4. Do you currently hold or plan to hold outside voluntary position(s)? Yes No

If yes, explain

5. Are you an officer in any professional, trade or business organization? Yes No

If yes, explain

6. Are you serving in any public office, or considering appointment or election to any public office?

Yes No

What is the type of elective / appointive position?

What are your duties?

Hours engaged in elective / appointive activity:

7. Are any members of your immediate family employed by or, through partnership or corporate office, holding an interest in any firm performing any service for the State of New Jersey or directly or indirectly receiving funding from the State?

Yes No

Family Member's name

Nature of Employment

Duration: Permanent Temporary

8. Are any members of your immediate family employed by a New Jersey casino or an applicant for a NJ casino license?

Yes No

Family Member's Name Relationship:

Name of Casino:

I certify that this questionnaire contains no willful misstatement of fact nor omission of material fact and that after it is submitted, any future activity subject to disclosure will be reported before I engage in such activity.

Signature of Employee Date

Immediate Supervisor (check one)

Approved Disapproved

Signature:

Date:

Comments and/or reason for disapproval:

Ethics Liaison Officer (check one)

Approved Disapproved

Signature:

Date:

Comments and/or reason for disapproval:

Please provide the employee with a copy of the Approved/Disapproved Form.

APPENDIX E

GUIDELINES GOVERNING OUTSIDE ACTIVITIES

These Guidelines present a comprehensive overview of decisions and policies of the State Ethics Commission concerning outside activities, both compensated and uncompensated. The Commission has addressed outside activities under the application of standards embodied in the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq.: sections 16, representation, appearance or negotiation regarding a proceeding pending before a State agency; 17.2(b), State employee/family member relationships with casino applicants or licensees; 19, contracts with State agencies; 23(e)(1), interest in substantial conflict with official duties; 23(e)(2), licensed or regulated activities; 23(e)(3), unwarranted privilege; 23(e)(5), employment or service reasonably expected to impair objectivity and independence of judgment; 23(e)(7), appearance of impropriety; 24, receipt of thing of value for service related to official duties; 25, information not generally available to the public; and N.J.A.C. 19:61-6.7(b), compensation for published works.

Uniform Ethics Code. Pursuant to Section VI of the Uniform Ethics Code, State officers and employees must obtain the approval of the agency Ethics Liaison Officer prior to engaging in any outside activity. An agency may find it administratively efficient to exempt disclosure of specific kinds of outside employment; for example, part-time work for businesses not related to the position of employment in the agency.

Agency Code of Ethics. Each State agency is required to promulgate a code of ethics to address the particular needs and problems of the agency. The agency code of ethics is a supplement to the Uniform Ethics Code and may prohibit certain types of outside employment.

Outside activities disapproved by a State employee's agency may be appealed to the Commission. Appeals should be directed in writing to the Executive Director, State Ethics Commission, 28 West State Street, P.O. Box 082, Trenton, NJ 08625.

Review/Approval Process. The following issues must be examined by the agency Ethics Liaison Officer in determining whether an outside activity can be approved. Does the outside position require representation before a State agency? Does the outside position involve a casino licensee or applicant for a casino license? Does the outside activity involve contracting with a State agency? Is there a significant overlap in the duties and responsibilities of the two positions? Does the State employee's agency have control, supervision, or jurisdiction over the outside entity? Does the outside entity receive grants from or contract with the State employee's agency? Does the outside activity involve a published work? Does the outside interest involve political activity? These Guidelines present summaries of past Commission cases, organized under the questions listed above. The case presentations are solely to provide examples of outside activities that have been addressed by the Commission. Also included are general explanations of the statutory provisions applicable to outside employment/volunteer activities.

Does the Outside Position Require Representation Before a State Agency? Section 16(a) of the Conflicts Law prohibits a special State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular agency in which such special State officer or employee holds office or employment.

Section 16(b) of the Conflicts Law prohibits a State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before *any* State agency.

"Interest" is defined in section 13(g) of the Conflicts Law as (1) the ownership or control of more than 10% of the profits or assets of a firm, association, partnership, or more than 10% of the stock in a for-profit corporation, other than a professional service corporation or (2) the ownership or control of more than 1% of the stock in any corporation which is the holder of or applicant for a casino license or in any holding or intermediary company with respect thereto. In the case of a professional service corporation, the provisions governing the conduct of individuals are applicable to shareholders, associates or professional employees regardless of the extent or amount of their shareholder interest in such corporation.

Section 16(c) sets forth exceptions to the general prohibitions of sections 16(a) and 16(b). Those exceptions include matters (1) pending before any court of record in the State, (2) in regard to a workers' compensation claim, (3) in connection with the determination or review of transfer, inheritance or estate taxes, (4) in connection with filing of corporate or other documents in the Office of the Secretary of State, (5) before the Division on Civil Rights, (6) before the State Board of Mediation, (7) before the Public Employment Relations Commission, (8) before the Unsatisfied Claim and Judgment Fund Board, (9) before any State agency on behalf of a county, municipality or school district or any authority, agency or commission thereof except where the State is an adverse party and provided the State employee does not hold office or employment in the State agency where the matter is pending.

Engineers. *In Case No. 6-93, the Commission was asked to consider the extent of the section 16(b) prohibition in the case of a Department of Transportation Project Engineer. The Project Engineer requested an opinion as to whether his secondary employment performing dam inspections for private land owners and completing reports to be submitted to the Department of Environmental Protection and Energy ("DEPE") constituted representational activity prohibited by section 16(b). The Commission determined that the preparation of the dam inspection reports, attendance at meetings at the DEPE, telephone conversations with DEPE employees regarding the reports and the submission of correspondence to DEPE on behalf of clients constituted representational activity prohibited by section 16(b) of the Conflicts Law. The Commission also determined that submission of the reports by the third-party clients would not mitigate the violation.*

In several cases since 1993, the Commission has found that State employees who sign documents, make telephone calls or submit correspondence in connection with matters pending before a State agency are in violation of section 16.

Tax Preparers. *The Commission has addressed the issue of whether a State employee's outside employment preparing State income tax returns is violative of section 16(b) of the Conflicts Law on a number of occasions (Cases No. 619-77, 830-79, 828-79, 908-80). In these cases, the Commission permitted the State employees to continue their outside employment as tax preparers, but advised them that they had an obligation to inform clients that in the event of a dispute, the State employees could not appear before the Division of Taxation or any other State agency. In 1993, the Commission revisited the issue, determined that the preparer's signature on the State tax return does not constitute representational activity, and confirmed its earlier rulings.*

Attorneys. *In Case No. 48-89, a Member of the Statewide Health Coordinating Council ("SHCC") requested advice from the Commission as to the applicability of Section 16(a) of the Conflicts Law to her situation. The Member secured employment in the health care department of a New Jersey law firm and asked what effect her employment with the firm would have on the firm and its clients. The firm, a partnership, represented providers of healthcare goods and services before the Department of Health, the SHCC, and other related public bodies. The Member's status with the firm was that of employee; she had no interest in the firm as defined in section 13(g) of the Conflicts Law.*

The Commission advised the Member that section 16(a) prohibited her from representing, appearing for, or negotiating on behalf of any party other than the State in connection with any matter pending before the SHCC. This prohibition did not extend to the law firm because the Member had no interest in the firm.

In Case No. 394-76, the Commission considered whether it would be a conflict of interest for a Project Specialist, Department of Health ("DOH"), to maintain a part-time law practice out of his home. In his official capacity, the employee was responsible for developing and evaluating a rate system for payment of hospital costs based on diagnostically related illness. The Commission determined that the DOH employee was permitted to engage in the outside practice of law with the understanding that he refrain from representing any person or party, including non-New Jersey governmental agencies, in any case related to rate-setting in health care facilities or other providers of medical care. This would avoid any possibility that decisions or conclusions rendered in such a case could be used to challenge the rate systems in New Jersey. The DOH employee had voluntarily agreed that he would not represent any health care facilities or other providers of medical care within the State while employed by the DOH.

In Case No. 355-76, Administrative Assistant, Child Care Licensing Section, Division of Youth and Family Services, Department of Human Services, the Commission determined that no conflict existed between the Administrative Assistant's State position and his private law practice provided that he refrain from offering services in any child, family, or licensing matters in which DYFS was involved or might be involved.

Campaign Treasurer. *In Case No. 29-97, the Commission determined that, under the operation of section 16(b) of the Conflicts Law, State employees are prohibited from acting as campaign treasurers because campaign reports signed by them must be submitted to the Election Law Enforcement Commission ("ELEC"), and, in the event of a complaint to ELEC, a State employee would be required to appear in person or respond in writing to ELEC's inquiry.*

Does the Outside Position Involve a Casino Licensee or Applicant for a Casino License?

State Officer or Employee. A State officer or employee, other than a State officer or employee included in the section 17.2(a) definition of "person," may hold employment with the holder of or applicant for a casino license only if the Commission grants a waiver. A waiver of the prohibition can be granted if, in the Commission's judgment, such employment will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest. Waivers may be sought by contacting the Commission.

Family Members. Members of the immediate family of a State officer or employee, or of a person, may also hold employment with the holder of or applicant for a casino license by obtaining a waiver from the Commission. An immediate family member is defined as a spouse, child, parent or sibling residing in the same household.

Does the Outside Activity Involve Contracting With a State Agency? Section 19(a) of the Conflicts Law prohibits a State officer or employee or from entering into a contract, valued at $25 or more, with any State agency. A special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency is restricted from contracting with his/her agency. This prohibition also extends to partners or any corporation which the State officer or employee or special State officer or employee controls or in which he owns or controls more than 1% of the stock.

Section 19 exempts only three categories of contracts from this general prohibition: (1) contracts made after public notice and competitive bidding; (2) contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A.* 52:34-10 or similar provisions; and (3) contracts of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to *N.J.S.A.* 52:27(b)-62.

State employees must receive the approval of the Commission prior to contracting under any of the section 19(b) exceptions. The Commission has approved many requests over the years by State employees to bid on contracts that are subject to public notice and competitive bidding. Such requests are generally approved if the contract in question is not with the State employee's own agency. The Commission has relied on section 23(e)(7), the appearance section of the statute, in limiting a State employee's participation in the contracting process when the contract is with his/her own agency.

The Commission has also granted approval for contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A.* 52:34-10, where the State employee is the sole source of supply for a particular good or service. *N.J.S.A.* 52:34-10 also exempts purchases from the federal or any State government or any agency or political subdivision thereof; public exigency; contracts where more favorable terms can be obtained from a primary source of supply; seasonal articles or wearing apparel; where commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action; or the equipment to be purchased is of a technical nature and procurement without advertising is necessary in order to assure standardization of equipment and interchangeability of parts.

In Case No. 7-91, the Commission for the Blind and Visually Impaired ("CBVI") requested that the Commission approve an exception to section 19 to permit the CBVI to contract with a State employee for the development of a computer software package. The State employee was identified by the CBVI as the sole source of supply for generating this program. The Commission approved the contract, pursuant to N.J.S.A. 52:34-10, with the understanding that all work would be performed on the State employee's own time and without the use of State resources.

In 1992, the Commission considered whether a Department of Human Services caseworker could continue to perform psychosocial evaluations of juvenile inmates for the Department of Corrections ("DOC"), Case No. 30-92. The Commission determined that section 19 permitted dual employment by two different State agencies but did not permit personal service contracts. The Commission determined that caseworker's arrangement with the DOC was a personal service contract that did not fall within the exception of section 19(b). They noted that while it was a contract that could be awarded without public notice and competitive bidding, the authority for such an award was N.J.S.A. 52:34-9; section 19(b) only allows contracts which are awarded pursuant to N.J.S.A. 52:34-10.

In Case No. 25-94, the Commission considered whether a Statistical Engineer, Bureau of Materials Engineering, Department of Transportation, was permitted, under section 19, to provide photography services to the

State Museum and other State agencies. The Commission determined that the Statistical Engineer could not contract with the State Museum to perform photography work because the contracts were not subject to public notice and competitive bidding and did not fall within the exceptions of N.J.S.A. 52:34-10.

In Case No. 15-99, the Commission affirmed a Department of Human Services ("DHS") decision that a DHS employee was prohibited, under section 19 of the Conflicts Law, from serving as a pool attorney for the Office of the Public Defender ("OPD"). The OPD uses the services of licensed New Jersey attorneys to handle "pool" cases, cases that have multiple defendants or cases that employees of the OPD cannot handle because of the volume or backlog of work or a conflict of interest. The DHS employee appealed to the Superior Court, Appellate Division, which upheld the Commission's decision.

Licensed or Regulated Activities. Pursuant to section 23(e)(2) of the Conflicts Law, all occupational, trade, business, or professional licenses issued by a State agency must be reported to the Commission. Such licenses include, but are not limited to, attorney, physician, nurse, pharmacist, engineer, real estate, insurance, private detective, and teacher. If the license is inactive, please so note. As is the case with any secondary employment activity, a State employee must receive the prior approval of the agency Ethics Liaison Officer prior to any outside use of a professional license.

Is There a Significant Overlap in the Duties and Responsibilities of the Two Positions? *In Case No. 40-91, the Commission considered an appeal by the Director of Social Services, Office of Public Guardian ("OPG"), Department of Community Affairs ("DCA"), that her proposed pursuit of a private practice as an "Eldercare Consultant" was incompatible with her State position of Director of Social Services, OPG. The DCA Ethics Committee denied the secondary employment based on the fact that the two positions dealt with the same general area, the duties and responsibilities of the two positions were similar, and the possibility existed that there were individuals, organizations, and entities that the DCA employee might deal with in both positions. The Commission confirmed the ruling of the DCA Ethics Committee. The Commission reviewed the situation under sections 16(b), 23(e)(3), (5) and (7) of the Conflicts Law.*

In Case No. 769-79, the Commission considered whether it would be a conflict of interest for the Coordinator, Government and Small Business Aids, Division of Economic Development, Department of Labor and Industry, to serve as a trustee of a local development corporation designed to help small businesses on a local level. The Commission noted that it appeared that the Coordinator would be providing on a local level the same service that he was authorized to offer in his State position. Moreover, it would not be unreasonable to expect that he would review applications for State aid submitted by the small businesses he had assisted on a local level. The Commission determined that it would be a conflict for the Coordinator to hold his present State position and concurrently serve as a trustee of the local development corporation. The Commission cited section 23(e)(5) in its determination.

In Case No. 1127-82, the Commission considered an appeal by the Assistant Chief of Vital Statistics and Registration, Department of Health ("DOH"), from a determination by the DOH that he should discontinue activities in connection with a company owned by him and a co-worker. The company sold vital records binders to municipalities for use by local registrars for the purpose of filing original vital records. In his official capacity, the State employee was responsible for assisting and instructing local registrars in a number of matters including maintenance of vital records files. His partner had even more contact with local registrars in that he was responsible for supervising and training vital statistics field personnel who provided technical assistance and guidelines to them. He further was responsible for conducting inspections of offices of local registrars to ensure compliance with federal

and State laws and to ensure the proper maintenance of records. The Commission upheld the DOH's determination that the sales activity had sufficient relationship to their official responsibilities so as to come within the prohibition of section 23(e)(5).

Does the State Employee's Agency Have Control, Supervision, or Jurisdiction over the Outside Employer? In numerous cases, the Commission has determined that State employees cannot engage in secondary employment when their activities are subject to regulation or inspection by the agency for which they work.

In Case No. 20-92, a Public Health Representative I, Office of Emergency Medical Services ("OEMS"), Division of Health Facilities Evaluation and Licensing ("DHFEL"), Department of Health ("DOH"), appealed a decision of the DOH Ethics Committee that her secondary employment as a per diem evening shift nursing supervisor at a local hospital constituted a conflict of interest with her Departmental employment. The OEMS is responsible for certifying and conducting routine inspections of hospital-based Mobile Intensive Care Unit programs.

In her capacity as an evening nursing supervisor at the hospital, the DOH employee was the on-site administrator in charge of the hospital during her shift. She had received approval from her supervisor prior to accepting the outside employment. Subsequent to that approval, OEMS was transferred to the DHFEL. The DHFEL is responsible for licensing health facilities in the State and for conducting inspections of the facilities to ensure compliance with statutory and regulatory requirements. The Commission found that the DOH Ethics Committee had balanced the integrity of the DOH's inspection system against the employee's ability to pursue part-time employment and affirmed the ruling of the Committee and the policy prohibiting such activities. The Commission reviewed the situation under sections 23(e)(5) and (7) of the Conflicts Law.

In Case No. 26-92, the Commission concurred with the Department of Law and Public Safety that a Safety Specialist, Division of Motor Vehicles ("DMV"), could not engage in outside employment repairing small holes, chips and cracks in automobile windshields because his customers would be subject to DMV inspection.

In Case No. 24-97, a Conservation Officer III, Division of Fish, Game and Wildlife, Department of Environmental Protection ("DEP"), appealed the DEP's denial of his secondary employment request to participate in the commercial harvest of eels/elvers. The DEP, through the Division, regulates and oversees New Jersey's freshwater fisheries and regulates the commercial harvest of elvers. The DEP employee, in his official capacity, spent between 40 and 60 percent of his enforcement hours working on elvering enforcement during the season. The Commission concurred with the DEP's decision that the employee be denied permission to engage in the commercial harvest of eels/elvers. The Commission reviewed the situation under sections 23(e)(1), (4), (5), and (7) of the Conflicts Law.

Does the Outside Entity Receive Grants from or Contract with the State Employee's Agency? In July 2000, in Case No. 20-00, the Commission determined that, in the absence of enabling legislation, code of ethics or other applicable guidelines, regulations, or policies that prohibit such activity, that all outside employment situations involving grant or contractual relationships take into account the following factors, in addition to the other factors set forth in these Guidelines, in determining whether approval may be granted.

- Whether the position in question was created as a result of the State grant or contract.
- Whether the State employee is in a policymaking or decisionmaking position.

- Whether the State employee had any involvement in the drafting or review of the RFP, the award of the grant, negotiation of the contract, or has oversight responsibilities in connection with the grant or contract.
- Whether the State employee, in his/her official capacity, has authority to refer clients to the outside entity.
- Whether the outside position is in the same geographic area as the employee's State position.
- Whether the State employee has had or can be expected to have any official interaction with the grant recipient or contractor in his/her official capacity.

In Case No. 20-00, the Commission noted that its previous decisions regarding special State officers remained unchanged. Board and commission members make policy, establish grant criteria, review proposals, make decisions, oversee grants and can be expected to have official interaction with the grant recipient(s). Thus, special State officers cannot represent parties before their agencies, cannot receive funding, directly or indirectly, from their agencies, and cannot provide services for agency-funded programs.

Published Works. Under N.J.A.C. 19:61-6.7(b), section 24 of the Conflicts Law, and Commission precedent, a State employee may accept compensation for published works under the following conditions.

- There is no prohibition governing such activity in the Department's enabling legislation or Code of Ethics.
- The State employee must obtain prior approval from his/her Department head.
- The published work must not use or disclose information not generally available to the public.
- The State employee must not use State time or resources in connection with the published work.
- The State employee must not use his/her official title in connection with publication or promotion of the published work.
- The State employee cannot promote, advertise or solicit sales of the published work to co-workers or individuals with whom he/she has official dealings.
- The State employee may not contract to sell the published work to the State except in compliance with section 19 of the Conflicts Law.
- The published work must not have been prepared as part of the State employee's official duties.

In addition, under the current rule, the receipt of compensation from an "interested party" is not prohibited, but is a factor to be considered in deciding whether to grant approval.

In Case No. 255-75, the Commission considered whether employees of the Public Broadcasting Authority ("PBA") could receive a compensation fee for journalistic work used on a commercial station. Various journalists employed full-time by the PBA were approached for the use of news items that they wrote during the hours that they

were employed by the State. These scripts, films or tapes were being used on commercial TV channels. The commercial stations wished to compensate the journalists for the use of their work. The Commission determined that it would be a violation of section 24 of the Conflicts Law for State employees to receive compensation from any source other than the State for news items created as part of their official duties.

In Case No. 3-84, the Commission found that the Supervising Program Development Specialist, Bureau of Research, Division of Youth and Family Services ("DYFS"), Department of Human Services ("DHS"), could not accept a cash award from a gerontological society for a paper prepared by him as a DYFS employee.

The DHS was awarded a grant to study abuse of the elderly. Because of his experience in the field of gerontology, the State employee was assigned the task of preparing a paper on the subject as part of his official duties. The paper was prepared entirely on State time with grant monies administered by the State. The State employee then submitted the paper for consideration for an annual research award and was the recipient of that award. The Departmental Ethics Review Board concluded that the acceptance of the cash award was violative of the Department's Code of Ethics. The Commission noted that the employee had solicited the award and affirmed the DHS' determination. The State employee appealed the Commission's decision to the Superior Court, Appellate Division, which upheld the Commission's determination.

In 1997, the Department of Law and Public Safety requested an opinion as to whether a Division of Law Deputy Attorney General ("DAG") was permitted to co-author a book about psychics and the paranormal, Case No. 3-97. The DAG wanted to write the book in her private capacity and use her married name (she is known by her maiden name in her employment with the Department). The Commission determined that the DAG was permitted to co-author the book under the following conditions: that she not refer to her status as a DAG or member of the Department; that she not permit the use of her title or employment in connection with publication or promotion of the book; that she not write about an active case or use information not generally available to the public; that she avoid any legal analysis that could be interpreted as Division of Law work product; that she not use State time or resources in connection with her outside activity.

In Case No. 34-98, the Commission determined that the Managing Actuary, Division of Life and Health, Department of Banking and Insurance ("DOBI"), was permitted to co-author and market a study guide utilized by students preparing to take the Society of Actuaries ("SOA") professional examination under the Commission's rules, precedent, the Conflicts of Interest Law and the DOBI Code of Ethics. In approving the activity, the Commission took into account the following factors: the study guide is sold nationally and not just to New Jersey exam registrants, the employee co-authored the book while at Temple, uses only his name and not his official title in connection with the study guide and does not directly solicit regulated entities.

Additional examples of published works situations that have been addressed by the Commission can be found under "Published Works" at http://nj.gov/ethics/statues/guide/published_works.html .

Political Activity. The Commission permits involvement in partisan political activities provided that there is no provision in the agency code of ethics prohibiting such activities. State employees, however, may not use State time or State resources in pursuit of such activities and must notify their Departmental Ethics Liaison Officer. The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission.

In Commission Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.

In Commission Case No. 34-85, two members of the Board of Dentistry were advised that N.J.S.A. 52:13D-24 expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

Additional examples of political activity situations that have been addressed by the Commission can be found under "Political Activities" at http://nj.gov/ethics/statues/guide/political_activities.html .

Prohibited Outside Activity – Certain Officials. Section 24d.(1) of the Conflicts Law prohibits certain designated State officers from soliciting, receiving or agreeing to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him/her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for authorized travel.

For the purposes of this provision, designated State officer includes: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor and Workforce Development, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor.

Note also that, pursuant to Section X of the Uniform Ethics Code, an agency head or assistant head is prohibited from engaging in any private business transactions with any employee of his/her agency.

General Caveats. The Commission generally provides the following advice to individuals with approved outside activities. State time cannot be used for outside activities. State resources, including but not limited to telephones, facsimile machines. e-mail, copy machines, mail service and office supplies, cannot be used for outside activities. Coworkers and/or individuals with whom the State employee comes in contact in his/her official capacity cannot be solicited as clients for outside activities, including but not limited to real estate services, cosmetic sales, consulting

services, and legal services. State employees are also prohibited from referring clients to any firm with which they are associated.

September 2004
June 2006
August 2006
outsideactivity.doc

APPENDIX F

Blind Trusts

1. For those situations where a blind trust may be utilized by a State officer or employee or special State officer or employee, his/her spouse or domestic partner or dependent children, and approved by the Commission, such trust shall contain the following characteristics:

a. The trust shall not contain investments or assets in which the holder's ownership right or interest is required to be recorded in a public office or those assets whose permanency makes transfer by the trustee improbable or impractical; these investments or assets would include, but not be limited to, businesses, real estate, security interests in personal property and mortgages;

b. The trust shall contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a public employee or public officer and his or her private business or financial interests will be eliminated;

c. The trust shall be irrevocable, and shall be terminated only upon the death of the public employee or public officer or upon termination of his or her status as a public employee or public officer whichever shall first occur;

d. The trustee shall be directed not to disclose to the grantor any information about any of the assets in the trust;

e. The trustee shall be required either to:

(1) prepare and file the grantor's personal income tax returns, withholding from distribution of the trust's net income amounts sufficient to pay the grantor's tax; and further to participate in the audit of the grantor's returns during the period of the trust with authority to compromise the grantor's tax liability; or

(2) submit to the grantor, for income tax purposes, a certification of income paid without identifying the assets producing such income;

f. Among its other powers, the trustee shall have authority to determine whether any of the assets originally transferred to the trustee are to be sold and, if so, when;

g. A provision shall be included in the trust agreement prohibiting the trustee from investing the trust property in corporations or businesses which do a significant amount of business with the State of New Jersey or from knowingly making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position;

h. The grantor shall retain no control over the trustee nor shall he or she be permitted to make any recommendations or suggestions as to the trust property;

i. The trustee shall be a commercial trustee and not a natural person;

j. The principal benefit to be retained by the grantor shall be the right to receive income from the assets transferred to the trust;

k. The trust shall not become effective until submitted and approved by the Commission; and

l. The trust agreement shall provide the trustee will give the Commission access to any records or information related to the trust which is necessary for the performance of the Commission's duties.

2. A copy of the executed blind trust agreement shall be filed with the Commission and with the head of the department in which the State officer or employee holds his/her position. If the grantor is the head of the department, a copy of the executed blind trust shall be filed with the Chief Counsel to the Governor. Attached to such copy shall be a brief statement outlining the business or financial interests from which the State officer or employee seeks to remove himself/herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he/she seeks to avoid by use of the trust agreement.

Blind Trust.doc

APPENDIX G

GUIDELINES GOVERNING THE USE OF OFFICIAL STATIONERY

State officers and employees and special State officers and employees frequently write letters for various purposes which are not always related to their official duties. Questions about the propriety of letters written on State stationery to further the personal interest of the officer or employee or another individual or entity have been addressed to the State Ethics Commission. To help resolve these questions, the Commission has established the following Guidelines to clarify the use of official stationery for purposes other than the conduct of a State agency's business.

Permissible Uses of Official Stationery

The Commission has determined that the following uses of State stationery are generally permissible:

1. To recommend a current or former employee or colleague for another position, admission to a school or program, etc.

Example: Recommending a subordinate for admission to graduate school.

2. To respond to inquiries from a private entity about a current or former employee or colleague.

Example: Providing a character reference for an employee to an adoption agency during the course of the employee's application to adopt a child.

Note: These permissible uses are only acceptable so long as the use of official stationery does not create an impression that the State officer or employee is engaged in an unwarranted use of his or her position. For example, it would not be appropriate for a State employee to recommend an individual for inclusion in a program over which the State employee has supervisory or regulatory authority. In addition, there must be a reasonable connection between the officer's or employee's official duties and the use and purpose of the letter.

Impermissible Uses of Official Stationery

The Commission has determined that the following examples represent clearly impermissible uses of State stationery:

1. To promote a candidate for elective office.

Example: Writing an endorsement of a candidate for the legislature for inclusion in a campaign pamphlet.

2. To endorse a State vendor or contractor.

Example: Writing a letter of general recommendation for a State vendor for dissemination by the vendor. Note, however, that a letter complimenting the vendor for a job well done may be acceptable even though the vendor may later display the letter.

3. To express a personal opinion on a matter that is not related to one's official duties.

Example: Sending a letter to the editor of a newspaper commenting on a matter that is not related to the duties of the State officer or employee or his or her agency.

4. To secure a personal financial gain or pursue a vested interest for one's self.

Example: Writing to a private contractor (plumber, electrician) demanding a refund or a reduction in a quoted price.

Personal Stationery Imprinted with Agency, Office or Title

The Commission has determined that use of personal stationery imprinted with the agency office or title of a State officer or employee, even though paid for personally, is impermissible. Such stationery may create the appearance of official stationery or may create an impression that the State officer or employee is acting in an official capacity.

The Commission acknowledges that there are occasions when it may be appropriate for a State officer or employee to identify himself or herself by position or title in correspondence on personal stationery (i.e., stationery bearing the individual's name and home address).

Agency Use of Official Stationery for Solicitations

1. State agencies shall not solicit contributions of any kind from vendors to the agency or from entities regulated by the agency.

2. Solicitation of any other entities is subject to review and approval by the agency's Ethics Liaison Officer prior to any contact by the agency. The Ethics Liaison Officer must be advised of the purpose of the solicitation, the expected result, the identities of the entities to be solicited, whether there is any personal connection between the agency employees and the solicited entity, and must be provided with a sample of the solicitation letter.

3. The Ethics Liaison Officer should determine whether the solicitation would be problematic under the Uniform Ethics Code, the agency's code of ethics, the Conflicts of Interest Law, any Guidelines promulgated by the Commission, and/or any statutory provisions dealing with charitable contributions. The Ethics Liaison Officer should consider such factors as whether the agency has any business contacts with the recipients of the solicitation, whether any solicited products or services will directly benefit any agency employees, whether the solicitation is of such magnitude that it could be burdensome to the recipient, and whether the language of the solicitation is coercive.

4. The Ethics Liaison Officer shall copy the Commission on all determinations regarding solicitations.

Circumstances that do not fall within the permissible or impermissible examples above require an individual determination by the Commission. Questions and inquiries should be addressed to: State Ethics Commission, P.O. Box 082, Trenton, New Jersey 08625-0082; (609) 292-1892.

Adopted at the Commission's
public meeting on October 17, 1991;
amended February 20, 1992;
June 1, 2006

Guidstat.doc

APPENDIX H

POST-EMPLOYMENT RESTRICTIONS
NEW JERSEY CONFLICTS OF INTEREST LAW

This memorandum presents a comprehensive overview of the State Ethics Commission's decisions, policies and guidelines concerning the post-employment provisions of the Conflicts Law. Presented below are general explanations of the statutory provisions as well as summaries of past Commission cases. The case presentations are designed only to provide examples of post-employment issues that have been addressed by the Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

The sections of the Conflicts Law covering post-employment are *N.J.S.A.* 52:13D-17, the general prohibition, and 17.2(c), the casino post-employment restriction. In addition, the Uniform Ethics Code contains a one-year ban on certain State officials' interactions with their former agencies.

N.J.S.A. 52:13D-17 provides:

> No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed $1,000 or imprisonment not to exceed six months, or both.
>
> In addition, for violations occurring after the effective date of P.L.2005, c.382, any former State officer or employee or former special State officer or employee of a State agency in the Executive Branch found by the State Ethics Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than $500 nor more than $10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10* et seq.).

N.J.S.A. 52:13D-13(g) defines "interest" as:

> "Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional

APPENDIX I

SUBCHAPTER 7. RECUSAL PROCESS

19:61-7.1 Purpose

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

19:61-7.2 Scope

The rules in this subchapter apply to all State officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e), which definitions are incorporated in N.J.A.C. 19:61-1.10.

19:61-7.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

19:61-7.4 Situations where recusal is required

(a) A State official must recuse himself or herself from a matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official's public duties; or

2. *Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.*

(b) For purposes of (a) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

(c) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (a) and (b) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Commission for guidance in such cases.

(d) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the Commission as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the Commission to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

Examples

The spouse of the Director of the Division of Solid and Hazardous Waste (Division), Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of N.J.A.C. 19:61-7.5(b).

The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of N.J.A.C. 19:61-7.5(b).

Pursuant to N.J.A.C. 19:61-3.1(e), if a member of the Commission holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the Commission meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the Commission Chairwoman is the Commissioner of the Department of Personnel, materials associated with this matter would not be forwarded to her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

A member of the Real Estate Commission (REC) is a Director and past President of the New Jersey Association of Realtors (NJAR). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions and voting on the regulation in question.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Commission. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;

2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);

3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);

4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and

5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;

2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and

3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

APPENDIX
Sample Recusal Statements
Sample Recusal Statement: Seeking Employment

DATE: _____

TO: Agency Ethics Liaison Officer

State Ethics Commission

FROM: Name of Employee

SUBJECT: Recusal – Seeking Employment with (Name of Outside Organization)

This is to notify you that I am (seriously considering employment with, discussing employment with, or seeking employment with) (Name of Outside Organization).

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any matters specifically involving the above-named organization to be referred to my supervisor (or subordinate, if no other option) without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my supervisor (or subordinate), as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from
the agency ethics liaison officer to resume interactions with the outside organization.

_____
Employee's Name

Recommend: _____ _____
(Name of Employee's Director/Supervisor) Date

Approve: _____ _____
Ethics Liaison Officer Date

I-5

Sample Recusal Statement Conflicts

DATE: _____

TO: Designee(s)

FROM: Name of Employee

SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting (name of entity or individual) relating to (family relationship, former affiliation with firm, etc.), I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters. By copy of this memorandum, I am instructing (appropriate contacts in office) to ensure that I do not receive any communications on any matters affecting (name of entity or individual). This recusal will remain in effect until (state duration of recusal).

dls
c: subordinates responsible for screening communications
Ethics Liaison Officer
State Ethics Commission

APPENDIX J

State Ethics Commission Position on Privatization Issues

At its December 7, 1994 meeting, the State Ethics Commission considered whether State employees could, under the application of section 19 of the Conflicts Law, participate in an open competitive bid process for the privatization of services currently being provided by their agency and, if successful, could operate the service under the application of section 17.

Application of Section 19: Section 19 prohibits a State officer or employee from entering into a contract, valued at $25 or more, with any State agency. This prohibition also extends to partners or any corporation which the State officer or employee controls or in which he owns or controls more than 1% of the stock. Section 19(b) exempts only three categories of contracts from this general prohibition:

1. Contracts made after public notice and competitive bidding;

2. Contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A.* 52:34-10 or similar applicable provisions; and

3. Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to *N.J.S.A.* 52:27B-62.

Each of these exceptions requires prior approval of the Commission.

Because the contract for the privatization of the program at issue will be made after public notice and competitive bidding, the Commission approved the employees' participation in the bid process. To deal with concerns expressed in past Commission cases regarding whether State employees could bid on contracts to be awarded by their own agencies, the Commission outlined several safeguards. These safeguards are intended to prevent perceptions of State employees gaining unwarranted advantages or using insider information.

In order to approve an employee's participation in an open competitive bid process for services being privatized by his/her agency, the Commission requires an affidavit to the Commission from the agency management specifying that the employee is not or has not been involved in the privatization decision and will have no involvement in the privatization process, e.g., development of the RFP and winding down of the State-provided service. The affidavit must also specify that the employee will have no involvement in the evaluation of bids. The Commission also requires that the agency maintain records identifying all individuals involved in the privatization process. This requirement will facilitate investigation of any future complaints charging an employee with the use of insider information.

The Commission recommends that the RFP contain a notice to all bidders that agency employees or former employees may be submitting proposals. The Commission also recommends the "blind" review of the proposals to the maximum extent feasible. This would involve identifying bidders only by numbers or letters and not by personal or corporate identity.

Application of Section 17: The post-employment restriction of the Conflicts Law prohibits a former State employee from representing, appearing for, negotiating on behalf of or providing information or services not generally available to the public to any person or party other than the State in connection with any specific cause, proceeding, application or matter in which he/she had substantial and direct involvement during his/her State employment.

The Commission has taken the position that privatized services that are no longer pending, active or on-going in the State agency that formerly provided the services are not "matters" within the scope of section 17.

The Commission is concerned that individuals who expect to have involvement in the privatized services not participate, while State employees, in the privatization decision and process because of the Conflicts Law provisions that prohibit employees from using their official positions to gain an unwarranted advantage (section 23(e)(3)), acting in their official capacities in matters where they have an interest that may impair their objectivity (section 23(e)(4)), acting in a way that might create the impression of a violation of the public trust (section 23(e)(7)) and using or disclosing information not generally available to the public (section 25). Thus, procedurally, the Commission requires that an employee express his/her intention to be involved in any private sector efforts in connection with the privatization to the agency's management and the Commission as soon as it is feasible so that appropriate steps can be taken to screen the employee from the agency's privatization activities.

The Commission will require notice that the employee was not involved in the privatization decision or in the privatization process, e.g., preparation of the RFP, review of bids, evaluation of potential providers. The agency will be required to maintain records identifying all employees involved in the privatization process.

private.doc

~~December 1994~~
August 2006

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LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 26. HEALTH AND VITAL STATISTICS
CHAPTER 2D. RADIATION PROTECTION

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 26:2D-1 (2008)

§ 26:2D-1. Short title

This act shall be known and may be cited as the "Radiation Protection Act."

HISTORY: L. 1958, c. 116, p. 592, 1.

NOTES:

Cross References:

Violations; sanctions, see *26:2D-36*.

Definitions, see *26:2D-39*.

Administrative Code:

1. *N.J.A.C. 7:26-3A.40*, CHAPTER 26. SOLID WASTE, Intermediate handlers and destination facilities.

2. *N.J.A.C. 7:26A-3.3*, CHAPTER 26A. RECYCLING RULES, Mobile recycling equipment.

3. *N.J.A.C. 7:28*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, 7, Chapter 28 -- Chapter Notes.

4. *N.J.A.C. 7:28-1.4*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Definitions.

5. *N.J.A.C. 7:28-4.3*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Exemption from requirement for a State license for manufacture, production, transfer, distribution or arrangement of distributi.

6. *N.J.A.C. 7:28-24.9*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Examination application or license application denial, license revocation and suspension.

7. *N.J.A.C. 7:28-27.2*, CHAPTER 28. RADIATION PROTECTION PROGRAMS,

Definitions.

8. *N.J.A.C. 7:28-27.24*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Inspections.

9. *N.J.A.C. 8:43G-7.19*, CHAPTER 43G. HOSPITAL LICENSING STANDARDS, Cardiac catheterization supplies and equipment.

10. *N.J.A.C. 13:35-2.6*, CHAPTER 35. BOARD OF MEDICAL EXAMINERS, Medical standards governing screening and diagnostic medical testing offices; determinations with respect to the validity of certain diagnostic tests.

LexisNexis (R) Notes:

CASE NOTES

1. Planning board was preempted by the Radiation Protection Act, *N.J. Stat. Ann. § 26:2D-1* et seq. from considering any health or safety issues relating to electromagnetic or radio emissions. *New Brunswick Cellular Tel. Co. v. Old Bridge Township Planning Bd., 270 N.J. Super. 122, 636 A.2d 588, 1993 N.J. Super. LEXIS 905 (Law Div. 1993).*

NJ ICLE

1. *New Jersey Environmental Law 16.01* Nuclear Energy; New Jersey Response

2. *New Jersey Environmental Law 16.11* Review of Current Statutes

LexisNexis 50 State Surveys, Legislation & Regulations

1. Nuclear and Radiologic Medicine

2. Nuclear Power and Radiation

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*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
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TITLE 26. HEALTH AND VITAL STATISTICS
CHAPTER 2D. RADIATION PROTECTION

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 26:2D-2 (2008)

§ 26:2D-2. Definitions

As used in this act, unless the context indicates another or different meaning or intent:

(a) "Commission" means the Commission on Radiation Protection created pursuant to this act;

(b) "Department" means the Department of Environmental Protection;

(c) "Unnecessary radiation" means the use or presence of electromagnetic radiation including microwave, infrared, visible, ultraviolet, X-ray, and gammaray; sonic, infrasonic, or ultrasonic waves; and particle radiation including alphas, betas, high energy electrons, neutrons, protons and other atomic or nuclear particles in such manner as to be or tend to be injurious or dangerous to the health of the people or the industrial or agriculture potential of the State, or to the ecology of the State and its wildlife.

HISTORY: L. 1958, c. 116, p. 592, 2. Amended by L. 1971, c. 372, 1, eff. Dec. 30, 1971; L. 1981, c. 296, 1, eff. Oct. 9, 1981.

NOTES:

Cross References:

Definitions, see *26:3A2-23*.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

1. Nuclear and Radiologic Medicine
2. Nuclear Power and Radiation

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*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 26. HEALTH AND VITAL STATISTICS
CHAPTER 2D. RADIATION PROTECTION

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 26:2D-3 (2008)

§ 26:2D-3. Commission on Radiation Protection

There is hereby created in the Department of Environmental Protection the Commission on Radiation Protection, which shall consist of 10 members, three of whom shall be the Commissioner of Environmental Protection, the Commissioner of Health, and the Commissioner of Labor, or their designees, who shall serve ex officio and seven members with scientific training in medicine, radiology, nonionizing radiation, infrasonics, ultrasonics, radiation physics, medical physics, epidemiology, atomic energy or biology or engineering, to be appointed by the Governor, with the advice and consent of the Senate.

HISTORY: L. 1958, c. 116, p. 593, § 3. Amended by L. 1971, c. 372, § 2, eff. Dec. 30, 1971; L. 1986, c. 28, § 2, eff. June 17, 1986.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.01* Nuclear Energy; New Jersey Response
2. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-4 (2008)

§ 26:2D-4. Commissioners' terms

Commissioners appointed by the Governor shall be appointed for a term of four years commencing on July 1 of the year of appointment, except that of those first appointed, two shall be appointed for terms of one year, one for a term of two years, one for a term of three years, and one for a term of four years, which terms shall commence on July 1, 1958. Of the two commissioners first appointed to the commission pursuant to the provisions of this 1986 amendatory act, one commissioner shall serve a term of four years and one commissioner shall serve a term of two years. Each commissioner shall hold over after the expiration of his term until his successor has been appointed and has qualified.

Vacancies shall be filled for the unexpired terms only in the manner provided for the original appointments.

HISTORY: L. 1958, c. 116, p. 593, 4. Amended by L. 1986, c. 28, 3, eff. June 17, 1986.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-5 (2008)

§ 26:2D-5. Compensation of commissioners

Commissioners shall serve without compensation but shall be entitled to be reimbursed for expenses necessarily incurred in the performance of their duties.

HISTORY: L. 1958, c. 116, p. 593, 5.

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N.J. Stat. § 26:2D-6 (2008)

§ 26:2D-6. Organization, officers

The commission annually shall organize as soon as possible after July 1, and shall elect a chairman, vice-chairman and a secretary from its own membership. Five members of the commission shall constitute a quorum to transact its business. Codes, rules and regulations shall be adopted, amended or repealed by an affirmative vote of at least six members.

HISTORY: L. 1958, c. 116, p. 593, 6. Amended by L. 1971, c. 372, 3, eff. Dec. 30, 1971; L. 1986, c. 28, 4, eff. June 17, 1986.

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N.J. Stat. § 26:2D-7 (2008)

§ 26:2D-7. Promulgation of codes, rules or regulations

The commission shall have the power to formulate, adopt, promulgate, amend and repeal codes, rules and regulations as may be necessary to prohibit and prevent unnecessary radiation in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (*C. 52:14B-1* et seq.).

HISTORY: L. 1958, c. 116, p. 594, 7. Amended by L. 1981, c. 296, 2, eff. Oct. 9, 1981.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-1.3*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Practice where rules do not govern.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-8 (2008)

§ 26:2D-8. Review of policies and program of department of health

It shall be the duty of the commission to review the policies and program of the department as developed under authority of this act; to make recommendations thereon to the department; to provide the department with such technical advice and assistance as may be requested by the department.

HISTORY: L. 1958, c. 116, p. 594, 8.

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N.J. Stat. § 26:2D-9 (2008)

§ 26:2D-9. Duties of department

The department shall:

(a) Administer this act and codes, rules or regulations promulgated by the commission;

(b) Provide the commission with the necessary personnel required to carry out its duties;

(c) Develop comprehensive policies and programs for the evaluation and determination of hazards associated with the use of radiation, and for their amelioration;

(d) Advise, consult, and cooperate with other agencies of the State, the Federal Government, other states and interstate agencies, and with affected groups, political subdivisions and industries;

(e) Accept and administer according to law loans, grants or other funds or gifts from the Federal Government and from other sources, public or private, for carrying out its functions under this act;

(f) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it may deem necessary or advisable for the discharge of its duties under this act;

(g) Collect and disseminate health education information relating to radiation protection;

(h) Require registration of sources of radiation, and require records concerning sources of radiation to be kept in such manner as may be prescribed by codes, rules or regulations of the commission;

(i) Review plans and specifications on the design and shielding for radiation sources submitted pursuant to codes, rules or regulations of the commission for the purpose of determining possible radiation hazards;

(j) Enter and inspect any building or place for the purpose of investigating an actual or

suspected source of radiation and ascertaining compliance with this act or any rule, regulation or order promulgated or issued pursuant thereto and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard;

(k) Have power, to be exercised subject to codes, rules and regulations of the commission, to require, issue, renew, amend, suspend and revoke licenses for the construction, operation or maintenance of sources of radiation including byproduct materials, source materials and special nuclear materials in quantities not sufficient to form a critical mass. The codes, rules and regulations may provide for recognition of other State or Federal licenses, subject to the registration requirements prescribed by or under the authority of this act;

(l) Have the power in accordance with a fee schedule adopted as a rule or regulation in accordance with the "Administrative Procedure Act,", P.L.1968, c. 410 (C. 52-14B-1 et seq.), to establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall be based on criteria contained in the fee schedule. The criteria shall reflect the actual or projected expense incurred by the department in the performance of the service for which the fee is charged;

(m) Be empowered to issue orders for the implementation and enforcement of the provisions of this act or of any rule or regulation promulgated pursuant hereto.

HISTORY: L. 1958, c. 116, p. 594, 9. Amended by L. 1961, c. 124, p. 742, 1; L. 1971, c. 155, 2, eff. June 1, 1971; L. 1981, c. 296, 3, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-9.1 (2008)

§ 26:2D-9.1. Agreements with federal government; assumption of regulatory authority by state

The Governor, on behalf of the State, may enter into agreements with the Federal Government providing for discontinuance by the Federal Government and assumption by the State of the authority, in the interest of the protection of the public from radiation hazards, to regulate sources of radiation including by-product materials, source materials and special nuclear materials in quantities not sufficient to form a critical mass. Subject to the terms of such agreements, regulatory authority assumed by the State by virtue of such agreements shall be exercised by the department in the manner provided in this act and as may be further provided by codes, rules and regulations of the commission promulgated pursuant to this act.

HISTORY: L. 1961, c. 124, p. 745, 3.

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N.J. Stat. § 26:2D-9.2 (2008)

§ 26:2D-9.2. Agreements with federal government or other states or agencies; performance of functions on co-operative basis

The department may (a) enter into agreements, subject to the approval of the Governor, with the Federal Government, other States or interstate agencies to perform inspections and other radiation protection functions on a co-operative basis with the Federal Government, other States or interstate agencies; and (b) subject to available appropriations, make its personnel available for participation in training programs of the Federal Government and otherwise secure assistance from the Federal Government to maintain and improve the department's administration of this act.

HISTORY: L. 1961, c. 124, p. 745, 4.

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N.J. Stat. § 26:2D-10 (2008)

§ 26:2D-10. Prevention of exposure to unnecessary radiation

All sources of radiation shall be shielded, transported, handled, used and kept in such manner as to prevent all users thereof and all persons within effective range thereof from being exposed to unnecessary radiation.

HISTORY: L. 1958, c. 116, p. 595, 10.

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N.J. Stat. § 26:2D-11 (2008)

§ 26:2D-11. Repealed by L.1981, c. 296, § 8, eff. Oct. 9, 1981

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N.J. Stat. § 26:2D-11.1 (2008)

§ 26:2D-11.1. Embargo of articles with radiation hazards; tagging; prohibition of use, sale or disposal, or impoundment; disposal or return; conditions

Notwithstanding any other remedy available to the department, whenever an agent of the department finds or has probable cause to believe that any material, machine, appliance, apparatus or device, or any part thereof, is a radiation hazard or danger of such nature as to constitute a threat to public health or welfare, or is being operated in a manner as to result in such a threat, he may embargo such article by affixing thereto a tag or other appropriate marking, giving notice that such article is, or is suspected to be, a radiation hazard or danger and has been detained or embargoed, and warning all persons not to use, remove or dispose of such article by sale or otherwise until permission for use, removal or disposal is given by the department, or he may cause any material, machine, appliance, apparatus or device to be secured or impounded. It shall be a violation of this act for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

Within 10 days after embargoing or impounding any source of radiation, the department shall give notice to the person causing the violation or hazardous condition prescribing circumstances under which the source of radiation will be returned to the custody of the person. If the person, within a reasonable time as may be fixed by the department, does not furnish satisfactory evidence to the department of present and intended future compliance with the conditions, the rights of the person, with respect to the source of radiation so secured or impounded, shall become the property of the State to be disposed of by the department on behalf of the State in any manner consistent with public health and safety.

HISTORY: L. 1971, c. 372, 4, eff. Dec. 30, 1971. Amended by L. 1981, c. 296, 5, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-11.2 (2008)

§ 26:2D-11.2. Embargo; hearing; stay; conditions

Any person aggrieved by an embargo imposed under the provisions of this act who shall apply therefor within 30 days after the imposition of such embargo, shall be granted a hearing before the department. Pending the determination by the department before or after such hearing, the department may stay the operation of the embargo upon such terms and conditions, including performance bonds, as it may deem proper.

HISTORY: L. 1971, c. 372, 5, eff. Dec. 30, 1971.

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N.J. Stat. § 26:2D-11.3 (2008)

§ 26:2D-11.3. Repealed by L. 1981, c. 296, § 8, eff. Oct. 9, 1981

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N.J. Stat. § 26:2D-12 (2008)

§ 26:2D-12. Emergency orders; hearing

Whenever the department finds that an emergency exists requiring immediate action to protect the public health or welfare, it may issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but, on application to the department, shall be afforded a hearing within 5 days. On the basis of such hearing the department may continue such order in effect or revoke, amend or modify such order.

HISTORY: L. 1958, c. 116, p. 596, 12.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-3.10*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Denial of an application for registration, and suspension, modification, or revocation of registration of ionizing radiation-p.

2. *N.J.A.C. 7:28-24.9*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Examination application or license application denial, license revocation and suspension.

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N.J. Stat. § 26:2D-13 (2008)

§ 26:2D-13. Actions to prevent violations; injunctions; penalties

The department may bring a civil action in the Superior Court to prevent the violation of the provisions of this act or codes, rules or regulations promulgated by the commission and orders of the department and said court may proceed in the action in a summary manner or otherwise and may restrain in all such cases any person or legal entity from violating any of the provisions of this act or said codes, rules, regulations or orders.

Any person who violates the provisions of this act or any rule, regulation or order promulgated or issued pursuant hereto or uses, removes, or disposes of any property in violation of an embargo imposed under the provisions of this act shall be liable to a penalty of not more than $ 2,500.00 to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (*N.J.S. 2A:58-1* et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

The department is authorized and empowered to compromise and settle any claim for a penalty under this section in an amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

HISTORY: L. 1958, c. 116, p. 596, 13. Amended by L. 1981, c. 296, 4, eff. Oct. 9, 1981.

NOTES:

Cross References:

Violations; penalties, see *26:2D-23.4*.

Administrative Code:

1. *N.J.A.C. 7:28-24.9*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Examination application or license application denial, license revocation and suspension.

2. *N.J.A.C. 7:28-48.1*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Scope, purpose and general provisions.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-14 (2008)

§ 26:2D-14. Service of notice

Any notice, order or other instrument issued pursuant to this act may be served personally or by mailing a copy thereof by certified mail directed to the person or legal entity affected.

HISTORY: L. 1958, c. 116, p. 596, 14.

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N.J. Stat. § 26:2D-15 (2008)

§ 26:2D-15. Existing remedies not impaired

No existing civil or criminal remedy for any action which is a violation of any code, rule or regulation of the commission shall be excluded or impaired by this act.

HISTORY: L. 1958, c. 116, p. 596, 15.

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N.J. Stat. § 26:2D-16 (2008)

§ 26:2D-16. Review

Any code, or rule or regulation of the commission or determination or finding of the department shall be reviewable in the Superior Court by a proceeding in lieu of prerogative writ.

HISTORY: L. 1958, c. 116, p. 596, 16.

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N.J. Stat. § 26:2D-17 (2008)

§ 26:2D-17. Approval of local regulations

No ordinance, resolution or regulation concerning unnecessary radiation adopted by any municipality, county or local board of health shall be effective until a certified copy of such ordinance or regulation has been submitted to the commission and approved by the commissioner of the department. Such ordinances or regulations may not be approved unless the same shall be consistent with this act or any code, rule or regulation issued pursuant hereto.

HISTORY: L. 1958, c. 116, p. 597, 17.

LexisNexis (R) Notes:

CASE NOTES

1. Zoning board improperly denied telephone company a variance from requirement that cellular tower not be located within 1,000 feet of any school or residence on the ground that the tower would be a health or safety hazard because under *N.J. Stat. Ann. § 26:2D-17* any attempt by a municipality to regulate the levels of electromagnetic radiation beyond that regulated by the State was precluded. *New Brunswick Cellular Tel. Co. v. Township of Edison Zoning Bd. of Adjustment, 300 N.J. Super. 456, 693 A.2d 180, 1997 N.J. Super. LEXIS 217 (Law Div. 1997),* questioned by *Northeast Towers, Inc. v. Zoning Bd. of Adjustment, 327 N.J. Super. 476, 744 A.2d 190, 2000 N.J. Super. LEXIS 35 (App.Div. 2000).*

2. Zoning board improperly denied telephone company a variance from requirement that cellular tower not be located within 1,000 feet of any school or residence on the ground that the tower would be a health or safety hazard because under *N.J. Stat. Ann. § 26:2D-17* any attempt by a municipality to regulate the levels of electromagnetic radiation beyond that regulated by the State was precluded. *New Brunswick Cellular Tel. Co. v. Township of Edison Zoning Bd. of Adjustment, 300 N.J. Super. 456, 693 A.2d 180, 1997 N.J. Super. LEXIS 217 (Law Div. 1997),* questioned by *Northeast Towers, Inc. v. Zoning Bd. of Adjustment, 327 N.J. Super. 476, 744 A.2d 190, 2000 N.J. Super. LEXIS 35 (App.Div. 2000).*

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N.J. Stat. § 26:2D-18 (2008)

§ 26:2D-18. Radioactive materials; transportation or storage or detention pending transit; certificate of handling

No person shall transport into or through the State, or store, hold or detain pending or during such transit, any of the following materials without first having obtained a certificate of handling from the department:

a. Plutonium isotopes in any quantity and form exceeding two grams or 20 curies, whichever is less;

b. Uranium enriched in the isotope U-235 exceeding 25 atomic per cent of the total uranium content in quantities where the U-235 content exceeds one kilogram;

c. Any of the actinides the activity of which exceeds 20 curies;

d. Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies;

e. Any quantity of radioactive material which exceeds 20 curies; or

f. Any lesser quantity of radioactive material which, when combined with any other quantity of such material, exceeds 20 curies.

HISTORY: L. 1977, c. 233, 1, eff. Sept. 26, 1977.

NOTES:

Cross References:

Violations; penalties; crime of fourth degree; enforcement, see *26:2D-22*.

Definitions, see *39:5B-18*.

Radioactive material; production of certificate of handling, certificate number or other documents upon request, see *39:5B-19*.

Placard on vehicle, see *39:5B-20*.

Possession of certificate of handling or certification number by driver or operator, see *39:5B-21*.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-19 (2008)

§ 26:2D-19. Submission of information and issuance of certificate

a. Any person seeking to obtain such a certificate shall submit to the department, not less than 7 business days prior to the storage or transporting of any of the materials specified in section 1 of this act, the following information:

(1) Name of shipper, (2) Name of carrier, (3) Type and quantity of radioactive material, (4) Date and time of shipment, (5) Starting point, scheduled route, and destination, (6) Location and manner of storage, and (7) Other information required by the department.

b. The department, after consultation with the Chief of the State Police, shall issue the "certificate of handling" upon a finding that the storage or transporting of such material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the State. The department, in its discretion, may require changes in the location or manner of storage or changes in dates, routes or time of transporting such material if necessary to maximize protection to public health and safety.

HISTORY: L. 1977, c. 233, 2, eff. Sept. 26, 1977.

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N.J. Stat. § 26:2D-20 (2008)

§ 26:2D-20. Discharge or threat of discharge of radioactivity; prevention or abatement; recovery of costs

In the event of a discharge of radioactivity, or threat thereof, resulting from a radiation source in storage or transit in this State, the department may recover from any shipper, carrier, bailor, bailee, or any other person responsible for the storage or transportation of such radiation source, the costs incurred by the department for the prevention or abatement of such discharge or the removal of the effects thereof.

HISTORY: L. 1977, c. 233, 3, eff. Sept. 26, 1977.

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N.J. Stat. § 26:2D-21 (2008)

§ 26:2D-21. Rules and regulations

Without limiting or impairing in any way the powers heretofore provided by the act to which this act is a supplement, the commission is hereby empowered and directed to adopt, pursuant to the provisions of the "Administrative Procedure Act" P.L.1968, c. 410 (*C. 52:14B-1* et seq.) such rules and regulations necessary to carry out the provisions of this act.

HISTORY: L. 1977, c. 233, 4, eff. Sept. 26, 1977.

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N.J. Stat. § 26:2D-22 (2008)

§ 26:2D-22. Violations; penalties; crime of fourth degree; enforcement

Any person who violates any provision of this act shall be liable to the penalties contained in P.L.1958, c. 116. Any person who violates any provision of this act shall be guilty of a crime of the fourth degree. The State Police shall, and any local police department may, enforce the provisions of P.L.1977, c. 233 (*C. 26:2D-18* et seq.).

HISTORY: L. 1977, c. 233, 5, eff. Sept. 26, 1977. Amended by L. 1981, c. 296, 6, eff. Oct. 9, 1981.

LexisNexis (R) Notes:

LAW REVIEWS & JOURNALS

1. *53 Rutgers L. Rev. 181,* NEW JERSEY DEVELOPMENTS: Limiting the Designated Felon Rule: The Proper Role of the Responsible Corporate Officer Doctrine in the Criminal Enforcement of New Jersey's Environmental Laws.

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N.J. Stat. § 26:2D-23 (2008)

§ 26:2D-23. Obstruction, hindrance, delay or interference of personnel of department in performance of duties

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by the department, its personnel or any of its authorized agents of any duty under the provisions of this act or refuse to permit the personnel or authorized agents to perform their duties by refusing them upon proper presentation of a written order of the department, entrance to any premises at reasonable hours.

HISTORY: L. 1981, c. 296, 7, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-23.1 (2008)

§ 26:2D-23.1. Radioactive materials prohibited from transportation or storage in transit

It shall be unlawful for any person to transport or store in transit the following radioactive materials in any county in New Jersey which has an average population density exceeding 1,000 persons per square mile as measured in the most recent decennial census:

a. Plutonium isotopes in any quantity and form exceeding 20 curies;

b. Uranium enriched in the isotope U-235 exceeding 25 atomic per cent of the total uranium content in quantities where the U-235 content exceeds 1 kilogram;

c. Any of the actinides (i.e., elements with atomic number 89 or greater) the activity of which exceeds 20 curies; or

d. Spent reactor fuel elements or mixed fission products associated with such spent fuel elements the activity of which exceeds 20 curies.

Any quantity of radioactive material specified as "Low Specific Activity" by the Nuclear Regulatory Commission in 10 CFR Part 71, entitled "Packaging of Radioactive Material for Transport" shall be exempt from the provisions of this act.

HISTORY: L. 1983, c. 345, 1.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-23.2 (2008)

§ 26:2D-23.2. Designation or definition of additional categories or subcategories

The department may, pursuant to the "Administrative Procedure Act" P.L.1968, c. 410 (*C. 52:14B-1* et seq.), designate or define any categories or subcategories of radioactive material covered under this act, except radiopharmaceuticals and radioactive substances, the principal purpose of which is associated with the manufacture of the radiopharmaceuticals, to be banned from areas designated by the department. The department shall only do so where it finds that such material may create an unwarranted hazard to public safety and where the transportation of the material in the area is not essential to the public welfare.

HISTORY: L. 1983, c. 345, 2.

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N.J. Stat. § 26:2D-23.3 (2008)

§ 26:2D-23.3. Certificates of handling

Notwithstanding the provisions of sections 1 and 2 of this act, the department may issue "certificates of handling" on a case-by-case basis for radioactive materials covered under this act:

a. For compelling reasons involving urgent public policy or national security interests which transcend public health and safety concerns;

b. For research or development activities, medical therapy, or educational purposes which the department determines do not pose significant threats to public health and safety;

c. For the transportation of fresh or non-irradiated nuclear fuel to any nuclear generating facility upon a finding by the department that there is no feasible alternate route or mode of transportation which involves less risk to the public; or

d. For the transportation of spent or irradiated nuclear fuel from any nuclear electricity generating facility upon a finding by the department that there is no feasible alternate route or mode of transportation or method of disposition which involves less risk to the public health and safety; provided, however, that no certificate of handling shall be issued for the transportation of any spent or irradiated nuclear fuel in New Jersey unless the department and the State Police have jointly determined that adequate safety precautions have been taken by the transporter and that adequate emergency response capabilities exist to protect the public during such transportation, and the department has further determined that the shipment of such fuel is secured by a limit of insurance or other form of indemnification, either by law or privately obtained, which is appropriate for the protection of the public in view of the risks associated with such transportation.

HISTORY: L. 1983, c. 345, 3.

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N.J. Stat. § 26:2D-23.4 (2008)

§ 26:2D-23.4. Violations; penalties

Any person who violates the provisions of this act shall, in addition to any penalties imposed pursuant to section 13 of P.L.1958, c. 116 (*C. 26:2D-13*), have all certificates of handling in the possession of that person revoked and shall be ineligible to receive any certificate of handling for 3 years.

HISTORY: L. 1983, c. 345, 4.

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N.J. Stat. § 26:2D-24 (2008)

§ 26:2D-24. Legislative findings and declarations

The Legislature hereby finds and declares that the citizens of the State of New Jersey are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate training and experience of persons operating medical equipment emitting ionizing radiation and requiring them to operate the equipment under the specific direction of a licensed practitioner; and that it is therefore necessary to establish standards of education, training and experience for these operators and to provide for the appropriate examination and certification thereof.

HISTORY: L. 1981, c. 295, 1, eff. Oct. 9, 1981.

NOTES:

Cross References:

Compliance with law on radiologic technology, see *45:6-69*.

Administrative Code:

1. *N.J.A.C. 7:28-15.1*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Scope.

2. *N.J.A.C. 7:28-16.9*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Operating criteria.

3. *N.J.A.C. 7:28-19.1*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Purpose and responsibility.

4. *N.J.A.C. 7:28-19.2*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Definitions.

5. *N.J.A.C. 7:28-19.3*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, General

provisions.

6. *N.J.A.C. 7:28-19.8*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Students.

7. *N.J.A.C. 7:28-24.3*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, General provisions.

8. *N.J.A.C. 8:43A-30.3*, CHAPTER 43A. MANUAL OF STANDARDS FOR LICENSING OF AMBULATORY CARE FACILITIES, Radiation therapy oncology services staff qualifications.

9. *N.J.A.C. 8:43G-28.13*, CHAPTER 43G. HOSPITAL LICENSING STANDARDS, Radiation oncology services staff qualifications.

10. *N.J.A.C. 13:30-1A.2*, CHAPTER 30. NEW JERSEY BOARD OF DENTISTRY, Scope of practice of licensed dental hygienist.

11. *N.J.A.C. 13:30-2.4*, CHAPTER 30. NEW JERSEY BOARD OF DENTISTRY, Scope of practice of registered dental assistant.

12. *N.J.A.C. 13:30-2.5*, CHAPTER 30. NEW JERSEY BOARD OF DENTISTRY, Scope of practice of limited registered dental assistant in orthodontics.

13. *N.J.A.C. 13:30-2.6*, CHAPTER 30. NEW JERSEY BOARD OF DENTISTRY, Scope of practice of unregistered dental assistant.

14. *N.J.A.C. 13:30-8.14*, CHAPTER 30. NEW JERSEY BOARD OF DENTISTRY, Dental X-rays; lead shields.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-25 (2008)

§ 26:2D-25. Short title

This act shall be known and may be cited as the "Radiologic Technologist Act."

HISTORY: L. 1981, c. 295, 2, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-26 (2008)

§ 26:2D-26. Definitions

As used in this act:

a. "Board" means the Radiologic Technology Board of Examiners created pursuant to section 5 of this act.

b. "License" means a certificate issued by the board authorizing the licensee to use equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes in accordance with the provisions of this act.

c. "Chest x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the chest area for diagnostic purposes only.

d. "Commissioner" means the Commissioner of Environmental Protection.

e. "Dental x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to intraoral radiography for diagnostic purposes only.

f. "Health physicist" means a person who is certified by the American Board of Health Physics or the American Board of Radiology in radiation physics.

g. "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatric medicine, osteopathy or chiropractic.

h. "Radiation therapy technologist" means a person, other than a licensed practitioner, whose application of radiation on human beings is for therapeutic purposes.

i. "Diagnostic x-ray technologist" means a person, other than a licensed practitioner, whose application of radiation on human beings is for diagnostic purposes.

j. "Radiologic technologist" means any person who is licensed pursuant to this act.

k. "Radiologic technology" means the use of equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

l. "Podiatric x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the operation of x-ray machines as used by podiatrists on the lower leg, foot and ankle area for diagnostic purposes only.

m. "Orthopedic x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the spine and extremities for diagnostic purposes only.

n. "Urologic x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the abdomen and pelvic area for diagnostic purposes only.

HISTORY: L. 1981, c. 295, 3, eff. Oct. 9, 1981; amended 1984, c. 242, 1, eff. Dec. 28, 1984; 1985, c. 540, 1, eff. Jan. 21, 1986; 2005, c. 259, § 31, eff. Jan. 4, 2006.

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N.J. Stat. § 26:2D-27 (2008)

§ 26:2D-27. X-ray technologist licenses

a. Except as hereinafter provided, no person other than a licensed practitioner or the holder of a license as provided in this act shall use x-rays on a human being.

b. A person holding a license as a diagnostic x-ray technologist may use the title "licensed radiologic technologist" or the letters (LRT) (R) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed diagnostic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed diagnostic technologist.

c. A person holding a limited license as a chest x-ray technologist may use the title "licensed chest x-ray technologist" or the letters (LRT)(C) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed chest x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed chest x-ray technologist.

d. A person holding a limited license as a dental x-ray technologist may use the title "licensed dental x-ray technologist" or the letters (LRT)(D) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed dental x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed dental x-ray technologist.

e. A person holding a license as a radiation therapy technologist may use the title "licensed therapy technologist" or (LRT)(T) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed therapy technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed therapy technologist.

f. A person holding a license as provided by this act shall use medical equipment emitting ionizing radiation on human beings only for diagnostic or therapeutic purposes on a case by case

basis at the specific direction of a licensed practitioner, and only if the application of the equipment is limited in a manner hereinafter specified.

g. Nothing in the provisions of this act relating to radiologic technologists shall be construed to limit, enlarge or affect, in any respect, the practice of their respective professions by duly licensed practitioners.

h. The requirement of a license shall not apply to a hospital resident specializing in radiology, who is not a licensed practitioner in the State of New Jersey, or a student enrolled in and attending a school or college of medicine, osteopathy, podiatric medicine, dentistry, dental hygiene, dental assistance, chiropractic or radiologic technology, who applies radiation to a human being while under the direct supervision of a licensed practitioner.

i. A person holding a license as a diagnostic x-ray technologist and a license as a radiation therapy technologist may use the letters (LRT)(R)(T) after his name.

j. A person holding a limited license as a podiatric x-ray technologist may use the title "licensed podiatric x-ray technologist" or the letters (LRT)(P) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed podiatric x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed podiatric x-ray technologist.

k. A person holding a limited license as an orthopedic x-ray technologist may use the title "licensed orthopedic x-ray technologist" or the letters (LRT)(O) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed orthopedic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed orthopedic x-ray technologist.

l. A person holding a limited license as a urologic x-ray technologist may use the title "licensed urologic x-ray technologist" or the letters (LRT)(U) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed urologic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed urologic x-ray technologist.

HISTORY: L. 1981, c. 295, 4, eff. Oct. 9, 1981; amended 1984, c. 242, 2, eff. Dec. 28, 1984; 1985, c. 540, 2, eff. Jan. 21, 1986; 2005, c. 259, § 32, eff. Jan. 4, 2006.

NOTES:

Administrative Code:

1. *N.J.A.C. 10A:16-3.4*, CHAPTER 16. MEDICAL AND HEALTH SERVICES, Licensure.

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N.J. Stat. § 26:2D-28 (2008)

§ 26:2D-28. Radiologic Technology Board of Examiners

a. There is created a Radiologic Technology Board of Examiners which shall be an agency of the Commission on Radiation Protection in the Department of Environmental Protection and which shall report to the commission. The board shall consist of two commission members appointed annually to the membership of the board by the chairman of the commission, and 13 additional members appointed by the Governor with the advice and consent of the Senate. Of the members appointed by the Governor, two shall be radiologists who have practiced not less than five years; one shall be a licensed physician who has actively engaged in the practice of medicine not less than five years; one shall be a licensed dentist who has actively engaged in the practice of dentistry for not less than five years; one shall be a licensed podiatrist who has actively engaged in the practice of podiatric medicine for not less than five years; one shall be an administrator of a general hospital with at least five years' experience; one shall be a health physicist who has practiced not less than five years; three shall be practicing radiologic technologists with at least five years of experience in the practice of radiologic technology and holders of current certificates issued pursuant to this act; two shall be members of the general public; and one shall be a representative of the department designated by the Governor pursuant to subsection c. of section 2 of P.L.1971, c.60 (*C.45:1-2.2*).

b. The terms of office of the members appointed by the Governor shall be three years. Vacancies shall be filled for an unexpired term only in the manner provided for the original appointment.

c. Members of the board shall serve without compensation but shall be reimbursed for their reasonable and necessary traveling and other expenses incurred in the performance of their official duties.

d. The commissioner shall designate an officer or employee of the department to act as secretary of the board who shall not be a member of the board.

e. The board, for the purpose of transacting its business, shall meet at least once every four months at times and places fixed by the board. At its first meeting each year it shall organize and

elect from its members a chairman. Special meetings also may be held at times as the board may fix, or at the call of the chairman or the commissioner. A written and timely notice of the time, place and purpose of any special meeting shall be mailed by the secretary to all members of the board.

f. A majority of the members of the board shall constitute a quorum for the transaction of business at any meeting.

HISTORY: L. 1981, c. 295, 5; amended 1984, c. 242, 3; 1985, c. 540, 3; 1987, c. 121, 1; 2005, c. 259, § 33, eff. Jan. 4, 2006.

LexisNexis (R) Notes:

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1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-29 (2008)

§ 26:2D-29. Qualifications

a. The board shall admit to examination for licensing any applicant who shall pay to the department a nonrefundable fee established by rule of the commission and submit satisfactory evidence, verified by oath or affirmation, that the applicant:

(1) At the time of application is at least 18 years of age;

(2) Is of good moral character;

(3) Has successfully completed a four-year course of study in a secondary school approved by the State Board of Education, or passed an approved equivalency test.

b. In addition to the requirements of subsection a. hereof, any person seeking to obtain a license in a specific area of radiologic technology must comply with the following requirements:

(1) Each applicant for a license as a diagnostic x-ray technologist (LRT)(R) shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board or its equivalent, as determined by the board.

(2) Each applicant for a license as a therapy technologist (LRT(T)) shall have satisfactorily completed a 24-month course in radiation therapy technology approved by the board or the equivalent of such, as determined by the board.

(3) Each applicant for a license as a chest x-ray technologist (LRT(C)) shall have satisfactorily completed the basic curriculum for chest radiography as approved by the board or its equivalent, as determined by the board.

(4) Each applicant for a license as a dental x-ray technologist (LRT(D)) shall have satisfactorily completed the curriculum for dental radiography as approved by the board or its equivalent, as determined by the board.

(5) Each applicant for a license as a podiatric x-ray technologist (LRT(P)) shall have satisfactorily completed the basic curriculum for podiatric radiography as approved by the board or its equivalent, as determined by the board.

(6) Each applicant for a license as an orthopedic x-ray technologist (LRT(O)) shall have satisfactorily completed the basic curriculum for orthopedic radiography as approved by the board or its equivalent, as determined by the board.

(7) Each applicant for a license as an urologic x-ray technologist (LRT(U)) shall have satisfactorily completed the basic curriculum for urologic radiography as approved by the board or its equivalent, as determined by the board.

c. The board shall establish criteria and standards for programs of diagnostic or radiation therapy and approve these programs upon a finding that the standards and criteria have been met.

HISTORY: L. 1981, c. 295, 6, eff. Oct. 9, 1981. Amended by L. 1984, c. 242, 4, eff. Dec. 28, 1984; L. 1985, c. 540, 4, eff. Jan. 21, 1986.

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N.J. Stat. § 26:2D-30 (2008)

§ 26:2D-30. Training programs

a. The program of diagnostic x-ray technology shall be at least a 24-month course or its equivalent, as determined by the board. The curriculum for this course may follow the Committee on Allied Health Education and Accreditation (CAHEA) standards; provided that the standards are not in conflict with board policies.

b. The program of radiation therapy technology shall be at least a 24-month course of study or its equivalent, as determined by the board. The curriculum for the course may follow the Committee on Allied Health Education and Accreditation (CAHEA) standards; provided that the standards are not in conflict with board policies.

c. The board shall establish criteria and standards for programs of chest radiography, podiatric radiography, orthopedic radiography, urologic radiography and dental radiography and approve the programs upon a finding that the standards and criteria have been met.

d. An approved program of radiologic technology may be offered by a medical or educational institution or other public or private agency or institution, and, for the purpose of providing the requisite clinical experience, shall be affiliated with one or more hospitals that, in the opinion of the board, are likely to provide the experience.

HISTORY: L. 1981, c. 295, 7, eff. Oct. 9, 1981. Amended by L. 1984, c. 242, 5, eff. Dec. 28, 1984; L. 1985, c. 540, 5, eff. Jan. 21, 1986.

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N.J. Stat. § 26:2D-31 (2008)

§ 26:2D-31. License examination; in lieu certificate, registration or license

a. Each applicant shall be required to pass a license examination designated and approved by the board for his specialty.

b. The board shall hold an examination at least once every 6 months at times and places as the board may determine.

c. An applicant who fails to pass the examination may reapply for the examination; provided the applicant complies with the conditions established by the board.

d. The board may accept, in lieu of its own examination, a current certificate of the American Registry of Radiologic Technologists issued on the basis of a registry examination satisfactory to the board, provided that the standards of that agency are at least as stringent as those established by the board.

e. The board may accept, in lieu of its own examination, a current certificate, registration or license as a radiologic technologist issued by another state, provided that the standards in the other state are at least as stringent as those established by the board.

f. The board may accept, in lieu of its own examination, a current certificate of the New Jersey Board of Dentistry issued on the basis of satisfactory completion of the certification examination given by the Certifying Board of the American Dental Assistants' Association and any educational requirements as may be prescribed by the New Jersey Board of Dentistry, provided that the standards of that association are at least as stringent as those established by the board.

HISTORY: L. 1981, c. 295, 8, eff. Oct. 9, 1981.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-19.4*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Licensure procedure.

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N.J. Stat. § 26:2D-32 (2008)

§ 26:2D-32. Issuance of licenses

a. The board shall issue a license to each candidate who has either successfully passed the examination, or who has paid the prescribed fee and has qualified under subsection d., e. or f. of section 8 of this act.

b. The board may, in its discretion, issue a limited license to any applicant who does not qualify, by reason of a restricted area or duration of training and experience, for the issuance of a license under the provisions of section 7 or 9 of this act, but who has demonstrated to the satisfaction of the board by examination that he is capable of performing the functions of a radiologic technologist in chest x-ray technology or of acting as a dental x-ray technologist, orthopedic x-ray technologist, urologic x-ray technologist or podiatric x-ray technologist. A limited license shall specify the activities that its holder may engage in, and shall be issued only if the board finds that its issuance will not violate the purposes of this act or tend to endanger the public health and safety.

c. The board may, in its discretion, issue a temporary license to any person whose license or relicense may be pending and in whose case the issuance of a temporary license may be justified by reason of special circumstances. A temporary license shall be issued only if the board finds that its issuance will not violate the purposes of this act or tend to endanger the public health and safety. A temporary license shall expire 90 days after the date of the next examination, if the applicant is required to take the same, or, if the applicant does not take the examination, then on the date of the examination. In all other cases, a temporary license shall expire when the determination is made either to issue or deny the applicant a regular license and in no event shall a temporary license be issued for a period longer than 180 days.

d. Every radiologic technologist shall carry his current license on his person at work. The license shall be displayed on request.

HISTORY: L. 1981, c. 295, 9, eff. Oct. 9, 1981. Amended by L. 1984, c. 242, 6, eff. Dec. 28, 1984; L. 1985, c. 540, 6, eff. Jan. 21, 1986.

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N.J. Stat. § 26:2D-33 (2008)

§ 26:2D-33. Licenses; renewal; duration; fee; radiologic technologist; renewal within 5 years; existing certificates; CXT certification; limited certificate

a. All licenses are renewable on December 31 of every even numbered year following the year of its issuance. A license shall be renewed by the board for a period of 2 years upon payment of a renewal fee in an amount to be determined by rule of the commission.

b. A radiologic technologist who has been heretofore duly licensed in this State and whose license has not been revoked or suspended, and who has temporarily ceased his activities as a radiologic technologist for not more than 5 years, may apply for the reissuance of a license upon compliance with the application provisions of this act, including payment of any outstanding fee.

c. Any person who, as of the effective date of this act, holds an unlimited certificate as a certified x-ray technologist (CXT) issued pursuant to P.L.1968, c. 291 shall be licensed as both a diagnostic x-ray and radiation therapy technologist until the expiration date of that certificate. Any person who, as of the effective date of this act, holds a limited certificate in chest x-ray, dental x-ray or radiation therapy pursuant to P.L.1968, c. 291 shall be licensed in that category until the expiration date of that certificate.

d. All CXT certifications shall be renewed by the board by the issuance of a license as a diagnostic x-ray technologist. All limited certificates shall be renewed only by the issuance of a license in the same limited category.

e. Within 5 years of the effective date of this act, the board may issue a license as a radiation therapy technologist to anyone upon the expiration of his CXT certificate upon the submission of a separate application accompanied by such information as required by the board and a fee as established by regulation.

HISTORY: L. 1981, c. 295, 10, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-34 (2008)

§ 26:2D-34. Suspension, revocation, censure or other discipline

a. The license of a radiologic technologist may be suspended for a fixed period, or may be revoked, or the technologist may be censured, reprimanded or otherwise disciplined, in accordance with the provisions and procedures defined in this act, if after due hearing it is determined that he:

(1) Is guilty of any fraud or deceit in his activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring his license;

(2) Has been convicted in a court of competent jurisdiction, either within or without this State, of a crime involving moral turpitude, except that if the conviction has been reversed and the holder of the license discharged or acquitted, or if he has been pardoned or his civil rights restored, the license may be restored to him;

(3) Is or has been afflicted with any medical problem, disability, or addiction which, in the opinion of the board, would impair his professional competence;

(4) Has aided and abetted a person who is not a licensed radiologic technologist or otherwise authorized pursuant to section 4 of this act in engaging in the activities of a radiologic technologist;

(5) Has undertaken or engaged in any practice beyond the scope of the authorized activities of a radiologic technologist pursuant to this act;

(6) Has falsely impersonated a duly licensed or former duly licensed radiologic technologist or is engaging in the activities of a radiologic technologist under an assumed name;

(7) Has been guilty of unethical conduct as defined by rules promulgated by the commission;

(8) Has continued to practice without obtaining a license renewal as required by this act;

(9) Has applied ionizing radiation to a human being without the specific direction of a duly licensed practitioner as defined herein; or to any person or part of the human body outside the scope of his specific authorization;

(10) Has acted or is acting as an owner, co-owner, or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation, chiropractic analysis, or the treatment of disease;

(11) Has expressed to a member of the public an interpretation of a diagnostic x-ray film or fluorescent image;

(12) Has used or is using the prefix "Dr.," unless entitled to do so pursuant to a degree granted, the word "doctor" or any suffix or affix to indicate or imply that the radiologic technologist is a duly licensed practitioner as defined herein when not so licensed;

(13) Is or has been guilty of incompetence or negligence in his activities as a radiologic technologist.

b. Proceedings against any radiologic technologist under this section shall be instituted by filing with the board a written charge or charges under oath against the radiologic technologist. The charges may be preferred by any person, corporation, association or public officer, or by the board in the first instance. A copy thereof, together with a report of the investigation as the board shall deem proper, shall be referred to the commission for its recommendation to the commissioner. If the commissioner determines the matter to be a contested case, he shall either designate three or more members of the board as a committee to hear and report on the charges and shall set a time and place for the hearing or shall refer the matter to the Office of Administrative Law for hearing before an administrative law judge, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (*C. 52:14B-1* et seq.). For the purpose of this section, the board, its committee or the administrative law judge shall have power to issue subpenas for the appearance of witnesses, and to take testimony under oath. Upon review of the record of the hearing, the commissioner may affirm, modify or reject the written report and recommendation of the committee or the administrative law judge. If the commissioner finds that the charges have not been proved, he shall order them dismissed. If the charges are found to be true, the commissioner may, in his discretion, issue an order suspending or revoking the license of the accused, or otherwise disciplining him.

c. When the license of any person has been revoked or annulled, as herein provided, the board may, after the expiration of 2 years, accept an application for restoration of the license.

HISTORY: L. 1981, c. 295, 11, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-35 (2008)

§ 26:2D-35. Employment of unlicensed radiologic technologist

No person shall knowingly or negligently employ as a radiologic technologist any person who requires and does not possess a valid license to engage in the activities of a radiologic technologist.

HISTORY: L. 1981, c. 295, 12, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-36 (2008)

§ 26:2D-36. Violations; sanctions

Any person who violates any provision of this act or any rule, regulation or order promulgated or issued pursuant to the act to which this act is supplementary shall be subject to the sanctions contained in P.L.1958, c. 116 (*C. 26:2D-1* et seq.) as amended and supplemented.

HISTORY: L. 1981, c. 295, 13, eff. Oct. 9, 1981.

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N.J. Stat. § 26:2D-37 (2008)

§ 26:2D-37. Short title

This act shall be known and may be cited as "The Radiation Accident Response Act."

HISTORY: L. 1981, c. 302, 1, eff. Oct. 27, 1981.

NOTES:

Cross References:

Assessment against operator of nuclear electric generating facility; levy and payment, see *26:2D-48*.

Investigation of incident, imminent threat; reporting requirements, see *26:13-4*.

Duties, responsibilities, see *27:5H-4*.

Functions, powers, duties continued and transferred, see *52:27H-6.1*.

LexisNexis (R) Notes:

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1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-38 (2008)

§ 26:2D-38. Legislative findings and determinations

The Legislature hereby finds and determines that the citizens of the State of New Jersey are entitled to the maximum protection possible from any and all threats to their health and welfare which may result from a radiation accident at a nuclear facility or during the transportation of radioactive material; that existing emergency response capabilities to abate these threats are dispersed among various State and local agencies and private organizations and limited in geographic scope; and that the dangers posed by these accidents can best be minimized by the development and implementation of a comprehensive and coherent response plan to coordinate and guide all necessary and appropriate resources and personnel into a unified course of action.

HISTORY: L. 1981, c. 302, 2, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-39 (2008)

§ 26:2D-39. Definitions

As used in this act:

a. "Department" means the Department of Environmental Protection;

b. "Division" means the Division of State Police in the Department of Law and Public Safety;

c. "Nuclear facility" means any facility which would pose a threat to the health and welfare of the public in the event of a radiation accident, including, but not limited to, atomic fission or fusion electric generating facilities, nuclear fuel fabrication plants, nuclear fuel reprocessing plants, nuclear waste handling and disposal facilities, and any other facility requiring a certificate of handling pursuant to P.L.1977, c. 233;

d. "Plan" means the State Radiation Emergency Response Plan mandated by section 4 of this act;

e. "Radiation accident" means any occurrence or event during the operation and maintenance of any nuclear facility or during the transportation of radioactive material, which results in the release of unnecessary radiation, as defined in section 1 of P.L.1958, c. 116 (*C. 26:2D-1*);

f. "Operator" means the company or corporation operating a nuclear electric generating facility, when the company or corporation is a public electric utility authorized to petition the Board of Public Utilities to recover expenses directly related to the operation of a nuclear electric generating facility in New Jersey; however, when the facility is being operated by an affiliate or associated corporation of a public electric utility, "operator" means the public electric utility and not the affiliated or associated corporation.

HISTORY: L. 1981, c. 302, 3, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 1, eff. July 1, 1985.

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N.J. Stat. § 26:2D-40 (2008)

§ 26:2D-40. State radiation emergency response plan; preparation and adoption; revision and update

The department and the division, after consultation with the Departments of Health, Energy, and Transportation and after careful review of all relevant guidelines established by the Federal Emergency Management Agency, shall, within 18 months of the effective date of this act, jointly prepare or cause to be prepared and adopt a State Radiation Emergency Response Plan. The plan shall be based upon planning criteria, objectives, requirements, responsibilities and concepts of operation for the implementation of all necessary and appropriate protective or remedial measures to be taken with respect to a radiation accident, or threatened radiation accident, at a nuclear facility or during the transportation of radioactive material, including but not limited to, the designation of all counties and municipalities which shall prepare radiation emergency response plans, the establishment and implementation of appropriate training programs for all personnel who may be involved in any aspect of radiation emergency planning and response, the establishment of an emergency operations headquarters proximate to the site of each nuclear facility from which emergency response operations can be coordinated efficiently and effectively, the development and installation of a mechanism to monitor all temporary circumstances or conditions such as road repairs, utility activities, and floods, which may impede or preclude implementation of the emergency response plan and apprise all relevant emergency response personnel thereof, the preparation and updating of an inventory of temporary housing facilities which may be required in the event of a radiation accident, the development and administration of a communications system to efficiently and effectively discharge all responsibilities and duties in the event of a radiation accident, the preparation of a public emergency response plan for residents of the affected area, the establishment of procedures and practices to review and monitor potential threats from nuclear facilities in neighboring states and to coordinate emergency response plans with any such plans established for such out-of-State-facilities, and a public emergency notification and public information and educational program to furnish all citizens who may be affected with information as they may require to act safely and prudently. The plan shall be revised and updated at least bi-annually; provided, however, that a thorough revision and updating shall be undertaken and completed at least 6 months prior to the

projected commencement of operations of any new nuclear facility. The criteria, objectives, requirements, concepts of operation, and designations shall be published by the department and division within 3 months of the effective date of this act.

HISTORY: L. 1981, c. 302, 4, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-41 (2008)

§ 26:2D-41. Municipality with nuclear facilities or designation as affected municipality; local radiation emergency response plan

Every municipality in each county wherein is located one or more nuclear facilities or which is designated as an affected municipality within 6 months of the adoption of the designation and in conformity with the criteria and objectives, requirements, responsibilities, and concepts of operation established, shall prepare and submit to the county wherein it is located, a local radiation emergency response plan. The local radiation emergency response plans shall be submitted through the county for approval by the division and the department. The local plans shall be reviewed at least once every 18 months and revised, subject to county approval. Any municipality required to prepare an emergency response plan pursuant to this section may apply to the department for financial and technical assistance therefor.

HISTORY: L. 1981, c. 302, 5, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-42 (2008)

§ 26:2D-42. County emergency response plans

Every county wherein is located one or more nuclear facilities or which is designated as an affected county, shall, within 6 months of the designation and in conformity with criteria and guidelines established, prepare and submit to the department and the division a county radiation emergency response plan which coordinates and supplements and, if necessary, replaces radiation emergency response plans of municipalities within its jurisdiction. The county emergency response plan shall, after initial approval, be updated at least every 18 months.

HISTORY: L. 1981, c. 302, 6, eff. Oct. 27, 1981.

LexisNexis (R) Notes:

NJ ICLE

1. *New Jersey Environmental Law 16.11* Review of Current Statutes

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N.J. Stat. § 26:2D-43 (2008)

§ 26:2D-43. Powers and duties of department

The department is authorized and directed to:

a. Carry out all duties and responsibilities established by any memorandum of understanding between the department and the division necessary or incident to the implementation of the plan;

b. Assess any danger attendant to a radiation accident, provide immediate public health and safety and other technical guidance, and coordinate on-site radiation emergency abatement procedures;

c. Provide public health and safety and other technical advice and guidance as it may deem appropriate with respect to the preparation and implementation of the plan;

d. Review, approve or modify, in cooperation with the division, all radiation emergency response plans and procedures developed or modified pursuant to this act;

e. Conduct, in cooperation with the division, public hearings annually in each designated county to determine the adequacy and effectiveness of the plan;

f. Direct, in cooperation with the division, the testing and evaluation of all plans developed pursuant to this act upon their adoption, and annually thereafter, to assure that all personnel with emergency response duties and responsibilities effectively carry out their assigned tasks;

g. Develop and implement a comprehensive monitoring strategy which shall include, but not necessarily be limited to, the daily monitoring of levels of radioactivity in the environment; and

h. Seek and apply for funds, grants, and other forms of financial assistance from the Federal Emergency Management Agency and any other public and private sources to support the purposes and provisions of this act.

HISTORY: L. 1981, c. 302, 7, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-44 (2008)

§ 26:2D-44. Powers and duties of division

The division is authorized and directed to:

a. Carry out all duties and responsibilities established by any memorandum of understanding between the department and the division necessary or incident to the implementation of the plan;

b. Exercise operational control during any threatened or actual radiation emergency;

c. Review, approve or modify, in cooperation with the department, all radiation emergency response plans and procedures developed or modified pursuant to this act;

d. Direct, in cooperation with the department, the testing and evaluation of all emergency response plans developed pursuant to this act upon their adoption, and annually thereafter, to assure that all personnel with emergency response duties and responsibilities effectively carry out their assigned tasks.

HISTORY: L. 1981, c. 302, 8, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-45 (2008)

§ 26:2D-45. Duties of Department of Health

The Department of Health shall, within 1 year of the effective date of this act:

a. Complete and update annually a study of the public health aspects of nuclear emergency response planning, which study shall include, but not necessarily be limited to, an evaluation of existing medical facilities and personnel to determine the State's present capacity to respond to any radiation threat to public health; an evaluation of the evacuation plans of hospitals and other health care facilities and alternate sources of care for patients; and an inventory of the standby plans, capacity, and distribution of all prophylactic or preventive supplies and equipment deemed medically advisable for use, as well as an evaluation of the feasibility and desirability of the State purchase and distribution of potassium iodide in order to minimize the adverse effects of the radiation accident. The results of the study, and any recommendations, shall be submitted to the department and the division for their use in preparing the plan and relevant portions of such study shall be submitted by the department to the municipalities charged with developing local emergency response plans to assist them in the preparation of such plans;

b. Establish standards and criteria to identify those persons at greatest health risk in the event of radiation exposure so that they may be afforded maximum protection;

c. Develop a plan for medical services to evacuees en route and at the sites of temporary shelter, and submit such plan to the department and the division for incorporation into the plan;

d. Develop and implement appropriate training programs for emergency medical personnel, health facility managers, and health officers;

e. Develop and implement, in cooperation with the division and the department, public educational programs concerning the effects and hazards of radiation.

HISTORY: L. 1981, c. 302, § 9, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-46 (2008)

§ 26:2D-46. Duties of Department of Transportation

The Department of Transportation shall, within 1 year of the effective date of this act:

a. Complete a study evaluating all means of transportation serving affected counties and municipalities and, in conjunction with the Department of Health, develop an inventory of emergency transport vehicles. Such study shall be submitted to the department and the division, and relevant portions thereof shall be submitted by the department to municipalities charged with developing local emergency response plans for their use in preparing emergency response plans;

b. Prepare and submit to the department and the division for inclusion in the plan, and annually update, a radiation emergency transportation plan, which plan shall include, but not be limited to, the designation, construction, and maintenance of primary and secondary routes to be used by radiation emergency response personnel and the general public in the event of a radiation accident or threatened radiation accident, and the development of traffic management procedures sufficient to assure rapid access to and from any affected county or municipality.

HISTORY: L. 1981, c. 302, § 10, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-47 (2008)

§ 26:2D-47. Duties of Department of Energy

The Department of Energy shall, within 1 year of the effective date of this act:

a. Complete a study and evaluation of all existing emergency energy supplies available to the State and accessible to affected counties and municipalities in the event of a radiation accident or threatened radiation accident, and submit such study to the department and the division, and relevant portions shall be submitted by the department thereof to municipalities charged with developing local emergency response plans for their use in preparing emergency response plans; and

b. Develop and submit to the department and the division, for inclusion in the plan, and update annually, an emergency energy supply plan to assure that any area affected by a radiation accident or threatened radiation accident, will have access to sufficient energy supplies to implement any emergency response plans or procedures.

HISTORY: L. 1981, c. 302, § 11, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-48 (2008)

§ 26:2D-48. Assessment against operator of nuclear electric generating facility; levy and payment

a. In order to defray the expenses of local, county and State agencies in discharging their responsibilities under this act, including those costs associated with the development, testing and updating of the Emergency Radiation Response Plans and for the acquisition and maintenance of any equipment necessary to carry out their responsibilities, the State Treasurer shall annually make an assessment against the operator of each nuclear electric generating facility located in New Jersey;

b. The assessment against the operator of a single nuclear electric generating facility shall not exceed $ 2,750,000 (in 2003 dollars adjusted by the CPI) and, in the case of an operator of two or more nuclear electric generating facilities, the assessment shall not exceed $ 5,500,000 (in 2003 dollars adjusted by the CPI), and shall be assessed in an amount equal to the sum of the amounts in paragraphs (1) and (2) of this subsection and determined annually by the State Treasurer on or before June 30 in the following manner:

(1) The total amount appropriated to the various local, county and State agencies by law for the purpose of discharging their responsibilities under P.L.1981, c.302 (*C.26:2D-37* et seq.) for the State's next fiscal year for costs related directly to a particular nuclear electric generating facility shall be assessed against the operator of that particular nuclear electric generating facility.

(2) All other amounts appropriated to the State agencies by law for the purpose of discharging their responsibilities under P.L.1981, c.302 (*C.26:2D-37* et seq.) for the next fiscal year shall be assessed equally against each operator of a nuclear electric generating facility.

The assessment prescribed above shall be levied by the State Treasurer not later than July 1, and shall be paid within 30 days after mailing by first class mail to the affected operator of the nuclear electric generating facility notice thereof and a statement of the amount;

c. The assessments shall be appropriated through the regular appropriation process in

accordance with a joint budget to be submitted by the division and the department;

d. Any costs of a local, county or State agency incurred in discharging its responsibilities under P.L.1981, c.302 (*C.26:2D-37* et seq.), not reasonably required to carry out the purposes of P.L.1981, c.302 (*C.26:2D-37* et seq.) or not generally associated with or related to the operation of nuclear electric generating facilities located in New Jersey, shall not be included in any such assessment or appropriation;

e. "CPI" means the annual Consumer Price Index for a calendar year as determined year to year using the decimal increase in the September through August, 12-month average for the previous year of the Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Department of Labor.

HISTORY: L. 1981, c. 302, § 12; amended 1984, c. 98, § 2; 2002, c. 34, § 43, eff. July 1, 2002; 2006, c. 35, § 1, eff. July 8, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 35, in a., substituted "the operator of each nuclear electric generating facility" for "each operator of a nuclear electric generating facility"; and in the first paragraph of b., substituted "assessment against the operator of a single nuclear electric generating facility" for "assessment to each operator of a nuclear electric generating facility" and inserted "and, in the case of an operator of two or more nuclear electric generating facilities, the assessment shall not exceed $5,500,000 (in 2003 dollars adjusted by the CPI)."

Editor's Note:

For the Consumer Price Index for All Urban Consumers, see http://www.bls.gov/cpi/.

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N.J. Stat. § 26:2D-48.1 (2008)

§ 26:2D-48.1. Additional assessment for provision of supplemental security

To defray the costs incurred by the State in providing supplemental security, the State Treasurer shall annually make an assessment against the operator of each nuclear electric generating facility located in New Jersey.

The amount of the assessment shall be determined by the State Treasurer. In making that determination, the State Treasurer shall include the salaries of the State Police and State National Guard personnel assigned supplemental security duties, the costs of all necessary specialized equipment and training, and all other expenditures directly related to having the State provide supplemental security at each nuclear electric generating facility. The amount of the assessment so determined shall not exceed the actual aggregate costs incurred by the State in providing supplemental security at these facilities.

To the greatest extent practicable, the State Treasurer shall apportion the assessment among the operators to reflect the actual costs incurred by the State in providing supplemental security at each particular nuclear electric generating facility.

The assessment apportioned each operator shall be due and payable at a time and in a manner prescribed by the State Treasurer.

HISTORY: L. 2006, c. 35, § 2, eff. July 8, 2006.

NOTES:

Cross References:

Operator not liable for assessment under certain circumstances, see *26:2D-48.2*.

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N.J. Stat. § 26:2D-48.2 (2008)

§ 26:2D-48.2. Operator not liable for assessment under certain circumstances

Commencing with the Fiscal Year 2008, an operator of a nuclear electric generating facility shall not be liable for an assessment under section 2 of P.L.2006, c.35 (*C.26:2D-48.1*) if, prior to the commencement of any fiscal year, the Attorney General, after reviewing the findings and recommendations of the Director of the New Jersey Office of Homeland Security and Preparedness and the Superintendent of State Police, determines that the operator has an approved, privately funded security program in operation at its facility.

HISTORY: L. 2006, c. 35, § 3, eff. July 8, 2006.

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N.J. Stat. § 26:2D-49 (2008)

§ 26:2D-49. Objections; hearing

Within 15 days after the date of mailing a statement as provided in this act, the operator of a nuclear electric generating facility against which the statement is rendered may file with the State Treasurer its objections thereto. Not less than 30 nor more than 60 days after giving notice thereof to the objecting utility, the State Treasurer shall hold a hearing on the objections.

HISTORY: L. 1981, c. 302, 13, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 3, eff. July 1, 1985.

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N.J. Stat. § 26:2D-50 (2008)

§ 26:2D-50. Determination by state treasurer; amended, invalid or valid statement

If, after the hearing, the State Treasurer finds that any part of the charge against the objecting operator of a nuclear electric generating facility is excessive, erroneous, or invalid, he shall transmit to the operator of a nuclear electric generating facility, by registered mail, an amended statement in accordance with the findings, which shall have the same force and effect as an original statement. If the State Treasurer finds the entire statement invalid, he shall notify the objecting operator of a nuclear electric generating facility, by registered mail, of the determination, and the original statement shall be null and void. If the State Treasurer finds that the statement as rendered is neither excessive, erroneous, unlawful nor invalid, in whole or in part, he shall transmit notice thereof to the objecting utility by registered mail.

HISTORY: L. 1981, c. 302, 14, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 4, eff. July 1, 1985.

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N.J. Stat. § 26:2D-51 (2008)

§ 26:2D-51. Prohibition of action to restrain or delay payment; refund after payment

No action or proceeding shall be maintained in any court for the purpose of restraining or delaying the collection or payment of a statement rendered in compliance with the provisions of this act. An operator of a nuclear electric generating facility against which a statement is rendered shall pay the amount thereof, and after the payment may, in the manner provided by this act, at any time within two years from the date of the payment, bring against the State an action at law to recover the amount paid, with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, or invalid in whole or in part.

HISTORY: L. 1981, c. 302, 15, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 5, eff. July 1, 1985.

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N.J. Stat. § 26:2D-52 (2008)

§ 26:2D-52. Failure to pay or file objections

If any affected operator of a nuclear electric generating facility, to which a statement for the amount assessed against it as provided in this act has been rendered, fails to pay the amount within 30 days, or fails to file with the State Treasurer objections to the statement as provided herein, the State Treasurer shall proceed to collect the amount stated to be due, with legal interest, by seizure and sale of any goods or chattels, including stocks, securities, bank accounts, evidences of debt and accounts receivable belonging to the affected operator of a nuclear electric generating facility anywhere within the State.

HISTORY: L. 1981, c. 302, 16, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 6, eff. July 1, 1985.

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N.J. Stat. § 26:2D-53 (2008)

§ 26:2D-53. Rules and regulations

The department and the division are authorized in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (*C. 52:14B-1* et seq.), to jointly promulgate, adopt, and enforce any rules and regulations necessary or appropriate to carry out the purposes and intent of this act.

HISTORY: L. 1981, c. 302, 17, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-54 (2008)

§ 26:2D-54. Inspection of buildings and places

The department and the division shall have the authority to enter and inspect any building or place for the purpose of determining compliance or noncompliance with the provisions of this act, any rules or regulations adopted pursuant thereto, or the plan.

HISTORY: L. 1981, c. 302, 18, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-55 (2008)

§ 26:2D-55. Continuance and expiration of existing state radiation emergency plan

The existing State Radiation Emergency Plan, as contained in the PIPAG Manual (Procedures for Implementing Protective Action Guides), or any other radiation emergency plan approved pursuant to State or federal law shall continue in full force and effect until all emergency response plans required by this act are adopted.

HISTORY: L. 1981, c. 302, 19, eff. Oct. 27, 1981. Amended by L. 1984, c. 98, 7, eff. July 1, 1985.

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N.J. Stat. § 26:2D-56 (2008)

§ 26:2D-56. Severability

If any section, part, phrase, or provision of this act or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which the judgment shall have been rendered and it shall not affect or impair the validity of the remainder of this act or the application thereof to other persons.

HISTORY: L. 1981, c. 302, 20, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-57 (2008)

§ 26:2D-57. Violations; penalty; injunction

Any person who willfully violates this act or any rule, or regulation promulgated pursuant hereto, including the State Radiation Emergency Response Plan, shall be liable to a penalty of not more than $ 2,500.00 for each offense, to be collected by the department and the division in a summary proceeding under "the penalty enforcement law" (*N.J.S. 2A:58-1* et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief is requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department and the division are authorized to compromise and settle any claim for penalty under this section in an amount in their discretion as may appear appropriate in all these circumstances.

HISTORY: L. 1981, c. 302, 21, eff. Oct. 27, 1981.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-19.3*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, General provisions.

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N.J. Stat. § 26:2D-58 (2008)

§ 26:2D-58. Advice of Governor's advisory council for emergency services

In implementing the provisions of this act, the department and the division shall seek the advice of the Governor's Advisory Council for Emergency Services established pursuant to P.L.1972, c. 133.

HISTORY: L. 1981, c. 302, 22, eff. Oct. 27, 1981.

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N.J. Stat. § 26:2D-59 (2008)

§ 26:2D-59. Radon gas, progeny study

The Department of Environmental Protection shall prepare and transmit to the Governor and Legislature a study concerning the dangers posed to the public health, safety, and welfare by the presence of radon gas and radon progeny in residential dwellings, schools, and public buildings in the State. The study shall identify the potential sources of contamination in the State, identify demographic, geologic, and geographic areas subject to an actual or potential threat or danger of contamination, and develop a cost-effective strategy for radon gas and radon progeny contamination testing. The study shall include recommendations for private actions to solve or alleviate potential health problems and any legislative or executive action that should be taken. The department shall prepare and transmit to the Governor and the Senate Institutions, Health and Welfare Committee and the General Assembly Agriculture and Environment Committee interim reports on its progress in implementing this section. The department shall transmit its first report on May 1, 1986 and subsequent reports every six months thereafter.

HISTORY: L. 1985, c. 408, 1, eff. Jan. 10, 1986.

NOTES:

Cross References:

Specialized scientific personnel, see *26:2D-79*.

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N.J. Stat. § 26:2D-60 (2008)

§ 26:2D-60. Voluntary registry

The Department of Health shall conduct an epidemiologic study of cancer and the presence of radon gas and radon progeny in residential dwellings and shall maintain a voluntary registry of persons at risk of radiogenic lung cancer. The department shall communicate promptly to persons on the registry new techniques for the prevention of mortality from the disease.

HISTORY: L. 1985, c. 408, 2, eff. Jan. 10, 1986.

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N.J. Stat. § 26:2D-61 (2008)

§ 26:2D-61. Monitoring

The Department of Environmental Protection and the Department of Health shall coordinate to establish a program of confirmatory monitoring of the presence of radon gas and radon progeny in residential dwellings, utilizing local health officers and the Department of Environmental Protection personnel.

HISTORY: L. 1985, c. 408, 3, eff. Jan. 10, 1986.

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N.J. Stat. § 26:2D-62 (2008)

§ 26:2D-62. Public information and education program

The Departments of Environmental Protection and Health shall also coordinate to establish a public information and education program to inform the public of the potential health effects of the presence of radon gas and radon progeny in residential dwellings, and the presence of radium in potable water supplies, and the geographic areas in the State subject to an actual or potential threat of danger and the measures which can be taken to protect the health, safety, and welfare of the citizens of the State. This public information and education program shall include:

a. A cooperative program with county and local health departments to facilitate health education in response to requests from the public; and

b. A toll-free public telephone information service within the Department of Environmental Protection to answer questions from residents of the State concerning radon gas and radon progeny contamination, or radium contamination, or both, as the case may be. The availability of the public telephone information service shall be published in the major newspapers circulated in the geographic areas of this State subject to an actual or potential threat of danger from radon gas or radon progeny contamination, or from the presence of radium in potable water supplies, as appropriate.

HISTORY: L. 1985, c. 408, § 4; amended 1989, c. 311, § 5.

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N.J. Stat. § 26:2D-63 (2008)

§§ 26:2D-63 to 26:2D-69. Blank

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N.J. Stat. § 26:2D-70 (2008)

§ 26:2D-70. Radon tester certification

The Department of Environmental Protection shall within 180 days of the enactment of this act establish a program for the certification of persons who test for the presence of radon gas and radon progeny in buildings.

HISTORY: L. 1986, c. 83, 1, eff. Aug. 14, 1986.

NOTES:

Administrative Code:

1. *N.J.A.C. 5:23-10.1*, CHAPTER 23. UNIFORM CONSTRUCTION CODE, Title, scope; intent.

2. *N.J.A.C. 7:18*, CHAPTER 18. REGULATIONS GOVERNING THE CERTIFICATION OF LABORATORIES AND ENVIRONMENTAL MEASUREMENTS, 7, Chapter 18 -- Chapter Notes.

3. *N.J.A.C. 7:18-1.1*, CHAPTER 18. REGULATIONS GOVERNING THE CERTIFICATION OF LABORATORIES AND ENVIRONMENTAL MEASUREMENTS, Scope and authority.

4. *N.J.A.C. 7:18-1.7*, CHAPTER 18. REGULATIONS GOVERNING THE CERTIFICATION OF LABORATORIES AND ENVIRONMENTAL MEASUREMENTS, Definitions.

5. *N.J.A.C. 7:18-10.8*, CHAPTER 18. REGULATIONS GOVERNING THE CERTIFICATION OF LABORATORIES AND ENVIRONMENTAL MEASUREMENTS, Civil penalties for violations of *N.J.S.A. 26:2D-70* et seq. (The provisions of the Radiation Protection Act governing Radon).

6. *N.J.A.C. 7:28-27.1*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Scope.

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N.J. Stat. § 26:2D-71 (2008)

§ 26:2D-71. Radon mitigator certification

The Department of Environmental Protection shall within 180 days of the enactment of this act establish a program for the certification of persons who mitigate, and safeguard buildings from, the presence of radon gas and radon progeny.

HISTORY: L. 1986, c. 83, 2, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-72 (2008)

§ 26:2D-72. Mandatory programs

Beginning 90 days after the establishment of the certification programs by the Department of Environmental Protection pursuant to sections 1 and 2 of this act, no person who is not certified pursuant to section 1 or section 2 of this act, as appropriate, shall test for, or mitigate or safeguard a building from, the presence of radon gas and radon progeny. The provisions of this section shall not apply to a person performing this testing or mitigation on a building which he owns, or to a person performing testing or mitigation without remuneration.

HISTORY: L. 1986, c. 83, 3, eff. Aug. 14, 1986.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-27.26*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Criminal penalties.

LexisNexis (R) Notes:

LAW REVIEWS & JOURNALS

1. *53 Rutgers L. Rev. 181*, NEW JERSEY DEVELOPMENTS: Limiting the Designated Felon Rule: The Proper Role of the Responsible Corporate Officer Doctrine in the Criminal Enforcement of New Jersey's Environmental Laws.

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N.J. Stat. § 26:2D-73 (2008)

§ 26:2D-73. Confidentiality

No person shall disclose to any person, except to the Department of Environmental Protection or the Department of Health, the address or owner of a nonpublic building that the person tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality.

The provisions of this section shall not apply to a person performing testing or treatment on a building which he owns, or to instances where disclosure is necessary to contract for further testing or to contract for the mitigating and safeguarding of a building from the presence of radon gas and radon progeny. In the case of a prospective sale of a building which has been tested for radon gas and radon progeny, the seller shall provide the buyer, at the time the contract of sale is entered into, with a copy of the results of that test and evidence of any subsequent mitigation or treatment, and any prospective buyer who contracts for the testing shall have the right to receive the results of that testing.

HISTORY: L. 1986, c. 83, 4, eff. Aug. 14, 1986.

NOTES:

Cross References:

Radon testing in child care centers, requirements, exceptions, see *30:5B-5.2*.

Administrative Code:

1. *N.J.A.C. 7:28-27.28*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Reporting requirements.

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N.J. Stat. § 26:2D-74 (2008)

§ 26:2D-74. Disclosure to Department of Environmental Protection

A person certified pursuant to section 1 or 2 of this act to provide testing or mitigation services shall, within 30 days of the provision of these services, disclose to the Department of Environmental Protection the address or location of the building, the name of the owner of the building where the services were provided, and the results of any tests performed. The Department of Environmental Protection shall provide to the Department of Health this information upon the request of the Department of Health.

HISTORY: L. 1986, c. 83, 5, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-75 (2008)

§ 26:2D-75. Fee schedule

The department shall establish a fee schedule to cover the costs of the certification programs established pursuant to sections 1 and 2 of this act.

HISTORY: L. 1986, c. 83, 6, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-76 (2008)

§ 26:2D-76. Rules, regulations

The department shall, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (*C. 52:14B-1* et seq.), adopt rules and regulations to implement the provisions of this act.

HISTORY: L. 1986, c. 83, 7, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-77 (2008)

§ 26:2D-77. 3rd degree crimes

A person who violates the provisions of section 3, 4, or 5 of this act, or any rule or regulation adopted pursuant thereto, is guilty of a crime of the third degree.

HISTORY: L. 1986, c. 83, 8, eff. Aug. 14, 1986.

NOTES:

Administrative Code:

1. *N.J.A.C. 7:28-27.1*, CHAPTER 28. RADIATION PROTECTION PROGRAMS, Scope.

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N.J. Stat. § 26:2D-78 (2008)

§ 26:2D-78. Not public records

For the purposes of P.L. 1963, c. 73 (*C. 47:1A-1* et seq.), health data relating to individuals and data relating to radon gas and radon progeny contamination at specific properties, including residential dwellings, gathered pursuant to the provisions of this act and the provisions of P.L. 1985, c. 408 (*C. 26:2D-59* et seq.) shall not be deemed to be public records. The Departments of Health and Environmental Protection shall destroy all information in their possession relating to the names and addresses of persons owning properties on which data were collected relating to radon gas and radon progeny contamination, at the end of five years from the date on which the data were collected.

HISTORY: L. 1986, c. 83, § 9, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-79 (2008)

§ 26:2D-79. Specialized scientific personnel

The Departments of Environmental Protection and Health are authorized to employ persons with specialized scientific training necessary to implement the provisions of P.L. 1985, c. 408 (*C. 26:2D-59* et seq.) without regard to the provisions of Title 11 of the Revised Statutes.

HISTORY: L. 1986, c. 83, 10, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-80 (2008)

§ 26:2D-80. New-house testing

The Department of Community Affairs is authorized to enter into an agreement with a public or private agency to carry out testing for radon gas and radon progeny at the sites of residential dwellings, the construction of which is in progress or commences on or after the effective date of this act, and to provide funding for that testing, provided that each $ 1.00 of that funding is matched by $ 1.00 from other public or private sources.

HISTORY: L. 1986, c. 83, 11, eff. Aug. 14, 1986.

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N.J. Stat. § 26:2D-81 (2008)

§ 26:2D-81. Findings, declarations

The Legislature finds and declares that:

Tanning facilities are not regulated by the State of New Jersey and the number of tanning facilities is rapidly growing throughout the State; various physical complications can arise from frequent and unsupervised use of these tanning facilities such as, overexposure to ultraviolet radiation which can cause severe sunburn and eye injury including cataracts and corneal damage; repeated exposure to ultraviolet light in tanning facilities can also cause premature aging of the skin, skin cancers and abnormal skin sensitivity in persons who may be using certain drugs including some tranquilizers, diuretics, antibiotics, high blood pressure medicines and birth control pills.

It is, therefore, desirable that citizens are protected against any problems which may result from improperly functioning equipment in tanning facilities, and given the potential for harm that is presented by establishments using artificial suntan sources, it is imperative that effective minimum safety standards in this health area be established.

HISTORY: L. 1989, c. 234, § 1.

NOTES:

Cross References:

"Non-Ionizing Radiation Fund" established in DHSS, see *26:2D-85*.

Tanning facility; annual registration, fee, see *26:2D-86*.

Violations, penalties, see *26:2D-87*.

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N.J. Stat. § 26:2D-82 (2008)

§ 26:2D-82. "Tanning facility" defined

As used in this act: "tanning facility" means any location, place, area, structure or business that, either as a sole service or in conjunction with other services, provides patrons with access to sunlamps, ultraviolet lamps or other equipment intended to induce skin tanning through the irradiation of any part of the human body for cosmetic or nonmedical purposes.

HISTORY: L. 1989, c. 234, § 2.

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N.J. Stat. § 26:2D-82.1 (2008)

§ 26:2D-82.1. Restrictions on use of tanning facilities by minors

a. A tanning facility operator shall not permit a person who is under 14 years of age to use a tanning facility.

b. A tanning facility operator shall not permit a person who is at least 14 but less than 18 years of age to use a tanning facility without written authorization of the person's parent or legal guardian indicating that such parent or guardian has read and understood the safety standards and warnings required pursuant to section 3 of P.L.1989, c.234 (*C.26:2D-83*). An emancipated minor shall be exempt from the authorization requirement of this subsection upon legal proof documenting said emancipation.

c. The Commissioner of Health and Senior Services shall establish by regulation:

(1) the contents required in the authorization form;

(2) the method for maintaining a record of the forms; and

(3) the frequency with which the forms shall be authorized or reauthorized.

d. The penalties for violating the provisions of this section shall be as provided in section 7 of P.L.1989, c.234 (*C.26:2D-87*).

HISTORY: L. 2006, c. 48, § 1, eff. Nov. 16, 2006.

NOTES:

Editor's Note:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved on July 19, 2006.

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N.J. Stat. § 26:2D-83 (2008)

§ 26:2D-83. Minimum safety standards for tanning facilities established

The Commissioner of Health and Senior Services, in consultation with the Commissioner of Environmental Protection, shall, by regulation, establish minimum safety standards for tanning facilities. The standards shall include, but not be limited to:

a. Establishment of a maximum safe time of exposure to radiation and a maximum safe temperature at which tanning devices may be operated;

b. A requirement that a patron at a tanning facility wear protective eye glasses when using tanning equipment and that a patron be supervised as to the length of time the patron uses tanning equipment at the facility;

c. A requirement that the facility operator post easily legible, permanent warning signs near the tanning equipment which state: "DANGER-ULTRAVIOLET RADIATION FOLLOW ALL INSTRUCTIONS";

d. A requirement that the facility have protective shielding for tanning equipment in the facility; and

e. A requirement that the facility operator post a sign in conspicuous view at or near the reception area which states: "PERSONS UNDER AGE 14 SHALL NOT BE PERMITTED TO USE THIS TANNING FACILITY. PERSONS BETWEEN 14 AND 18 YEARS OF AGE SHALL NOT BE PERMITTED TO USE THIS TANNING FACILITY WITHOUT WRITTEN AUTHORIZATION OF A PARENT OR LEGAL GUARDIAN."

HISTORY: L. 1989, c. 234, § 3; amended 2006, c. 48, § 2, eff. Nov. 16, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 48, in the introductory paragraph, substituted "Commissioner

of Health and Senior Services" for "Commissioner of Health" and "Commissioner of Environmental Protection" for "Department of Environmental Protection"; and added e.

Editor's Note:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved on July 19, 2006.

Cross References:

Restrictions on use of tanning facilities by minors, see *26:2D-82.1*.

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N.J. Stat. § 26:2D-84 (2008)

§ 26:2D-84. Compliance with safety standards; certification, periodic inspections

The local board of health in the municipality in which a tanning facility is located shall certify that a facility is in compliance with the safety standards established pursuant to section 3 of this act and shall periodically inspect the facility to ensure continued compliance with the standards.

HISTORY: L. 1989, c. 234, § 4.

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N.J. Stat. § 26:2D-85 (2008)

§ 26:2D-85. "Non-Ionizing Radiation Fund" established in DHSS

There is established in the Department of Health and Senior Services a nonlapsing revolving fund known as the "Non-Ionizing Radiation Fund." The fund shall be credited with all fees collected pursuant to this act [*C.26:2D-81* et seq.]. Interest on monies in the fund shall be credited to the fund, and all monies in the fund are appropriated for the purposes of this act.

HISTORY: L. 1989, c. 234, § 5; amended 2006, c. 48, § 3, eff. Nov. 16, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 48, in the first sentence, substituted "Department of Health and Senior Services" for "Department of Health."

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved on July 19, 2006.

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N.J. Stat. § 26:2D-86 (2008)

§ 26:2D-86. Tanning facility; annual registration, fee

a. A tanning facility shall register annually with the Department of Health and Senior Services on forms provided by the department and shall pay to the department an annual registration fee.

b. The Department of Health and Senior Services shall establish a registration fee schedule, by regulation, to cover the costs of implementing the provisions of this act [*C.26:2D-81* through *C.26:2D-88*], including the costs incurred by local boards of health pursuant to section 4 [*C.26:2D-84*] of this act.

HISTORY: L. 1989, c. 234, § 6; amended 2006, c. 48, § 4, eff. Nov. 16, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 48, in a. and b., substituted "Department of Health and Senior Services" for "Department of Health."

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved on July 19, 2006.

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N.J. Stat. § 26:2D-87 (2008)

§ 26:2D-87. Violations, penalties

A person who violates the provisions of this act [*C.26:2D-81* through *C.26:2D-88*] is subject to a penalty of $ 100 for the first offense and $ 200 for each subsequent offense. The penalty shall be sued for and collected in a court of competent jurisdiction in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10* et seq.).

A penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health and Senior Services or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health and Senior Services the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board of health into the treasury of the municipality where the violation occurred.

HISTORY: L. 1989, c. 234, § 7; amended 2006, c. 48, § 5, eff. Nov. 16, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 48, in the first paragraph, substituted "the 'Penalty Enforcement Law of 1999,' P.L.1999, c.274 (*C.2A:58-10* et seq.)" for ""the penalty enforcement law," *N.J.S.2A:58-1* et seq."; and in the second paragraph, substituted "Commissioner of Health and Senior Services" for "Commissioner of Health" in two places.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved on July 19, 2006.

Cross References:

Restrictions on use of tanning facilities by minors, see *26:2D-82.1*.

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*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 213TH LEGISLATURE ***
*** FIRST ANNUAL SESSION (P.L. 2008 CH. 50 & J.R. 3) ***
*** ANNOTATIONS CURRENT THROUGH JULY 22, 2008 ***

TITLE 26. HEALTH AND VITAL STATISTICS
CHAPTER 2D. RADIATION PROTECTION

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N.J. Stat. § 26:2D-88 (2008)

§ 26:2D-88. Rules, regulations

In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.), the Commissioner of Health and Senior Services, in consultation with the Commissioner of Environmental Protection, shall promulgate rules and regulations necessary to carry out the purposes of this act [*C.26:2D-81* et seq.].

HISTORY: L. 1989, c. 234, § 8; amended 2006, c. 48, § 6, eff. Nov. 16, 2006.

NOTES:

Amendment Note:

2006 amendment, by Chapter 48, substituted "Commissioner of Health and Senior Services" for "Commissioner of Health" and "Commissioner of Environmental Protection" for "Department of Environmental Protection."

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Effective Dates:

Section 7 of L. 2006, c. 48 provides: "This act shall take effect on the 120th day following enactment." Chapter 48, L. 2006, was approved July 19, 2006.

LexisNexis 50 State Surveys, Legislation & Regulations

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NEW JERSEY STATE LEAGUE OF MUNICIPALITIES; AN ORGANIZATION OF MUNICIPALITIES; BOROUGH OF ELMER, A MUNICIPAL CORPORATION; TOWNSHIP OF PLAINSBORO, A MUNICIPAL CORPORATION; CITY OF PATERSON, A MUNICIPAL CORPORATION; GEORGE FERENSICK, AN INDIVIDUAL; ABSECON CITY; ALLOWAY TOWNSHIP; BERKELEY HEIGHTS TOWNSHIP; BERLIN BOROUGH; BERNARDS TOWNSHIP; BERNARDSVILLE BOROUGH; BOGOTA BOROUGH; BOONTON TOWN; BRANCHBURG TOWNSHIP; BUENA VISTA TOWNSHIP; BURLINGTON CITY; CALIFON BOROUGH; CAPE MAY POINT BOROUGH; CHATHAM BOROUGH; CHESTER TOWNSHIP; CLINTON TOWNSHIP; CLOSTER SHIP; CLOSTER BOROUGH; COLLINGSWOOD BOROUGH; COLTS NECK TOWNSHIP; CRANBURY TOWNSHIP; DELAWARE TOWNSHIP; DUMONT BOROUGH; EAST BRUNSWICK TOWNSHIP; EASTAMPTON TOWNSHIP; ELSINBORO TOWNSHIP; EMERSON BOROUGH; ENGLEWOOD CLIFFS BOROUGH; ESSEX FELLS BOROUGH; EVESHAM TOWNSHIP; FAIR LAWN BOROUGH; FAIRFIELD TOWNSHIP; FARMINGDALE BOROUGH; FLORHAM PARK BOROUGH; FRANKLIN TOWNSHIP (HUNTERDON COUNTY); FREEHOLD TOWNSHIP; FRELINGHUYSEN TOWNSHIP; FRENCHTOWN BOROUGH; GIBBSBORO BOROUGH; GREEN BROOK TOWNSHIP; HACKENSACK CITY; HADDON TOWNSHIP; HADDONFIELD BOROUGH; HALEDON BOROUGH; HAMBURG BOROUGH; HAMILTON TOWNSHIP (ATLANTIC COUNTY); HAMILTON TOWNSHIP (MERCER COUNTY); HAMPTON TOWNSHIP; HARDING TOWNSHIP; HARDYSTON TOWNSHIP; HAZLET TOWNSHIP; HIGHLAND PARK BOROUGH; HILLSDALE BOROUGH; HOPATCONG BOROUGH; KEYPORT BOROUGH; LAFAYETTE TOWNSHIP; LAVALLETTE BOROUGH; LAWRENCE TOWNSHIP (CUMBERLAND COUNTY); LAWRENCE TOWNSHIP (MERCER COUNTY); LEBANON BOROUGH; LINCOLN PARK BOROUGH; LITTLE EGG HARBOR TOWNSHIP; LITTLE SILVER BOROUGH; LIVINGSTON TOWNSHIP; LODI BOROUGH; LONG BRANCH CITY; LOWER ALLOWAYS CREEK TOWNSHIP; LUMBERTON TOWNSHIP; MAHWAH TOWNSHIP; MANALAPAN TOWNSHIP; MANASQUAN BOROUGH; MANCHESTER TOWNSHIP; MANNINGTON TOWNSHIP; MIDDLESEX BOROUGH; MILLBURN TOWNSHIP; MILLSTONE TOWNSHIP; MILLVILLE CITY; MONTVALE BOROUGH; MONTVILLE TOWNSHIP; MOORESTOWN TOWNSHIP; MOUNT OLIVE TOWNSHIP; NEPTUNE TOWNSHIP; NEW PROVIDENCE BOROUGH; NEWTON TOWN; NORTH BRUNSWICK TOWNSHIP; NORTH CALDWELL BOROUGH; NORTH HALEDON BOROUGH; NORTH HANOVER TOWNSHIP; OAKLAND BOROUGH (BERGEN COUNTY); OGDENSBURG BOROUGH; OLD BRIDGE TOWNSHIP; OLD TAPPAN BOROUGH; OLDMANS TOWNSHIP; ORADELL BOROUGH; PARK RIDGE BOROUGH; PARSIPPANY-TROY HILLS TOWNSHIP; PAULSBORO BOROUGH; PENNS GROVE BOROUGH; PENNSVILLE TOWNSHIP; PILESGROVE TOWNSHIP; PINE HILL TOWNSHIP; PITTSGROVE TOWNSHIP; PLUMSTED TOWNSHIP; QUINTON TOWNSHIP; RAMSEY BOROUGH; RANDOLPH TOWNSHIP; READINGTON

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A-199 September Term 1997

SUPREME COURT OF NEW JERSEY

158 N.J. 211; 729 A.2d 21; 1999 N.J. LEXIS 544

January 20, 1999, Argued
May 13, 1999, Decided

PRIOR HISTORY: [***1] On certification to the Superior Court, Appellate Division, whose opinion is reported at 310 N.J. Super. 224, 708 A.2d 708 (1998). New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 (App.Div.1998)

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant municipal league, municipalities, and other parties sought review of a judgment from the Superior Court, Appellate Division, (New Jersey), which held that regulations promulgated by respondent Department of Community Affairs pursuant to the Residential Site Improvement Standards Act, N.J. Stat. Ann. §§ 40:55D-40.1 to -40.7, were facially valid.

OVERVIEW: The court affirmed an appellate judgment upholding as facially valid regulations promulgated by respondent Department of Community Affairs pursuant to the Residential Site Improvement Standards Act (the Act), N.J. Stat. Ann. §§ 40:55D-40.1 to -40.7. The regulations established a uniform set of site improvement standards for residential development. Appellant municipal league, municipalities, and other parties had argued that the standards impermissibly limited the zoning power of New Jersey's municipalities. Although the Act contained two apparently contradictory sections regarding whether the Act limited the zoning power of municipalities, appellants' reading of the Act did not comport with the Act's legislative history and would render the Act virtually meaningless. In particular, appellants' literal interpretation of the language of N.J. Stat. Ann. § 40:55D-40.6, stating that nothing contained in the Act shall in any way limit the zoning power of any municipality, ignored the express legislative intent and purpose

of the Act to reduce housing costs by establishing uniform statewide standards for residential site improvement.

OUTCOME: The court affirmed an appellate judgment upholding as facially valid regulations promulgated by respondent Department of Community Affairs pursuant to the Residential Site Improvement Standards Act because the standards did not impermissibly limit the zoning power of New Jersey's municipalities.

CORE TERMS: municipality, ordinance, site, zoning, sidewalk, municipal, uniform standards, parking, residential development, promulgated, authorize, zoning ordinances, promulgate, housing, veto, legislative intent, plain language, exceeded, street, local zoning, recommendations, modifications, incidental, drainage, modify, public health, public health, public safety, administrative agencies, establishment

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Environmental Law > Litigation & Administrative Proceedings > Judicial Review
Governments > Local Governments > Ordinances & Regulations
[HN1]Administrative regulations are accorded a presumption of validity. The party challenging their validity bears the burden of proving that the regulations are arbitrary, capricious or unreasonable. The scope of review of an administrative regulation is highly circumscribed and a reviewing court is not to substitute its judgment for that of the agency. That deference, however, is not without limit. A regulation must be within the fair contemplation of the delegation of the enabling statute.

Administrative Law > Judicial Review > Standards of Review > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
Governments > Legislation > Interpretation
[HN2]The grant of authority to an administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and courts should readily imply such incidental powers as are necessary to effectuate fully the legislative intent. The absence of an express statutory authorization in the enabling legislation will not preclude administrative agency action where, by reasonable implication, that action can be said to promote or advance the policies and findings that served as the driving force for the enactment of the legislation.

Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances
Environmental Law > Zoning & Land Use > Constitutional Limits
Real Property Law > Zoning & Land Use > Constitutional Limits
[HN3]Basic local zoning policy is best left to the individual municipalities. Nevertheless, zoning is an exercise of the state's police power. Municipalities possess no inherent authority to zone; they have only that power that the Legislature has delegated to them. Thus, while N.J. Const. art. IV, § 6, P 2 authorizes legislative delegation of the zoning power to municipalities, it reserves the legislative right to repeal or modify that delegation.

Governments > Legislation > Interpretation
[HN4]When construing a statute, courts initially consider the statute's plain meaning. If the plain language of a statute creates uncertainties or ambiguities, a reviewing court must examine the legislative intent underlying the statute and construe the statute in a way that will best effectuate that intent. The general legislative intent influences the interpretation of a statute's component parts. To that end, courts must read statutes sensibly rather than literally.

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

New Jersey State League of Municipalities v. Department of Community Affairs **(A-199-97)**

Argued January 20, 1999 -- Decided May 13, 1999

STEIN, J., writing for a unanimous Court.

This appeal challenges the validity of regulations promulgated by the Department of Community Affairs (DCA) pursuant to the Residential Site Improvement Standards Act, N.J.S.A. 40:55D-40.1 to 40.7 (the Act). Those regulations establish a uniform set of site improvement standards for residential development.

In 1976, the Legislature enacted the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -129. The MLUL authorized municipalities to adopt zoning ordi-

nances relating to the nature and extent of the [***2] uses of land and of buildings and structures. Such ordinances may establish standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities. N.J.S.A. 40:55D-65(d). The MLUL permits each municipality to adopt its own set of standards for physical improvements. This has led to inconsistent requirements, and the lack of uniformity in site improvement standards has adversely affected construction costs, and therefore housing costs, throughout the State.

The Legislature enacted the Act to facilitate the approval process for new residential developments. The Act authorized the establishment of a uniform set of technical site improvement standards for streets, roads, parking facilities, sidewalks, drainage structures, and utilities. The uniform standards were to "supersede any such site improvement standards incorporated within the development ordinances of any municipality." N.J.S.A. 40:55D-40.5. Another provision of the Act, however, stated that "nothing contained in [the Act] shall in any way limit the zoning [***3] power of any municipality." N.J.S.A. 40:55D-40.6.

The Act established an Advisory Board (the Board) to prepare and submit to the Commissioner of the DCA (the Commissioner) recommendations for statewide site improvement standards for residential development. The Board was directed to adopt the recommendations contained in Article Six of the "Model Subdivision and Site Plan Ordinance" (the Model Ordinance) prepared by The Center for Urban Policy Research at Rutgers University. However, the Board was authorized to deviate from the Model Ordinance if the modifications were supported by standards promulgated under similarly authoritative auspices.

The Board conducted an extensive review of the Model Ordinance and sought comments from professional planners and engineers throughout the State. During its deliberations, the DCA requested advice from the Attorney General's Office concerning the extent to which municipal zoning power limited the DCA's authority to establish uniform standards. Noting that the primary purpose of the Act is to facilitate residential development through the establishment of uniform standards, the Attorney General's Office responded that the DCA's authority [***4] was not limited by municipal zoning power.

In January 1996, the Board submitted its recommended standards to the Commissioner. The standards established requirements for streets and parking, water supply, sanitary sewers, and storm water management. The majority of the standards are technical in nature, although some arguably have the potential to affect the character or design of a municipality. Prior to the publication of the proposed standards in the New Jersey Register, the Commissioner added a regulation requiring sidewalks in certain residential facilities. The Commissioner determined that the provision was necessary after comments from the Director of the Division of Highway Traffic Safety and others that it would reduce pedestrian fatalities.

The League of Municipalities, together with 157 other individual municipalities and other parties, appealed from the promulgation of the regulations. Relying on the language of N.J.S.A. 40:55D-40.6 that nothing in the regulations "shall in any way limit" the zoning powers of municipalities, the League argued that where a standard in the regulations conflicts with a requirement in a municipal zoning ordinance, the ordinance supersedes [***5] the standard.

The Appellate Division held that the regulations were facially valid. In so holding, it found that N.J.S.A. 40:55D-40.6 was not violated because the Legislature had modified municipal zoning power through the Act.

The Court granted the League's petition for certification.

HELD: The regulations promulgated by the DCA establishing a uniform set of site improvement standards for residential development are facially valid.

1. Administrative regulations are accorded a presumption of validity. The scope of review of an administrative regulation is highly circumscribed, and a reviewing court cannot substitute its judgment for that of the agency. Further, the Legislature's grant of express authority to an administrative agency is deemed to include incidental authority necessary to effectuate fully the legislative intent. (pp. 13-15)

2. Although the Court has recognized that basic local zoning policy is best left to the individual municipalities, municipalities have no inherent authority to zone. They have only that power that the Legislature has delegated to them. *N.J. Const.* art. IV, § 6, P 2. (pp. 15-17)

3. The Court cannot accept the [***6] League's literal interpretation of the language of N.J.S.A. 40:55D-40.6 that nothing contained in the Act can in any way limit the zoning power of any municipality. That provision is contradicted by another provision, N.J.S.A. 40:55D-40.5, which provides that the uniform standards "supersede" municipal zoning ordinances. Because this conflict creates an ambiguity about the scope of the DCA's authority, the plain language of the statute does not end the inquiry. (pp. 17-18)

4. When one looks beyond the plain language of the statute, it is clear that the Legislature intended to authorize the DCA to promulgate the regulations. The intent to establish uniform improvement standards is explicitly stated in the Act. The Act also provides that, in the case of an inconsistency between the Model Ordinance and the MLUL, the Board is to conform its recommendations to the Model Ordinance. N.J.S.A. 40:55D-40.4(a). (pp. 19-20)

5. Although the majority of the regulations involve technical details, some create the potential for tension with matters of local zoning policy. If the application of a given standard to a specific development within a municipality leads to a conflict with local [***7] zoning policy, the municipality may make an "as-applied" challenge to the validity of that standard. The Court anticipates, however, that such challenges will be few. The DCA must be accorded a certain degree of flexibility to further the Act's goal, and the exceptions that are available in the regulations can diminish many potential conflicts. (pp. 20-21)

6. The League also asserts that the DCA impermissibly deviated from the Model Ordinance. Many of the regulations challenged by the League are supported by the required authoritative sources. Those that are not are insignificant, and such deviations are within the incidental powers granted to the DCA. Similarly, the Court rejects the League's contention that the Commissioner lacked authority to add the sidewalk provision to the standards. The Act authorizes the Commissioner to "veto any site improvement standard" recommended by the Board. N.J.S.A. 40:55D-40.4(b). The League therefore argues that the Commissioner was authorized only to veto standards, not to supplement them. The Court rejects the League's narrow interpretation that the term "veto" means the power only to delete a standard. (pp. 21-24)

The judgment of the [***8] Appellate Division is **AFFIRMED**.

CHIEF JUSTICE PORITZ and JUSTICES HANDLER, POLLOCK, O'HERN, GARIBALDI, and COLEMAN join in JUSTICE STEIN's opinion.

COUNSEL: *Stuart R. Koenig* argued the cause for appellants (*Stickel, Koenig & Sullivan,* attorneys).

Keith A. Costill, Deputy Attorney General, argued the cause for respondents (*Peter Verniero,* Attorney General of New Jersey, attorney; *Mary C. Jacobson,* Assistant Attorney General, of counsel).

Thomas F. Carroll, III, argued the cause for amicus curiae, New Jersey Builders Association (*Hill Wallack,* attorneys).

JUDGES: The opinion of the Court was delivered by STEIN, J. Chief Justice PORITZ and Justices HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN, and COLEMAN. COLEMAN join in Justice STEIN's opinion.

OPINION BY: STEIN

OPINION

[*216] [**24] The opinion of the Court was delivered by

STEIN, J.

This appeal presents a challenge to the validity of regulations promulgated by the Department of Community Affairs (DCA) pursuant to the Residential Site Improvement Standards Act, *N.J.S.A.* 40:55D-40.1 to -40.7. Those regulations establish a uniform set of site improvement standards for residential development. The primary issue before us is whether the standards [***9] impermissibly limit the zoning power of New Jersey's municipalities. We also consider the ancillary issue of whether the DCA and the DCA Commissioner exceeded their delegated authority in adopting certain portions of the regulations.

[*217] I

In 1976, the Legislature enacted the Municipal Land Use Law (MLUL), *N.J.S.A.* 40:55D-1 to -129. The MLUL was intended, in part, "[t]o encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare" and "[t]o ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole." *N.J.S.A.* 40:55D-2(a), -2(d).

The MLUL authorizes municipalities to adopt zoning ordinances "relating to the nature and extent of the uses of land and of buildings and structures thereon." *N.J.S.A.* 40:55D-62(a). Pursuant to the MLUL, such ordinances may

> [e]stablish, for particular uses or classes of uses, . . . standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access [***10] roads and roadways, other circu-

lation facilities and water, sewerage and drainage facilities. . . .

[N.J.S.A. 40:55D-65(d).]

Under the MLUL, each municipality is permitted to adopt its own set of standards for physical improvements. As a result, developers that build projects in more than one municipality often encounter inconsistent requirements. See John M. Kerekes, *Housing Made Easy: New Jersey's Uniform Site Improvements Standards Act of 1993*, 21 Seton Hall Legis. J. 11, 12 (1997) (observing that curb height standards differ by as much as fifty percent between contiguous municipalities). The lack of uniformity among the various municipalities' site improvement standards has adversely affected construction costs, and therefore housing costs, throughout the state. N.J.S.A. 40:55D-40.2a, -40.2b.

Recognizing that "[t]he multiplicity of standards for subdivisions and site improvements . . . increases the costs of housing without commensurate gains in the protection of the public health and safety," N.J.S.A. 40:55D-40.2(a), the Legislature sought to reduce housing costs by facilitating the approval process for new residential developments. N.J.S.A. 40:55D-40.2(e). To advance [***11] that [*218] goal, in January 1993 the Legislature enacted the Site Improvement Standards Act (Act), [**25] L. 1993, c. 32, codified at N.J.S.A. 40:55D-40.1 to -40.7. In a statement accompanying the signing of the Act, Governor Florio noted that the legislation would "cut industry costs by promoting standardization of construction materials and design" without "limit[ing] municipal zoning powers." Office of the Governor, *News Release* at 1 (Jan. 29, 1993). The Act authorized the establishment of a uniform set of technical site improvement standards for streets, roads, parking facilities, sidewalks, drainage structures, and utilities. N.J.S.A. 40:55D-40.1. The uniform standards were to "supersede any such site improvement standards incorporated within the development ordinances of any municipality." N.J.S.A. 40:55D-40.5.

Although the Legislature intended to create uniform "technical requirements" for residential development, N.J.S.A. 40:55D-40.2(f), it recognized that the "policy-making aspects of development review are best separated from the making of technical determinations," N.J.S.A. 40:55D-40.2(g). Consistent with that recognition, the Legislature amended an earlier proposed draft of the Act [***12] to remove language that would have authorized the establishment of uniform "design" standards in addition to the site improvement standards. That amendment also added a provision to the final version of the Act stating that "nothing contained in [the Act] shall in any way limit the zoning power of any municipality." N.J.S.A. 40:55D-40.6.

The Act established an Advisory Board (Board) to prepare and submit to the Commissioner of the DCA (Commissioner) recommendations for statewide site improvement standards for residential development. N.J.S.A. 40:55D-40.3, -40.4. The Board was directed to adopt the recommendations contained in Article Six of the "Model Subdivision and Site Plan Ordinance" (Model Ordinance) prepared by The Center for Urban Policy Research at Rutgers University. N.J.S.A. 40:55D-40.4(a). However, the Board was authorized to deviate from the Model Ordinance if the modifications were supported by "standards promulgated under [*219] similarly authoritative auspices of any academic or professional institution or organization." *Ibid.*

The Board conducted an extensive review of the Model Ordinance and sought comments from professional planners and engineers throughout the [***13] state. Subcommittees were formed to evaluate more thoroughly specific topics addressed by the Model Ordinance. During the Board's deliberations, the DCA requested advice from the Attorney General's office concerning the extent to which municipal zoning power limited the DCA's authority to establish uniform site improvement standards. Noting that the "primary purpose" of the Act is to facilitate residential development through the establishment of uniform standards, the Attorney General's office responded that the DCA's authority to promulgate such standards was not limited by municipal zoning power.

In January 1996, following approximately two and one-half years of deliberations, the Board submitted its recommended standards to the Commissioner. The standards established requirements for streets and parking (N.J.A.C. 5:21-4.1 to -4.20), water supply (N.J.A.C. 5:21-5.1 to -5.4), sanitary sewers (N.J.A.C. 5:21-6.1 to -6.2), and stormwater management (N.J.A.C. 5:21-7.1 to -7.6). Although the majority of the proposed standards were adopted directly from the Model Ordinance, the Board modified some of the standards contained in the Model Ordinance and added others [***14] not contained in the Model Ordinance.

The majority of the standards are technical in nature. *See, e.g.*, N.J.A.C. 5:21-4.18(a)(1) (thickness of concrete sidewalks); N.J.A.C. 5:21-5.3(h) (pipe size of water mains); N.J.A.C. 5:21-6.2(c)(9) (composition of manholes); N.J.A.C. 5:21-7.5(f) (structural criteria for stormwater detention basins). Some, however, arguably have the potential to affect the character or design of a municipality. *See, e.g.*, [**26] N.J.A.C. 5:21-4.2 (street width); N.J.A.C. 5:21-4.14 (number of parking spaces required per bedroom).

The regulations contain limited exceptions to the uniform standards. First, de minimis deviations from the standards may be [*220] granted "if the literal enforcement of one or more provisions of the standards is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question." N.J.A.C. 5:21-3.1(a). Examples of de minimis exceptions include authorization to reduce the minimum number of parking spaces and the minimum size of parking stalls. N.J.A.C. 5:21-3.1(f). A second exception permits a municipality or a developer to seek a waiver if adherence to a given standard would pose a "danger to public [***15] health and safety." N.J.A.C. 5:21-3.2(b). Third, the regulations permit a municipality to establish "special area standards" that differ from the uniform standards. N.J.A.C. 5:21-3.5(a). Special area standards are intended to apply to sections of a municipality that "exhibit a distinctive character or environmental feature that the municipality . . . [has] expressed a desire to preserve and enhance," such as historic districts or rural preservation areas. [1] N.J.A.C. 5:21-3.5(b). Finally, a developer and a municipality may agree to exceed the uniform standards. N.J.A.C. 5:21-3.6.

1 *Amicus curiae* New Jersey Builders Association contends that the special area exception is contrary to the Act's central purpose of uniformity. Because the parties did not raise that issue directly, it is not before us and we decline to address it.

Prior to the publication of the proposed standards in the New Jersey Register, the Commissioner added a regulation requiring sidewalks in certain residential developments located near [***16] schools or recreational facilities. N.J.A.C. 5:21-4.5(b). The Commissioner determined that the sidewalk provision was necessary after receiving comments from the Director of the New Jersey Division of Highway Traffic Safety and others that such a requirement would reduce pedestrian fatalities. The sidewalk provision was based on a standard promulgated in a treatise by the United States Department of Transportation Federal Highway Administration. In adding the sidewalk requirement, the Commissioner relied on her authority under N.J.S.A. 40:55D-40.4(b), which provides that the Commissioner

> [*221] shall promulgate the recommendations of the board with regard to statewide site improvement standards *without making a change* in any recommended standard *unless, in the commissioner's judgment, a standard would . . . result in a danger to the public health or safety.* The commissioner may veto any site improvement standard on the above-mentioned grounds; however, any veto of the commissioner may be overridden by a two-thirds vote of the board.
>
> [Emphasis supplied.]

Following two hearings and a period for public comment, the proposed standards, including the sidewalk requirement, were adopted [***17] and became effective on June 3, 1997.

Pursuant to *Rule* 2:2-3(a), the League of Municipalities, together with 157 individual municipalities and other parties (collectively "League"), appealed from the promulgation of the regulations. Because the municipal zoning power, as delineated by N.J.S.A. 40:55D-65(d), includes the right to adopt standards for off-street parking, roads, and water and sewer facilities, the League contended that the DCA exceeded its authority when it promulgated regulations governing those aspects of residential development. Relying on the language of N.J.S.A. 40:55D-40.6 that nothing in the regulations "shall in any way limit" the zoning powers of the municipalities, the League argued that where a standard contained in the regulations conflicts with a requirement in a municipal zoning ordinance, the ordinance supersedes the uniform standard.

[**27] The Appellate Division held that the regulations were facially valid. *League of Municipalities v. Department of Community Affairs*, 310 N.J. Super. 224, 228, 708 A.2d 708 (App.Div.1998). In so holding, the court found that N.J.S.A. 40:55D-40.6 was not violated because the Legislature "has modified but not limited municipal zoning [***18] power." *Id.* at 236, 708 A.2d 708. Additionally, the Appellate Division concluded that the Board's modifications of the Model Ordinance were within its incidental powers. No issue is raised before us concerning N.J.A.C. 5:21-1.5(b), the provision of the regulations that the Appellate Division invalidated. We granted the League's petition for certification. 156 N.J. 382, 718 A.2d 1211 (1998).

[*222] II

A

We begin by reviewing well-established principles regarding the rulemaking function of administrative agencies. [HN1]Administrative regulations are accorded a presumption of validity. *In re Township of Warren*, 132 N.J. 1, 26, 622 A.2d 1257 (1993); *Medical Soc'y v. New Jersey Dep't of Law & Public Safety*, 120 N.J. 18, 25, 575 A.2d 1348 (1990). The party challenging their validity bears the burden of proving that the regulations are arbitrary, capricious or unreasonable. *In re Amendment of* N.J.A.C. 8:31B-3.31, 119 N.J. 531, 543-44, 575 A.2d

481 (1990); New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 561, 384 A.2d 795 (1978). That judicial deference to administrative agencies stems from the recognition that agencies have the specialized expertise necessary to enact regulations dealing with [***19] technical matters and are "particularly well equipped to read and understand the massive documents and to evaluate the factual and technical issues that . . . rulemaking would invite." Bergen Pines County Hosp. v. New Jersey Dep't of Human Servs., 96 N.J. 456, 474, 476 A.2d 784 (1984). Therefore, the scope of review of an administrative regulation is "highly circumscribed," Lower Main St. Assocs. v. New Jersey Hous. & Mortgage Fin. Agency, 114 N.J. 226, 236, 553 A.2d 798 (1989), and a reviewing court is not to substitute its judgment for that of the agency, Dougherty v. Department of Human Servs., 91 N.J. 1, 6, 449 A.2d 1235 (1982).

That deference, however, is not without limit. A regulation "must be within the fair contemplation of the delegation of the enabling statute." New Jersey Guild of Hearing Aid Dispensers, supra, 75 N.J. at 561-62, 384 A.2d 795 (quoting Southern Jersey Airways, Inc. v. National Bank of Secaucus, 108 N.J. Super. 369, 383, 261 A.2d 399 (App.Div.1970)); *see also* In re Township of Warren, supra, 132 N.J. at 26, 622 A.2d 1257 ("Courts . . . act only in those rare circumstances when it is clear that the agency action is inconsistent with the legislative mandate.") [***20] (quoting Williams v. [*223] Department of Human Servs., 116 N.J. 102, 108, 561 A.2d 244 (1989)).

This Court has recognized that "[HN2]the grant of authority to an administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and . . . courts should readily imply such incidental powers as are necessary to effectuate fully the legislative intent." New Jersey Guild of Hearing Aid Dispensers, supra, 75 N.J. at 562, 384 A.2d 795; *see also* Cammarata v. Essex County Park Comm'r, 26 N.J. 404, 411, 140 A.2d 397 (1958) ("The grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective."). "[T]he absence of an express statutory authorization in the enabling legislation will not preclude administrative agency action where, by reasonable implication, that action can be said to promote or advance the policies and findings that served as the driving force for the enactment of the legislation." A.A. Mastrangelo, [**28] Inc. v. Commissioner, Dep't of Envtl. Protection, 90 N.J. 666, 683-84, 449 A.2d 516 (1982).

B

We have recognized that [HN3]basic local zoning policy is [***21] best left to the individual municipalities. Pascack Ass'n v. Mayor & Council of Washington Township, 74 N.J. 470, 483, 379 A.2d 6 (1977); Lake Shore Estates, Inc. v. Denville Township Planning Bd., 255 N.J. Super. 580, 589, 605 A.2d 1106 (App.Div.1991), *aff'd o.b.*, 127 N.J. 394, 605 A.2d 1073 (1992); *see also* Ward v. Scott, 16 N.J. 16, 23, 105 A.2d 851 (1954) ("Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for [a zoning] variance."). "Those matters that bear a close relation to the subject matter of local zoning ordinances--the conditions and use of land and its improvements--are . . . appropriate for local [*224] treatment." Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 226, 416 A.2d 334 (1980) (citations omitted).

Nevertheless, zoning is an exercise of the state's police power. Zilinsky v. Zoning Bd. of Adjustment of Verona, 105 N.J. 363, 367, 521 A.2d 841 (1987). Municipalities possess no inherent authority to zone; they have only that power that the Legislature has delegated to them. Riggs [***22] v. Township of Long Branch, 109 N.J. 601, 610, 538 A.2d 808 (1988). That principle is enunciated in the New Jersey Constitution:

> The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.
>
> [*N.J. Const.* art. IV, § 6, P2.]

Thus, while our Constitution authorizes legislative delegation of the zoning power to municipalities, it reserves the legislative right to repeal or modify that delegation.

We turn now to the primary issue in this appeal: whether the DCA exceeded its authority when it promulgated the uniform site improvement standards. Our inquiry concerning the scope of the DCA's authority begins with the terms of the Act. "[HN4]When construing a statute, courts initially consider the statute's plain meaning." National Waste Recycling, [***23] Inc. v. Middlesex County Improvement Auth., 150 N.J. 209, 223, 695 A.2d 1381 (1997). If the plain language of a statute creates uncertainties or ambiguities, a reviewing court must examine the legislative intent underlying the statute and "construe the statute in a way that will best effectuate

[that] intent." *Ibid.* (quoting *State v. Szemple*, 135 N.J. 406, 422, 640 A.2d 817 (1994)). The general legislative intent influences the interpretation of a statute's component parts. *Ibid.* To that end, courts must read statutes "sensibly rather than literally." *Roig v. Kelsey*, 135 N.J. 500, 515, 641 A.2d 248 (1994) [*225] (quoting *Schierstead v. City of Brigantine*, 29 N.J. 220, 230, 148 A.2d 591 (1959)).

III

A

Before beginning our analysis, we note that the League does not cite specific regulations that it contends are unlawful, but rather asserts that the DCA generally exceeded its statutory authority when it promulgated the regulations. When pressed at oral argument, the League conceded that its appeal was essentially a challenge to the facial validity of the regulations. We agree.

[**29] We hold that the regulations promulgated by the DCA are facially valid. We cannot accept [***24] the League's literal interpretation of the language of *N.J.S.A.* 40:55D-40.6 stating that "[n]othing contained in this Act shall in any way limit the zoning power of any municipality." To read that section, as does the League, to mean that the uniform standards do not supersede contrary requirements in municipal zoning ordinances would render the Act virtually meaningless. Such an interpretation ignores the express legislative intent and purposes of the Act: to reduce housing costs by establishing uniform statewide standards for residential site improvement. *N.J.S.A.* 40:55D-40.2.

Because the Act contains two apparently contradictory sections, the plain language of the Act does not clarify adequately the scope of the DCA's authority. *N.J.S.A.* 40:55D-40.5 provides that the uniform standards "supersede" municipal zoning ordinances. That provision implies that the DCA has the power to promulgate residential site improvement standards that override any municipal ordinance dealing with streets, roads, parking facilities, sidewalks, drainage structures, and utilities. *See* *N.J.S.A.* 40:55D-40.1 (defining "site improvement"). However, *N.J.S.A.* 40:55D-40.6 provides that the standards "shall in [***25] [no] way limit" municipal zoning power. That provision perhaps implies that municipalities retain their power to zone as delineated under the MLUL. *See* [*226] *N.J.S.A.* 40:55D-65(d) (defining municipal zoning powers). Because that conflict creates an ambiguity about the scope of the DCA's authority, the plain language of the statute does not end our inquiry.

When we look beyond the plain language of the statute, *Szemple, supra*, 135 N.J. at 422, 640 A.2d 817, that the Legislature intended to authorize the DCA to promulgate the regulations becomes clear. The Act explicitly directs the implementation of the standards contained in the Model Ordinance, and defines "site improvement" in terms that apply to streets, roads, parking facilities, sidewalks, drainage structures, and utilities. In addition, the intent to establish uniform improvement standards is explicitly stated in the Act. Finally, the Act provides that, in the case of an inconsistency between the Model Ordinance and the MLUL, the Board was to conform its recommendations to the Model Ordinance. *N.J.S.A.* 40:55D-40.4(a).

The Act constitutes a major step by the Legislature toward fostering uniformity and predictability in residential development, [***26] and we have no reason to question the Legislature's finding that uniform standards will serve the public interest by reducing housing costs. At the same time, however, the Act departs to some extent from the traditional "home rule" aspect of zoning. We understand the League's fear that the uniform standards will "intrude upon policy making aspects of development [that] would affect the design and character of communities." As the Legislature recognized in the Act, policymaking aspects of development review should be separated from technical determinations. To the extent that a specific standard affects local zoning policy, there may be valid local concerns. However, because this is a facial challenge to the regulations, the impact of specific standards on the design or character of municipalities is not the subject of this appeal.

Although the League concedes that the majority of the regulations "are the types of technical details which the Act was meant to authorize," we acknowledge that the regulations create the [*227] potential for tension with matters of local zoning policy. The concerns raised by the League are best addressed in the form of "as-applied" challenges to particular regulations. [***27] If the application of a given standard to a specific Development, see *N.J.S.A.* 40:55D-4, within a municipality leads to a conflict with a matter of local zoning policy, that individual municipality may challenge the validity of the standard in that [**30] context. Our holding today does not preclude such a challenge.

We anticipate, however, that the challenges will be few. The Act and the MLUL share the same purpose and legislative intent--"to establish reasonable physical improvement standards to protect the public health, safety, and welfare." *League of Municipalities, supra*, 310 N.J. Super. at 236, 708 A.2d 708. The DCA must be accorded a certain degree of flexibility to enact regulations that further that important goal. *See* *In re Township of Warren, supra*, 132 N.J. at 27, 622 A.2d 1257. In addition, we trust that the exceptions to the application of the uniform standards, although limited in scope, can diminish some of the potential conflicts that might arise and that, if necessary, the DCA can modify its regulations to make

more permissive the standards for granting exceptions or variances.

B

The League's remaining contentions, that the DCA and the Commissioner exceeded their delegated authority [***28] in adopting certain regulations, are without merit. First, the League asserts that the DCA impermissibly deviated from the Model Ordinance when it promulgated certain regulations. As noted above, the Act authorizes the DCA to adopt standards different from those contained in the Model Ordinance provided that such standards are supported by "any academic or professional institution or organization." N.J.S.A. 40:55D-40.4(a). We agree with the Appellate Division that many of the regulations challenged by the League are supported by the required authoritative sources and are therefore valid. The numerous institutions and organizations [*228] on which the Board relied when it reviewed and modified the Model Ordinance are set forth at N.J.A.C. 5:21-8.1.

Concerning the challenged modifications that are not explicitly supported by authoritative sources, we note initially that many of the deviations are insignificant. *See, e.g.,* N.J.A.C. 5:21-4.3(f), -4.17(a) (Model Ordinance curb width requirement of nine inches reduced in regulations to eight inches). Moreover, the deviations from the Model Ordinance are well within the incidental powers granted to the DCA under the Act. *New Jersey Guild* [***29] *of Hearing Aid Dispensers, supra*, 75 N.J. at 562, 384 A.2d 795. We therefore defer to the findings of the Board members, whose expertise in matters of building, engineering, and planning makes them far better-equipped than this Court to promulgate appropriate site improvement standards. *See* N.J.S.A. 40:55D-40.3 (prescribing composition of Board). To do otherwise would frustrate the ability of the DCA to effectuate the purposes of the Act.

Similarly, we reject the League's contention that the Commissioner lacked the authority to add the sidewalk provision to the standards recommended by the Advisory Board. That claim was raised for the first time in the League's petition for certification, and therefore was not addressed by the Appellate Division.

The Act clearly authorizes the Commissioner to "veto any site improvement standard" if the Commissioner determines that the standard would "result in a danger to the public health or safety." N.J.S.A. 40:55D-40.4(b). That the sidewalk requirement is beneficial to public safety is uncontroverted. Rather, the League contends that although the Commissioner had the power to *veto* any standard, she was not authorized to *modify* or *supplement* [***30] the proposed standards. We acknowledge that the plain language of N.J.S.A. 40:55D-40.4(b) does not explicitly authorize the Commissioner to change or modify the Board's proposed standards. Nevertheless, we decline to invalidate the sidewalk provision. We note that N.J.S.A. 40:55D-40.4(b) requires the Commissioner to promulgate the standards proposed by the Board "without making [*229] a change . . . *unless*" danger to public safety would result. By implication, that language may [**31] be read as authorizing the Commissioner to change the proposed standards *if* she determines there is a concern for public safety. We therefore reject the League's narrow interpretation that the term "veto" means the power only to delete a standard proposed by the Board, and hold that the Commissioner had the statutory authority to add the sidewalk provision. *Cf.* N.J. Const. art. V, § 1, P14 (providing that governor's veto power includes power to "recommend that an amendment or amendments specified by him be made in the bill").

Because the League has failed to rebut the presumption of validity to which administrative regulations are entitled, *Dougherty, supra*, 91 N.J. at 6, 449 A.2d 1235, we uphold the Board's [***31] modifications of the Model Ordinance and the Commissioner's addition of the sidewalk requirement.

IV

The judgment of the Appellate Division is affirmed.

CHIEF JUSTICE PORITZ and JUSTICES HANDLER, POLLOCK, O'HERN, GARIBALDI, and COLEMAN join in JUSTICE STEIN's opinion.

Citation #1
158 NJ 211

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New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (1999)

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LexisNexis Headnotes: HN1 (24), HN2 (10), HN3 (4), HN4 (3)

PRIOR HISTORY (2 citing references)

1. New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 (App.Div. 1998)

2. **Certification granted:**
New Jersey State League of Municipalities v. Department of Community Affairs, 156 N.J. 382, 718 A.2d 1211, 1998 N.J. LEXIS 911 (1998)

Affirmed by (CITATION YOU ENTERED):
New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (1999)

CITING DECISIONS (45 citing decisions)

NEW JERSEY SUPREME COURT

3. **Cited by:**
New Jersey SPCA v. New Jersey Dep't of Agric., 2008 N.J. LEXIS 894 (N.J. July 30, 2008)
2008 N.J. LEXIS 894

4. **Cited by:**
St. Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 878 A.2d 829, 2005 N.J. LEXIS 950 (2005)
185 N.J. 1 p.13
878 A.2d 829 p.837

5. **Cited by:**
N.J. Ass'n of Nurse Anesthetists, Inc. v. N.J. State Bd. of Med. Exam'rs, 183 N.J. 605, 875 A.2d 247, 2005 N.J. LEXIS 814 (2005) **LexisNexis Headnotes HN2**

183 N.J. 605 p.610
875 A.2d 247 p.250

6. **Cited by:**
In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 852 A.2d 1083, 2004 N.J. LEXIS 914 (2004)
180 N.J. 478 p.489
852 A.2d 1083 p.1090

7. **Cited by:**
In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 852 A.2d 167, 2004 N.J. LEXIS 1251 (2004) **LexisNexis Headnotes HN1**
180 N.J. 415 p.430
852 A.2d 167 p.176

8. **Cited by:**
Musikoff v. Jay Parrino's the Mint, L.L.C., 172 N.J. 133, 796 A.2d 866, 2002 N.J. LEXIS 566 (2002) **LexisNexis Headnotes HN4**
172 N.J. 133 p.140
796 A.2d 866 p.870

9. **Cited by:**
Norris v. Borough of Leonia, 160 N.J. 427, 734 A.2d 762, 1999 N.J. LEXIS 843 (1999)
160 N.J. 427 p.445
734 A.2d 762 p.772

NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

10. **Cited by:**
New Jersey Shore Builders Ass'n v. Twp. of Jackson, 401 N.J. Super. 152, 949 A.2d 312, 2008 N.J. Super. LEXIS 139 (App.Div. 2008) **LexisNexis Headnotes HN3**
401 N.J. Super. 152 p.160
949 A.2d 312 p.316

11. **Cited by:**
In re N.J.A.C. 12:17-9.6 ex. rel. State Dept. of Labor, 395 N.J. Super. 394, 928 A.2d 956, 2007 N.J. Super. LEXIS 278, Unemployment Ins. Rep. (CCH) P8657 (App.Div. 2007) **LexisNexis Headnotes HN1**
395 N.J. Super. 394 p.406
928 A.2d 956 p.963

12. **Cited by:**
Builders League of South Jersey, Inc. v. Township of Franklin, 395 N.J. Super. 46, 928 A.2d 88, 2007 N.J. Super. LEXIS 267 (App.Div. 2007) **LexisNexis Headnotes HN3**
395 N.J. Super. 46 p.57
928 A.2d 88 p.95

13. **Cited by:**
M.F. v. Department of Human Services, Div. of Family Development, 395 N.J. Super. 18, 928 A.2d 71,

2007 N.J. Super. LEXIS 266 (App.Div. 2007) **LexisNexis Headnotes HN1, HN2**
395 N.J. Super. 18 p.29
928 A.2d 71 p.78

14. **Cited by:**
Lourdes Med. Ctr. v. Bd. of Review, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656, 182 L.R.R.M. (BNA) 3259 (App.Div. 2007) **LexisNexis Headnotes HN1, HN2**
394 N.J. Super. 446 p.457
927 A.2d 164 p.171

15. **Cited by:**
In re Adoption of N.J.A.C. 19:3, 19:4, 19:5 & 19:6, 393 N.J. Super. 173, 922 A.2d 852, 2007 N.J. Super. LEXIS 153 (App.Div. 2007) **LexisNexis Headnotes HN1**
393 N.J. Super. 173 p.181
922 A.2d 852 p.857

16. **Cited by:**
Chicago Title Ins. Co. v. Bryan, 388 N.J. Super. 550, 909 A.2d 1131, 2006 N.J. Super. LEXIS 317 (App.Div. 2006)
388 N.J. Super. 550 p.557
909 A.2d 1131 p.1136

17. **Cited by:**
In re Stormwater Management Rules, 384 N.J. Super. 451, 894 A.2d 1241, 2006 N.J. Super. LEXIS 107 (App.Div. 2006)
384 N.J. Super. 451 p.454
894 A.2d 1241 p.1242

18. **Cited by:**
T.H. v. Division of Developmental Disabilities, 381 N.J. Super. 366, 886 A.2d 194, 2005 N.J. Super. LEXIS 346 (App.Div. 2005) **LexisNexis Headnotes HN1**
381 N.J. Super. 366 p.374
886 A.2d 194 p.199

19. **Cited by:**
In re Adoption of N.J.A.C. 7:26E-1.13, 377 N.J. Super. 78, 871 A.2d 711, 2005 N.J. Super. LEXIS 128 (App.Div. 2005) **LexisNexis Headnotes HN1**
377 N.J. Super. 78 p.98
871 A.2d 711 p.725

20. **Cited by:**
Safari Club Intern. v. New Jersey Dept. of Environmental Protection, 373 N.J. Super. 515, 862 A.2d 1152, 2004 N.J. Super. LEXIS 417 (App.Div. 2004)
373 N.J. Super. 515 p.521
862 A.2d 1152 p.1156

21. **Cited by:**
Estate of DeMartino v. Division of Medical Assistance and Health Services, 373 N.J. Super. 210, 861 A.2d 138, 2004 N.J. Super. LEXIS 397 (App.Div. 2004) **LexisNexis Headnotes HN1**
373 N.J. Super. 210 p.223
861 A.2d 138 p.146

22. **Cited by:**
St. Peter's University Hosp. v. Lacy, 372 N.J. Super. 170, 856 A.2d 756, 2004 N.J. Super. LEXIS 350 (App.Div. 2004)
372 N.J. Super. 170 p.177
856 A.2d 756 p.761

23. **Followed by, Cited by:**
In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 855 A.2d 582, 2004 N.J. Super. LEXIS 344 (App.Div. 2004) **LexisNexis Headnotes HN1**
Followed by:
372 N.J. Super. 61 p.93
855 A.2d 582 p.601

Cited by:
372 N.J. Super. 61 p.92
855 A.2d 582 p.600

24. **Cited by:**
In re Adoption of 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 369 N.J. Super. 2, 848 A.2d 1, 2004 N.J. Super. LEXIS 159 (App.Div. 2004) **LexisNexis Headnotes HN1**
369 N.J. Super. 2 p.17
848 A.2d 1 p.10

25. **Cited by:**
Borough of Closter v. Abram Demaree Homestead, Inc., 365 N.J. Super. 338, 839 A.2d 110, 2004 N.J. Super. LEXIS 19 (App.Div. 2004)
365 N.J. Super. 338 p.350
839 A.2d 110 p.117

26. **Cited by:**
In re Adopted Amendments to N.J.A.C., 365 N.J. Super. 255, 839 A.2d 60, 2003 N.J. Super. LEXIS 395 (App.Div. 2003) **LexisNexis Headnotes HN1, HN2**
365 N.J. Super. 255 p.263
365 N.J. Super. 255 p.265
839 A.2d 60 p.65
839 A.2d 60 p.66

27. **Followed by, Cited by:**
State v. Bond, 365 N.J. Super. 430, 839 A.2d 888, 2003 N.J. Super. LEXIS 389 (App.Div. 2003) **LexisNexis Headnotes HN1, HN2**
Followed by:
365 N.J. Super. 430 p.442
839 A.2d 888 p.895

Cited by:
365 N.J. Super. 430 p.441

28. **Cited by:**
In re Virgo's, Inc., 355 N.J. Super. 590, 810 A.2d 1175, 2002 N.J. Super. LEXIS 483 (App.Div. 2002) **LexisNexis Headnotes HN2**
355 N.J. Super. 590 p.595
810 A.2d 1175 p.1178

29. **Cited by:**
In re Coastal Permit Program Rules, 354 N.J. Super. 293, 807 A.2d 198, 2002 N.J. Super. LEXIS 259 (App.Div. 2002) **LexisNexis Headnotes HN1, HN2**
354 N.J. Super. 293 p.329
354 N.J. Super. 293 p.330
807 A.2d 198 p.221

30. **Cited by:**
In re N.J. Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1, 353 N.J. Super. 494, 803 A.2d 639, 2002 N.J. Super. LEXIS 372 (App.Div. 2002) **LexisNexis Headnotes HN1**
353 N.J. Super. 494 p.522
803 A.2d 639 p.657

31. **Cited by:**
In re 1999-2000 Abbott v. Burke Implementing Regulations, 348 N.J. Super. 382, 792 A.2d 412, 2002 N.J. Super. LEXIS 96 (App.Div. 2002) **LexisNexis Headnotes HN1**
348 N.J. Super. 382 p.395
792 A.2d 412 p.420

32. **Followed by:**
State v. Jones, 347 N.J. Super. 150, 789 A.2d 131, 2002 N.J. Super. LEXIS 39 (App.Div. 2002) **LexisNexis Headnotes HN4**
347 N.J. Super. 150 p.153
789 A.2d 131 p.133

33. **Cited by:**
DiVigenze v. Chrysler Corp., 345 N.J. Super. 314, 785 A.2d 37, 2001 N.J. Super. LEXIS 423 (App.Div. 2001) **LexisNexis Headnotes HN3**
345 N.J. Super. 314 p.327
785 A.2d 37 p.45

34. **Cited by:**
In re Regulation of Operator Serv. Providers , 343 N.J. Super. 282, 778 A.2d 546, 2001 N.J. Super. LEXIS 328 (App.Div. 2001) **LexisNexis Headnotes HN1**
343 N.J. Super. 282 p.327
778 A.2d 546 p.573

35. **Cited by:**
In re N.J.A.C. 13:38-1.3,f by the State Bd. of Optometrists, 341 N.J. Super. 536, 775 A.2d 629, 2001 N.J. Super. LEXIS 272 (App.Div. 2001) **LexisNexis Headnotes HN1**
341 N.J. Super. 536 p.543
775 A.2d 629 p.634

36. **Cited by:**
Dentists for Quality Care, Inc. v. State Bd. of Dentistry, 339 N.J. Super. 257, 771 A.2d 659, 2001 N.J. Super. LEXIS 165 (App.Div. 2001) **LexisNexis Headnotes HN1, HN2**
339 N.J. Super. 257 p.263
339 N.J. Super. 257 p.267
339 N.J. Super. 257 p.268
771 A.2d 659 p.663
771 A.2d 659 p.666

37. **Cited by:**
Baer v. Klagholz, 339 N.J. Super. 168, 771 A.2d 603, 2001 N.J. Super. LEXIS 141 (App.Div. 2001) **LexisNexis Headnotes HN1**
339 N.J. Super. 168 p.190
771 A.2d 603 p.616

38. **Cited by:**
Lewis v. Catastrophic Illness in Children Relief Fund Comm'n, 336 N.J. Super. 361, 764 A.2d 1035, 2001 N.J. Super. LEXIS 18 (App.Div. 2001) **LexisNexis Headnotes HN1**
336 N.J. Super. 361 p.369
764 A.2d 1035 p.1039

39. **Cited by:**
City of Camden v. Kenny, 336 N.J. Super. 53, 763 A.2d 777, 2000 N.J. Super. LEXIS 452 (App.Div. 2000) **LexisNexis Headnotes HN2**
336 N.J. Super. 53 p.62
763 A.2d 777 p.783

40. **Cited by:**
County of Hudson v. Department of Law & Public Safety, 328 N.J. Super. 308, 746 A.2d 5, 2000 N.J. Super. LEXIS 59 (App.Div. 2000) **LexisNexis Headnotes HN1**
328 N.J. Super. 308 p.323
746 A.2d 5 p.14

41. **Cited by:**
New Jersey Educ. Ass'n v. Board of Trustees, 327 N.J. Super. 405, 743 A.2d 859, 2000 N.J. Super. LEXIS 26 (App.Div. 2000) **LexisNexis Headnotes HN1**
327 N.J. Super. 405 p.410
743 A.2d 859 p.862

42. **Followed by:**
New Jersey Educ. Ass'n v. Board of Trustees, Pub. Employees' Retirement Sys., 327 N.J. Super. 326, 743 A.2d 353, 2000 N.J. Super. LEXIS 22 (App.Div. 2000) **LexisNexis Headnotes HN1**

327 N.J. Super. 326 p.332
743 A.2d 353 p.356

43. **Cited by:**
New Jersey Shore Builders Ass'n v. Township of S. Brunswick, 325 N.J. Super. 412, 739 A.2d 956, 1999 N.J. Super. LEXIS 330 (App.Div. 1999)
325 N.J. Super. 412 p.422
739 A.2d 956 p.962

44. **Cited by:**
In re Route 206 at New Amwell Rd. (Hillsborough), 322 N.J. Super. 345, 731 A.2d 56, 1999 N.J. Super. LEXIS 220 (App.Div. 1999)
731 A.2d 56 p.63

45. **Cited by:**
New Jersey Coalition of Health Care Prof'ls, Inc. v. New Jersey Dep't of Banking & Ins., 323 N.J. Super. 207, 732 A.2d 1063, 1999 N.J. Super. LEXIS 276 (App.Div. 1999) **LexisNexis Headnotes HN2**

OTHER NEW JERSEY DECISIONS

46. **Cited by:**
Pepperidge Tree Realty Corp. v. Kinnelon Borough, 21 N.J. Tax 57, 2003 N.J. Tax LEXIS 13 (Tax Ct. 2003) **LexisNexis Headnotes HN3**
21 N.J. Tax 57 p.69

3RD CIRCUIT - COURT OF APPEALS

47. **Cited by:**
Keeley v. Loomis Fargo & Co., 183 F.3d 257, 1999 U.S. App. LEXIS 16654, 138 Lab. Cas. (CCH) P58676, 5 Wage & Hour Cas. 2d (BNA) 815 (3d Cir. N.J. 1999) **LexisNexis Headnotes HN1, HN4**
183 F.3d 257 p.265

ANNOTATED STATUTES (7 Citing Statutes)

48. N.J. Const., Art. IV, Sec. VI, Para. 2

49. N.J. Const., Art. IV, Sec. VI, Para. 2

50. N.J. Stat. @ 40:55D-1

51. N.J. Stat. @ 40:55D-40.1

52. N.J. Stat. @ 40:55D-40.4

53. N.J. Stat. @ 40:55D-40.6

54. N.J. Stat. @ 40:55D-65

LAW REVIEWS AND PERIODICALS (2 Citing References)

55. DEVELOPMENTS IN STATE CONSTITUTIONAL LAW: 1999: XIV. Local Government, 31 Rutgers L.J. 1592 (2000)
31 Rutgers L.J. 1592 p.1592

56. ARTICLE: Realizing Urban Potential: The Promise and Possibilities of Municipal Environmental Remediation in New Jersey, 27 Rutgers L. Rec. 6 (2003)

TREATISE CITATIONS (4 Citing Sources)

57. 4-56 Antieau on Local Government Law, Second Edition @ 56.02

58. 4-59 Antieau on Local Government Law, Second Edition @ 59.01

59. 7-42A Zoning and Land Use Controls @ 42A.03

60. 10-53C Zoning and Land Use Controls @ 53C.08

BRIEFS (3 Citing Briefs)

61. In re ADOPTION OF N.J.A.C. 7:26E-1.13, 2005 NJ S. Ct. Briefs 20A, 2005 NJ S. Ct. Briefs LEXIS 51 (N.J. June 16, 2005)

62. In re N.J.A.C. 7:26E-1.13, 2005 NJ S. Ct. Briefs 20A, 2005 NJ S. Ct. Briefs LEXIS 49 (N.J. May 27, 2005)

63. In re ALLEGED NON-COMPLIANCE, 2005 NJ S. Ct. Briefs 57617, 2005 NJ S. Ct. Briefs LEXIS 101 (N.J. Mar. 10, 2005)

MOTIONS (2 Citing Motions)

64. McLEMORE v. CITY OF TRENTON, 2005 U.S. Dist. Ct. Motions 4631, 2007 U.S. Dist. Ct. Motions LEXIS 22395 (D.N.J. Feb. 19, 2007)

65. PLAYER v. MOTIVA, 2005 U.S. Dist. Ct. Motions 3216, 2005 U.S. Dist. Ct. Motions LEXIS 15112 (D.N.J. June 24, 2005)

LEXSEE

Positive
As of: Aug 12, 2008

A. JARED SILVERMAN, CHIEF NEW JERSEY BUREAU OF SECURITIES, PLAINTIFF-APPELLANT, v. ROBERT GARY BERKSON, DEFENDANT-RESPONDENT.

A-97 September Term 1994

SUPREME COURT OF NEW JERSEY

141 N.J. 412; 661 A.2d 1266; 1995 N.J. LEXIS 533

March 13, 1995, Argued
August 2, 1995, Decided

PRIOR HISTORY: [***1] On certification to the Superior Court, Appellate Division, whose opinion is reported at 276 N.J. Super. 6, 647 A.2d 160 (1994).

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff appealed from the Superior Court, Appellate Division (New Jersey), in which the court quashed a subpoena issued by the New Jersey Bureau of Securities requiring defendant, a New York resident, to appear in New Jersey during an investigation of securities transaction involving New Jersey residents.

OVERVIEW: Plaintiff, the Chief of the New Jersey Bureau of Securities, issued a subpoena to defendant, a New York resident, in the course of investigating securities transactions involving New Jersey residents. Defendant declined to appear in response to the subpoena, and plaintiff sought a court order enforcing the subpoena. The trial court granted the order. The appellate division reversed. The court reversed the appellate court and remanded the case to the trial court. The court held that it was reasonable to infer that the New Jersey Legislature would intend that plaintiff's administrative power to compel the attendance of witnesses was coextensive with its substantive mandate to investigate securities transactions within or outside of New Jersey. The court stated that consistent with principles of due process, that authority would be limited to subpoenaing witnesses who had purposefully availed themselves of the privilege to enter the New Jersey securities market.

OUTCOME: The court reversed appellate court and remanded the case to trial court for further proceedings in accordance with the opinion. The held that plaintiff's administrative power to compel the attendance of witnesses was coextensive with its substantive mandate to investigate securities transactions within or outside of New Jersey.

CORE TERMS: subpoena, nonresident, extraterritorial, out-of-state, territory, investigative, subpoenaed, issuance, subpoena issued, resident, power to issue, minimum contacts, sovereignty, territorial, attendance, enforcing, issuing, power to enforce, subpoena power, substantial justice, jurisdiction to enforce, fair play, personal jurisdiction, civil sanctions, forum state, attendance of witnesses, deposition, authorize, prescribe, contempt

LexisNexis(R) Headnotes

Administrative Law > Separation of Powers > Constitutional Controls > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
Governments > Legislation > Interpretation
[HN1]New Jersey government agencies have only those powers that the New Jersey Legislature confers upon them. Unless compelled to do otherwise, courts seek to avoid a statutory interpretation that might give rise to serious constitutional questions.

Administrative Law > Separation of Powers > Legislative Controls > General Overview
Governments > Legislation > Interpretation
[HN2]Powers expressly granted to an administrative agency should be liberally construed so that the agency can fulfill the New Jersey Legislature's purpose, and that an agency's express authority is augmented by such incidental authority as may be reasonably necessary or appropriate to effectuate the expressly delegated authority.

Governments > Legislation > Interpretation
[HN3]Where a statute is silent or ambiguous, it is clear duty of New Jersey courts to choose that construction that will carry out the legislative intent of the statute as a whole.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits
Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > Minimum Contacts
Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > General Overview
[HN4]A state court's assertion of personal jurisdiction does not violate the due process clause of U.S. Const. amend. XIV if the defendant has certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Civil Procedure > Federal & State Interrelationships > Choice of Law > Significant Relationships
[HN5]For a state's substantive law to be selected in a constitutionally permissible manner, that state must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > General Overview
Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction
Governments > State & Territorial Governments > Legislatures
[HN6]A state may proscribe conduct occurring outside its borders. In the criminal context, the common law adopts as the principal basis of jurisdiction a territorial theory of jurisdiction over crimes: a state has power to make conduct or the result of conduct a crime if the conduct takes place or the result happens within its territorial limits. The New Jersey Code of Criminal Justice reflects that understanding of a state's jurisdiction. A person may be convicted under the laws of New Jersey of an offense if either the conduct that is an element of the offense or the result that is such an element occurs within New Jersey. N.J. Stat. Ann. § 2C:1-3a(1). On the civil side, a state's power over its own citizens should extend to protection of its own citizens' rights when dealing with others even though there may be incidental effects in other jurisdictions.

Criminal Law & Procedure > Grand Juries > Investigative Authority > General Overview
Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction
[HN7]A federal court's jurisdiction to enforce a grand jury subpoena is not determined by its power to issue a subpoena; its power to issue a subpoena is determined by its jurisdiction.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > General Overview
Civil Procedure > Pretrial Matters > Subpoenas
Criminal Law & Procedure > Discovery & Inspection > Subpoenas > General Overview
[HN8]A subpoena is simply a command to appear at a certain time and place to give testimony upon a certain matter. The very etymology of the word subpoena signifies an order with a penalty for disobedience. The acquisition of jurisdiction over a foreign corporation through the process of subpoena is governed by the same principles of jurisdiction that apply in the case of civil litigation involving the process of a summons. Both a subpoena and a summons are forms of judicial process by way of orders of the court resulting in potential sanctions for disobedience.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > Minimum Contacts
Civil Procedure > Pretrial Matters > Subpoenas
[HN9]A federal court will enforce an investigative subpoena issued to a foreign national when it has personal jurisdiction over the subpoenaed party. A federal court has personal jurisdiction over an individual or business concern with respect to activities or effects within the United States if that entity has certain minimum contacts with the United States.

Antitrust & Trade Law > U.S. Federal Trade Commission Actions > Investigations > Subpoenas
Civil Procedure > Pleading & Practice > Service of Process > Summons > Content & Form
Civil Procedure > Pretrial Matters > Subpoenas
[HN10]Although a federal district court's process is generally confined to the territorial limits of the state in which it sits, extraterritorial service of process is proper when authorized by a statute of the United States. Fed. R. Civ. P. 4(k) (1) (D).

Administrative Law > Agency Investigations > Scope > Subpoenas
International Law > Dispute Resolution > Service of Process
[HN11]A New Jersey State agency may require the appearance of witnesses from outside New Jersey.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > General Overview
[HN12]Under principles of international law, a nation having some basis for jurisdiction to prescribe law may do so unless exercising that jurisdiction with respect to a person or activity having connections with another nation is unreasonable.

Administrative Law > Agency Investigations > Scope > Subpoenas
Civil Procedure > Pretrial Matters > Subpoenas
[HN13]Personal service of the subpoena within the territorial boundaries of the issuing state is not a prerequisite to a valid administrative order to appear.

Administrative Law > Agency Investigations > Scope > Subpoenas
[HN14]The system of judicial enforcement is designed to provide a meaningful day in court for one resisting an administrative subpoena. Bifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power.

Civil Procedure > Sanctions > Contempt > General Overview
Governments > Courts > Authority to Adjudicate
[HN15]One of the functions of a court is to compel a party to perform a duty that the law requires at his or her hands. Agency law invokes enforcement in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it. No question of contempt may arise until all issues are determined adversely to a party and that party has refused to obey a final order of the court.

Administrative Law > Agency Investigations > Scope > Subpoenas
[HN16]For reasons of fairness and efficiency of administration, federal courts have drawn a sharp distinction between agency power to issue subpoenas and judicial power to enforce them.

Civil Procedure > Jurisdiction > Jurisdictional Sources > General Overview
International Law > Dispute Resolution > Comity Doctrine > General Overview
International Law > Sovereign States & Individuals > General Overview
[HN17]In deciding whether to exercise enforcement jurisdiction, courts should balance the interests it seeks to protect against the interests of any other sovereign that might exercise authority over the same conduct. Because each sovereign has an interest in the welfare of its citizens, a court must consider (1) the extent and nature of the hardship that inconsistent enforcement actions would impose on the person subpoenaed; (2) the extent to which the required conduct is to take place in the territory of the other state; (3) the residence of the person subpoenaed; and (4) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > General Overview
Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview
Civil Procedure > Sanctions > Contempt > Civil Contempt
[HN18]The sheriff of a New Jersey county has no authority to enter New York. However, it does not follow that an adjudication of civil contempt under New Jersey Court Rules is a fruitless exercise; such civil sanctions are entitled to full faith and credit in the foreign jurisdiction. By later resort to the courts of the other state, the subpoenaed witness will be further guaranteed due process of law. In considering whether to accord full faith and credit to a judgment of another state, a forum state must consider whether the state rendering the judgment had jurisdiction over the defendant.

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

A. JARED SILVERMAN, ETC. V. ROBERT GARY BERKSON (A-97-94)

Argued March 13, 1995 -- Decided August 2, 1995

O'HERN, J., writing for a unanimous Court.

This appeal addresses the authority and power of a New Jersey agency investigating securities transactions involving New Jersey residents to issue a subpoena to a witness outside of the State's boundaries, and the corresponding authority and power of a New Jersey court to enforce such a subpoena.

The New Jersey Bureau of Securities (the Bureau) was investigating the activities of certain broker-dealers registered with the Bureau. In connection with that investigation, the Bureau issued a subpoena to Robert Gary Berkson, requiring him to appear at the Bureau's office in Newark, New Jersey, to testify about [***2] certain securities transactions. Bureau personnel personally served Berkson with the subpoena at his home in East Hills, New York. Berkson declined to appear in response to the subpoena.

Pursuant to N.J.S.A.49:3-68 (the statute authorizing the Bureau to issue subpoenas or "the subpoena statute"), the Bureau applied to the Superior Court for an order enforcing its subpoena. The Chancery Division granted the order of enforcement, finding that Berkson was an "artful manipulator" of the securities industry in New Jersey; that he "had repeated substantial contacts within New Jersey relating to the Bureau's pending investigation;" and that it was not unreasonable to anticipate that Berkson, who was packaging securities for sale to New Jersey investors, might be subject to jurisdiction in New Jersey. The court concluded that to allow Berkson to reside in New York and do business in New Jersey without fear of investigation or subpoena offends judicial notions of fair play and substantial justice.

Berkson appealed. The Appellate Division reversed, and ordered that the subpoena be quashed. The Appellate Division agreed that Berkson had minimum contacts within New Jersey, but found that [***3] the trial court could not issue a subpoena to compel Berkson's appearance and testimony because it violates his due process rights. According to the Appellate Division, a court cannot give an agency greater subpoena power than a subpoena issued in the name of the court via enforcement.

The Supreme Court granted the Bureau's petition for certification.

HELD: The New Jersey Bureau of Securities may subpoena a nonresident who has engaged in purposeful conduct expressly aimed at the New Jersey securities market. In addition, a New Jersey court may, consistent with due process principles, enforce such a subpoena.

1. Although conferring extraterritorial subpoena authority on the Bureau is unusual, it has been consistently held that powers expressly granted to an administrative agency should be liberally construed so that the agency can fulfill it legislative purpose. Where a statute is silent or ambiguous, it is the duty to chose a construction that will carry out the legislative intent of the statute as a whole. The Court is not inclined to create a presumption against any legislative intent that subpoena power extend beyond New Jersey borders. General principles of administrative [***4] law suggest that the Legislature intended the agency to have the authority necessary to fulfill its function to investigate, within and without the State, security transactions involving New Jersey residents. (pp. 5-8)

2. Under *International Shoe v. Washington,* a state court's assertion of personal jurisdiction does not violate the Due Process Clause if the nonresident defendant has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The power to exert authority over nonresidents exists as a matter of sovereignty. (pp. 9-12)

3. The power to issue a subpoena and the power to enforce a subpoena are different incidents of sovereignty, and such powers are not necessarily identical. The power to issue a subpoena is determined by the jurisdiction. Consistent with the principles of *International Shoe,* a state agency may require the appearance of witnesses from outside New Jersey. There is a difference between this case and *International Shoe. International Shoe* deals with long-arm jurisdiction over a cause of action, in which the nonresident is afforded the opportunity [***5] to appear and defend but need not do so, while a subpoena compels a person to do something. Nonetheless, the measures of sovereign power are ultimately the same. (pp. 12-19)

4. For reasons of fairness and efficiency of administration, federal courts have drawn a sharp distinction between agency power to issue subpoenas and judicial power to enforce them. Here, the issue is not what Court Rules do or do not permit New Jersey courts to do. The issue is whether the State may grant an agency extraterritorial authority over nonresident witnesses consistent with due process principles. If the Legislature grants such power, the proper role of a court under the sub-

poena statute is to ensure that principles of due process and comity between states have been observed in the issuance of the subpoena. In deciding whether to exercise enforcement jurisdiction, courts should balance the interest it seeks to protect against the interest of any other sovereign that might exercise authority over the same conduct. Because each sovereign has an interest in the welfare of its citizens, a court must consider: 1) the extent and nature of a hardship that inconsistent enforcement actions would impose [***6] on the person subpoenaed; 2) the extent to which the required conduct is to take place in the territory of the other state; 3) the residence of the person subpoenaed; and 4) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state. Process should be served only by those authorized to do so under the laws of this State. (pp. 19-24)

5. This decision comports with *International Shoe* and with the expanding role of states in the federalist system. As the federal government reduces its regulatory role and state governments increase theirs, the need to develop coherent principles of cooperation among states increases. Thus, it is reasonable to infer that the Legislature would, consistent with the principles of due process, intend that the Bureau's administrative power to compel the attendance of witnesses be coextensive with its substantive mandate to investigate securities transactions within or outside of the State. Consistent with principles of due process, that authority shall be limited to subpoenaing witnesses who have purposely availed themselves of the privilege to enter the New Jersey [***7] securities market. Before enforcing an agency subpoena, a court must determine that the party subpoenaed has engaged in such deliberate conduct. The court should consider the fairness to the witness and whether other available methods of discovery would adequately serve that agency's needs without having to bring the witness to New Jersey. In considering any civil sanctions to be imposed, a court shall not impose an order of arrest and shall limit monetary sanctions in accordance with the relevant principles applicable to *Rule* 1:10-3. (pp. 24-27)

Judgment of the Appellate Division is REVERSED and the matter is REMANDED to the Chancery Division for further proceedings in accordance with this opinion.

CHIEF JUSTICE WILENTZ and JUSTICES HANDLER, POLLOCK, GARIBALDI, and STEIN join in JUSTICE O'HERN's opinion. JUSTICE COLEMAN did not participate.

COUNSEL: *Michael Pariser,* Deputy Attorney General, argued the cause for appellant (*Deborah T. Poritz,* Attorney General of New Jersey, attorney; *Andrea M. Silkowitz,* Assistant Attorney General, of counsel).

Richard F. Horowitz, a member of the New York bar, argued the cause for respondent (*Hellring, Lindeman, Goldstein & Siegal,* attorneys; [***8] *James A. Scarpone,* on the brief).

JUDGES: The opinion of the Court was delivered by O'HERN, J. Chief Justice WILENTZ, and Justices HANDLER, POLLOCK, O'HERN, GARIBALDI, and STEIN. Justice COLEMAN did not participate.

OPINION BY: O'HERN

OPINION

[*414] [**1267] The opinion of the Court was delivered by

O'HERN, J.

This appeal concerns the authority and power of a New Jersey agency investigating securities transactions involving New Jersey residents to issue a subpoena to a witness outside of the State's boundaries, and the corresponding authority and power of a New Jersey court to enforce such a subpoena. We hold that (1) the New Jersey Bureau of Securities (the Bureau) may subpoena a nonresident who has engaged in purposeful conduct expressly aimed at the New Jersey securities market; and (2) a New Jersey court may, consistent with due process principles, enforce such a subpoena.

I

The case arises from the Bureau's investigation of securities transactions involving New Jersey residents. The Bureau's complaint [*415] states that it is conducting an investigation into the trading practices of L.C. Wegard & Co., Inc., and Hibbard Brown & Co., Inc., brokers-dealers registered with the Bureau, and of others. In connection with that [***9] investigation, the Bureau issued a subpoena to Robert Gary Berkson, requiring him to appear at the Bureau's office in Newark, New Jersey, to testify about certain securities transactions. Bureau personnel personally served Berkson with the subpoena at his home in East Hills, New York. Berkson declined to appear in response to the subpoena. Berkson's attorneys inform us that he "is not seeking to prevent the Bureau from conducting investigations or instituting proceedings; he is only seeking to prevent the unconstitutional use by the Bureau of an extraterritorial subpoena."

Pursuant to *N.J.S.A.* 49:3-68, the Bureau applied to the Superior Court for an order enforcing its subpoena. The Chancery Division granted an order of enforcement. It found that Berkson was an "artful manipulator" of the securities industry in New Jersey, that he "had repeated substantial contacts within New Jersey related to the Bu-

reau's pending investigation," and that "[i]t was certainly reasonable to anticipate that Berkson, who was packaging * * * securities for sale to New Jersey investors, could have anticipated that he would be subject to jurisdiction within the State." The court concluded that "[t]o allow [***10] [Berkson] to reside in New York, do business in New Jersey more than minimally, and [affect] a well-regulated industry in New Jersey, without fear of investigation or subpoena, is offensive to traditional notions of fair play and substantial justice."

Berkson appealed. The Appellate Division reversed the Chancery Division's decision and ordered that the subpoena be quashed.

> Pursuant to long-arm jurisdiction, New Jersey allows service of a summons and complaint to the fullest extent possible in order to afford due process of law, and [**1268] maintenance of an action with this type of service of process does not offend notions of fair play and substantial justice. We agree with the trial judge that defendant had minimum contacts with this State, but while that may support [*416] initiation of an action here by [the Bureau] against defendant, it does not countenance issuance of a subpoena to compel appearance and testimony.
>
> * * * *
>
> Service of the subpoena here violates defendant's due process rights. A court cannot accord an agency's subpoena greater power than a subpoena issued in the name of the court via enforcement.
>
> [276 N.J. Super. 6, 9-10, 647 A.2d 160 (1994) (citations omitted).]

[***11] The court observed that "[u]nder authority of R. 4:11-5, non-party witnesses may be compelled to testify at a deposition in another state and the deposition may be used in an action here," and that "[i]t is this type of procedural format envisioned by N.J.S.A. 49:3-68 [the statute authorizing the Bureau to issue subpoenas]." *Id.* at 9, 647 A.2d 160. We granted the Bureau's petition for certification, 138 N.J. 268, 649 A.2d 1288 (1994).

While the Bureau's appeal was pending in this Court, the Bureau, in accordance with a suggestion in the Appellate Division opinion, moved in the Chancery Division, pursuant to *Rule* 4:11-5, for issuance of an open commission to take Berkson's testimony in New York. The Bureau made a similar motion for issuance of an open commission to take the testimony of Peter F. Hibbard in Maryland. The Bureau described Hibbard as "a broker-dealer at the heart of the Bureau's investigation." The Chancery Division entered orders directing issuance of open commissions to take the testimony of Berkson and Hibbard in their respective states. Following oral argument before this Court, the Appellate Division reversed the decision of the Chancery Division issuing those [***12] commissions to take the out-of-state testimony. *In re Berkson*, 280 N.J. Super. 180, 654 A.2d 1030 (1995). It reasoned that its opinion in *Silverman, supra*, 276 N.J. Super. 6, 647 A.2d 160, did not envision the use of *Rule* 4:11-5 to authorize the issuance of a commission to compel the testimony of an out-of-state resident "solely for investigative purposes." 280 N.J. Super. at 183-84, 647 A.2d 160.

II

The first question in this case is one of agency authority. [HN1]Government agencies have only those powers the Legislature [*417] confers on them. *General Assembly v. Byrne*, 90 N.J. 376, 393, 448 A.2d 438 (1982). Unless compelled to do otherwise, courts seek to avoid a statutory interpretation that might give rise to serious constitutional questions. *New Jersey Bd. of Higher Educ. v. Shelton College*, 90 N.J. 470, 478, 448 A.2d 988 (1982). Conventional wisdom might suggest, as the Appellate Division concluded in *Berkson, supra*, 280 N.J. Super. at 184, 654 A.2d 1030, that "[i]f the Legislature had wished to bestow such extraordinary extraterritorial authority upon the Bureau, it could have done so in plain language." That court's conclusion was "reinforced by the absence of any provision in New Jersey's version of the Uniform Securities [***13] Law affording a procedure for the Bureau to take out-of-state testimony of a non-resident witness." *Ibid.* The court noted that the 1985 version of the *Uniform Securities Act* (not adopted in New Jersey, New York, or Maryland) specifically provided for the taking of testimony in the state of a nonresident witness for the purpose of an investigation being conducted in another state. *Ibid.*

We understand that conferring extraterritorial subpoena authority on the Bureau is unusual; to our knowledge, no other jurisdiction grants such authority to its agencies except through reciprocal legislation, such as in the *Uniform Securities Act*. On the other hand, our courts have consistently recognized that

> [HN2]powers expressly granted to an administrative agency should be liberally construed so that the agency can fulfill the Legislature's purpose, *Barry v. Arrow Pontiac, Inc.*, 100 N.J. 57, 70 [494 A.2d 804] (1985), and that an agency's express authority is augmented by such incidental authority as may be reasonably necessary

or appropriate to effectuate the expressly [**1269] delegated authority, New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 [364 A.2d 795] (1978).

[In re Solid Waste Util. Customer Lists, 106 N.J. 508, 516, 524 A.2d 386 (1987).]

[***14] Thus, for example, in *Customer Lists* we inferred that even in the absence of an express authority conferred on it, the Board of Public Utilities might require solid-waste haulers to provide it with proprietary information, such as customer lists. *Ibid.* And finally we have, when the interpretation is reasonable, deferred to an agency's interpretation of its own enabling act. [HN3]"Where a statute is silent or ambiguous, 'it is our clear duty to choose that [*418] construction which will carry out the legislative intent of the statute as a whole * * *.'" Accountemps v. Birch Tree Group, Ltd., 115 N.J. 614, 622, 560 A.2d 663 (1989) (extending regulation of employment practices to out-of-state agencies doing business in New Jersey) (quoting Horwitz v. Reichenstein, 15 N.J. 6, 8, 103 A.2d 881 (1954)).

In this case, the Bureau and respondent insist that the statute is neither silent nor ambiguous, and that the statute's language plainly resolves the issue in their favor. Respondent acknowledges that N.J.S.A. 49:3-68(a) authorizes the Bureau to conduct investigations within and without the State. The authority to subpoena [***15] in N.J.S.A. 49:3-68(b), however, is silent about whether a subpoena may be issued both within and without the State. Thus, according to respondent, the Legislature did not intend that a subpoena be issued outside of the State. The Bureau contends that the absence of any restriction implies that the Legislature intended that the Bureau's subpoena power reach the limits of the Constitution.

Federal courts have required a clear expression from Congress before authorizing extraterritorial service of an investigative subpoena. *See, e.g.*, Commodity Futures Trading Comm'n v. Nahas, 238 U.S. App. D.C. 93, 738 F.2d 487, 492-93 (D.C.Cir.1984). However, entry upon the territory of another nation is far more intrusive than the service of a subpoena in another state. We are not inclined to create a presumption against any legislative intent that the subpoena power extend beyond our borders. We realize there may have been a settled understanding that under judicial rules of practice and procedure in New Jersey a subpoena could not be served outside New Jersey. Recall, however, Justice Brennan's concurring opinion in Burnham v. Superior Court, 495 U.S. 604, 631, n. 3, 110 S. Ct. 2105, 2122, n. 3, 109 L. Ed. 2d 631, 652, n. 3 (1990) [***16] , noting that it should not be assumed "that there is no further progress to be made and that the evolution of our legal system, and the society in which it operates, ended 100 years ago."

[*419] Had the Legislature resolved this issue with sufficient clarity, there would be no debate about the agency's powers. We believe, however, that general principles of administrative law suggest that the Legislature intended the agency to have the authority necessary to fulfill its function to investigate, within and without the State, securities transactions involving New Jersey residents. We must then turn to the questions of constitutional jurisdiction.

III

In an analogous context, a federal court wrote: "The jurisdictional questions posed by this case are peculiarly complex because the jurisdiction of three institutions is at issue * * *." Federal Trade Comm'n v. Compagnie de Saint-Gobain-Pont-A-Mousson (SGPM), 205 U.S. App. D.C. 172, 636 F.2d 1300, 1315 (D.C.Cir.1980). The questions here involve: (1) the jurisdiction of a state to exercise authority over a nonresident; (2) the jurisdiction of an administrative agency of such a state to exercise that authority in the name [***17] of the state through the issuance of an administrative order (a subpoena) to the resident of a foreign state; and (3) the jurisdiction of a court of the issuing state to enforce such a subpoena when the party-subpoenaed is not physically present in the issuing state. *Cf. id.* at 1315-22 (using similar approach to decide validity of service of federal agency subpoena on French corporation by registered mail). We shall consider those questions separately. (We refer to a "state" as a state of the United States, unless we identify the state as being a foreign nation.)

[**1270] A.

Does a state have jurisdiction to exert authority over nonresidents?

A lawsuit is not the only manner in which a state may exert authority over a nonresident. The landmark case of Pennoyer v. Neff, 95 U.S. 714, 733, 24 L. Ed. 565, 572 (1878), held that the judgment of a court lacking personal jurisdiction violated the Due [*420] Process Clause of the Fourteenth Amendment. Perhaps influenced by Austinian concepts of law, *Pennoyer* held that jurisdiction to adjudicate derived from a "power" theory of a state's "exclusive jurisdiction and sovereignty over persons and property within its territory." 95 U.S. at 722, 24 L. Ed. at 568. [***18] It drew on principles of "public law" derived from Justice Story's *Commentaries on the Conflict of Laws:*

> [N]o State can exercise direct jurisdiction and authority over persons or prop-

erty without its territory. Story, Confl.L., ch. 2; Wheat.Int.L., pt. 2, ch. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. "Any exertion of authority of this sort beyond this limit," says Story, "is a mere nullity, and incapable of binding such persons or property in any other tribunals." Story, Confl.L., sec. 539.

[95 U.S. at 722-23, 24 L. Ed. at 568-69.]

Later years, however, saw the weakening of the Pennoyer rule. In the late 19th and early 20th centuries, changes in the technology of transportation and communication, and the tremendous [***19] growth of interstate business activity, led to an "inevitable relaxation of the strict limits on state jurisdiction" over nonresident individuals and corporations. *Hanson v. Denckla*, 357 U.S. 235, 260, 78 S Ct 1228 [1243], 2 L. Ed. 2d 1283 (1958) (Black, J., dissenting).[*Burnham, supra*, 495 U.S. at 617, 110 S. Ct. at 2114, 109 L. Ed. 2d at 643.]

The U.S. Supreme Court formerly resorted to various fictions, such as implied consent. *E.g.*, *Hess v. Pawloski*, 274 U.S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927). Eventually, in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the Court cast those fictions aside and held that [HN4]a state court's assertion of personal jurisdiction does not violate the Due Process Clause if the defendant has "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316, 66 S. Ct. at 158, 90 L. Ed. at 102 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 278, 283 (1940)). The concomitant understanding of legislative jurisdiction [***20] was similarly modified.

[*421] Until recently, it was unclear whether the due process limitation upon a state's extraterritorial application of law mirrored the due process analysis for determining the limits of a state court's judicial jurisdiction. The concepts are closely linked, and commentators have suggested that essentially the same principle should be applied with reference to both situations.

[*McCluney v. Jos. Schlitz Brewing Co.*, 649 F. 2d 578, 581 (8th Cir.), *aff'd*, 454 U.S. 1071, 102 S. Ct. 624, 70 L. Ed. 2d 607 (1981).]

In *Allstate Insurance Co. v. Hague*, 449 U.S. 302, 312-13, 101 S. Ct. 633, 640, 66 L. Ed. 2d 521, 531 (1981), the Court said that [HN5]"for a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."

That elucidation mirrors the principle of prescriptive jurisdiction among nations. [HN6]"It has long been settled law that a country can regulate conduct occurring outside its territory which causes harmful results [***21] within its territory." *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 235 U.S. App. D.C. 207, 731 F.2d 909, 922 (D.C.Cir.1984). Similarly, a state may proscribe conduct occurring outside its borders. In the criminal context, "[t]he common law adopts as the principal basis of jurisdiction a [**1271] territorial theory of jurisdiction over crimes: a state has power to make conduct or the result of conduct a crime if the conduct takes place or the result happens within its territorial limits." 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 2.9(a), at 180 (1986) (footnotes omitted). The New Jersey Code of Criminal Justice reflects that understanding of a state's jurisdiction. A person may be convicted under the laws of this State of an offense if "[e]ither the conduct which is an element of the offense or the result which is such an element occurs within this State." *N.J.S.A.* 2C:1-3a(1).

On the civil side, "[a] State's power over its own citizens should extend to protection of its own citizens' rights when dealing with others even though there may be incidental effects in other jurisdictions." *Instructional Sys., Inc. v. Computer Curriculum Corp.*, 130 N.J. 324, 370, 614 A.2d 124 (1992). [***22] Because the power

[*422] to exert authority over nonresidents exists as a matter of sovereignty, we turn to the next question.

B.

May a state authorize its agencies to subpoena a nonresident to testify or produce documents in the forum state?

The Appellate Division reasoned that because a judicial subpoena may not be served beyond the State's boundaries, a court may not enforce an administrative subpoena issued beyond the State's boundaries. We find, however, that the power to issue a subpoena and the power to enforce a subpoena are different incidents of sovereignty, and such powers are not necessarily identical. A federal court considering a related issue explained that [HN7]"[a] federal court's jurisdiction [to enforce a grand jury subpoena] is not determined by its power to issue a subpoena; its power to issue a subpoena is determined by its jurisdiction." *In re Marc Rich & Co., A.G.*, 707 F.2d 663, 669 (2d Cir.), *cert. denied*, 463 U.S. 1215, 103 S. Ct. 3555, 77L. Ed. 2d 1400 (1983).

[HN8]A subpoena is simply "a command to appear at a certain time and place to give testimony upon a certain matter." *Black's Law Dictionary* 1279 (5th ed. 1979). "[T]he very [***23] etymology of the word 'subpoena' signifies 'an order with a penalty for disobedience.'" *In re Simon*, 297 F. 942, 945 (2d Cir.1924) (quoting *Burns v. Superior Court*, 140 Cal. 1, 73 P. 597, 598 (1903)). Under our law,

> the acquisition of jurisdiction over a foreign corporation through the process of subpoena is governed by the same principles of jurisdiction which apply in the case of civil litigation involving the process of a summons. Both a subpoena and a summons are forms of judicial process by way of orders of the court resulting in potential sanctions for disobedience.
>
> [*In re Subpoena Duces Tecum, Inst'l Management Corp.*, 137 N.J. Super. 208, 216, 348 A.2d 792(App.Div.1975).]

The question is whether a different principle should apply when a state agency issues an order in the form of a subpoena.

Cases analyzing a federal court's authority to enforce subpoenas issued by federal agencies to foreign corporations have first [*423] examined the agency's statutory authority to issue the subpoena extraterritorially. Thus, in *Nahas, supra*, 738 F.2d 487, the court found that the authority of the Commodity Futures Trading Commission was, at that time, strictly limited [***24] by 7 *U.S.C.* § 15 to requiring the attendance of witnesses and the production of records "from any place in the United States or any State at any designated place of hearing." [1] The *Nahas* court relied on a presumption that federal legislation is meant to apply only within the territorial jurisdiction of the United States, and it would not infer the existence of the power to serve an investigative subpoena on a foreign national in a foreign country. *Id.* at 493. The court emphasized, however, that "this case does not pose a question about the authority of Congress; rather, it poses a question about the congressional intent embodied in 7 *U.S.C.* § 15." *Id.* at 495.

> 1 7 *U.S.C.* § 15 has since been amended to allow that agency to require the attendance of witnesses and the production of records "from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing."

[**1272] [HN9]A federal court will enforce an investigative subpoena issued to a foreign [***25] national when it has personal jurisdiction over the subpoenaed party. *In re Sealed Case (Iran-Contra Investigation)*, 266 U.S. App. D.C. 30, 832 F.2d 1268, 1272 (D.C.Cir.1987). A federal court has personal jurisdiction over an individual or business concern with respect to activities or effects within the United States if that entity has certain minimum contacts with the United States. *Id.* at 1273 (citing *International Shoe, supra*, 326 U.S. at 316, 66 S. Ct. at 158, 90 L. Ed. at 102). Thus, in *Marc Rich, supra*, 707 F.2d 663, the court found that a Swiss trading company doing business in the United States could be required to respond to a grand jury subpoena served on a representative within the forum. (Jurisdiction over a representative of the subpoenaed nonresident is insufficient; the nonresident entity must itself have the requisite contacts. *Sealed Case (Iran-Contra Investigation), supra*, 832 F.2d at 1272-73.)

[*424] Although the analogy is less precise in the domestic context than in the international context (after all, the federal government unquestionably may issue process across state lines), we do note that federal courts analyzing issues of enforcement of nationwide [***26] subpoenas by federal agencies have drawn a distinction between the agency's statutory authority to issue the subpoena and the corresponding grant of jurisdiction to a federal court to enforce the subpoena. [HN10]Although a

federal district court's process is generally confined to the territorial limits of the state in which it sits, extraterritorial service of process is proper "when authorized by a statute of the United States." Fed.R.Civ.P. 4(k)(1)(D). The Federal Trade Commission, for example, has the authority to compel the attendance and testimony of witnesses "from any place in the United States, at any designated place of hearing." 15 U.S.C. § 49. In *Federal Trade Commission v. Browning*, 140 U.S. App. D.C. 292, 435 F.2d 96 (D.C.Cir.1970), the court upheld the FTC's statutory power to subpoena witnesses in any district in which an inquiry is being carried on, and the corresponding district court's power to enforce such a subpoena. In *Federal Election Commission v. Committee to Elect Lyndon La Rouche*, 198 U.S. App. D.C. 116, 613 F.2d 849, 858 (D.C.Cir.1979), *cert. denied*, 444 U.S. 1074, 100 S. Ct. 1019, 62 L. Ed. 2d 755 (1980), the court upheld the authority of the FEC (with which Congress [***27] has vested "broad powers of compulsory process," *id.* at 860) to issue nationwide subpoenas, giving it substantial leeway in selecting its place of inquiry for subpoena-enforcement purposes.

We believe that, consistent with the principles of *International Shoe*, [HN11]a State agency may require the appearance of witnesses from outside New Jersey. It is true that there is a difference between this case and *International Shoe*. "The distinction between service of notice and service of compulsory process is a crucial one under principles of both domestic and international law." *SGPM, supra*, 636 F.2d at 1311. *International Shoe* held only that if a cause of action arises within a state, and if it is fair to make a party come into the state to defend, then the action may proceed under pain of default judgment. The forum state does [*425] not care whether the defendant comes in or not. It does not order the party to attend; it does not tell the defendant to do anything. The conclusion does not inevitably follow from *International Shoe* that if a state may exercise personal jurisdiction pursuant to long-arm service, it may exercise its jurisdiction to subpoena to the same limits. [***28] A subpoena compels a person to do something. Long-arm service of process is a state's assertion of jurisdiction, not over a person, but over a cause of action. Such a nonresident is afforded the opportunity to defend, but need not do so--the consequence being a judgment entitled to full faith and credit.

Still, we believe that the measures of sovereign power are ultimately the same. The concepts of "jurisdiction to prescribe" ("the authority of a state to make its law applicable to persons or activities") and "jurisdiction to adjudicate" ("the authority of a state to subject particular persons or things to its judicial process"), 1 *Restatement (Third) of Foreign Relations Laws of the United States* Part IV, at 231 (1987), are closely linked. [HN12]Under principles of international law, "a nation having some 'basis' for jurisdiction to prescribe law" may do so unless "exercising that jurisdiction 'with respect to a person or [**1273] activity having connections with another [nation] * * * is unreasonable.'" *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 113 S. Ct. 2891, 2921, 125 L. Ed. 2d 612, 653 (1993) (Scalia, J., dissenting) (quoting *Restatement (Third) of Foreign Relations, supra*, § 403(1)). [***29] Is not that articulation of the power to prescribe (albeit expressed in the international context) almost identical to *International* Shoe's delineation of the jurisdiction to adjudicate consistent with due process principles? *McCluney, supra*, 649 F.2d at 581. *See Institutional Management, supra*, 137 N.J. Super. at 216, 348 A.2d 792 (equating the jurisdiction to subpoena with the jurisdiction to serve initial process).

Respondent relies on *Minder v. Georgia*, 183 U.S. 559, 562, 22 S. Ct. 224, 225, 46 L. Ed. 328, 330 (1902), for the proposition that "the lawmaking power of the state is powerless to make any provision which would result in the compulsory attendance of the [*426] [out-of-state] witnesses * * *." *Minder* was decided long before *International Shoe*, but even then it would have been only marginally relevant to the issues here. The issue in *Minder* was whether a criminal defendant in Georgia had received a fair trial when he could not subpoena material defense witnesses who were outside Georgia. At that time, Georgia law made no provision to subpoena out-of-state witnesses. (That issue has since been [***30] addressed by the *Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings*, adopted in New Jersey as N.J.S.A. 2A:81-18 to -23.)

The question in this case is not whether a state may compel attendance in the forum of any out-of-state witness, but rather whether it may require the attendance of one who has purposely availed himself of the privilege of entering regulated securities markets in the forum state. Finally, [HN13]personal service of the subpoena within the territorial boundaries of the issuing state is not a prerequisite to a valid administrative order to appear. In his concurring opinion in *SGPM, supra*, 636 F.2d at 1327, Judge McGowan observed that Congress had explicitly authorized extraterritorial service by registered mail of civil investigative demands in antitrust matters. *See also id.* at 1321 (majority opinion) (discussing agency's subject matter jurisdiction and technique of service, and investigative demands and issues of enforcement jurisdiction). We agree that absent "purposeful availment," the jurisdiction to proscribe conduct in another forum would not suffice to confer jurisdiction to enforce a civil investigative [***31] demand in the territory of another state. *Cf. id.* at 1316 (recognizing that a nation having

jurisdiction to prescribe a rule of law does not necessarily have jurisdiction to enforce it).

C.

What is the proper role of a state court in enforcing such an administrative subpoena?

Courts play a critical role in this administrative process. First, judicial involvement ensures administrative due process. [HN14]"The [*427] system of judicial enforcement is designed to provide a meaningful day in court for one resisting an administrative subpoena." *United States v. Security State Bank & Trust*, 473 F.2d 638, 642 (5th Cir.1973). "Bifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power." *United States v. Bell*, 564 F.2d 953, 959 (Temp.Emer.Ct.App.1977). Second, judicial enforcement clarifies the rights arising from specific disputes in matters concerning both the general public and the individuals involved. [HN15]"One of the functions of a court is to compel a party to perform a duty which the law requires at his [or her] hands." *Interstate Commerce Comm'n v. Brimson*, 154 U.S. 447, 487, 14 S. Ct. 1125, 1137, 38 L. Ed. 1047, 1061 (1894). [***32] Agency law invokes enforcement "in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it * * *." *Ibid.* No question of contempt may arise until all issues are determined adversely to a party and that party has refused to obey a final order of the court. 154 U.S. at 488-89, 14 S. Ct. at 1137-38, 38 L. Ed. at 1061.

[**1274] [HN16]For those reasons of fairness and efficiency of administration, "federal courts have drawn a sharp distinction between agency power to *issue* subpoenas and judicial power to *enforce* them." *United States v. Hill*, 224 U.S. App. D.C. 138, 694 F.2d 258, 263 (D.C.Cir.1982) . Federal courts enforcing administrative subpoenas are strictly limited by their jurisdictional grants. On the other hand, the Legislature has given our courts plenary jurisdiction to enforce the agency's subpoena. *N.J.S.A.* 49:3-68.

Respondent insists that because New Jersey's courts have not the power to issue subpoenas beyond state lines, they have not the power to enforce subpoenas issued to [***33] out-of-state witnesses by agencies of the State. Citing *King v. Hochberg*, 17 N.J. Super. 533, 86 A.2d 307 (Ch.Div.1952), respondent contends that New Jersey courts do not have the authority to compel the testimony of nonresident witnesses. Our Court Rules do limit the power to [*428] compel attendance of witnesses at a court hearing to those witnesses who may be served "within the State of New Jersey." *R.* 1:9-4. And our Court Rules authorizing the use in this State of the deposition of a non-party witness in a foreign state apply only if the foreign state has a reciprocal procedure. Sylvia B. Pressler, *Current N.J.Court Rules*, comment on *R.* 4:11-5 (1995). We do not believe that those Rules resolve the issue of *agency* power. The Appellate Division reasoned that "[a] court cannot accord an agency's subpoena greater power than a subpoena issued in the name of the court via enforcement." 276 N.J. Super. at 10, 647 A.2d 160 (citing *Doumani v. Casino Control Comm'n*, 614 F. Supp. 1465, 1471 (D.N.J.1985)). *Doumani* does not establish that proposition, but only that an agency's authority to regulate nonresident interests may not exceed the due process limits that restrain courts. [***34] 614 F. Supp. at 1471.

The issue, then, is not what the Court Rules permit or do not permit New Jersey courts to do. The issue is whether the State may grant an agency extraterritorial authority over nonresident witnesses consistent with due process principles. If the Legislature grants such power, the proper role of a court under *N.J.S.A.* 49:3-68 is to ensure that principles of due process and comity between states have been observed in the issuance of the subpoena.

In that connection, we turn first to the provisions of *Rule* 1:9-6. That Rule sets forth the procedures for enforcement of a subpoena of a public officer or agency. Any application for compliance shall be on notice to the party subject to subpoena. Because the Bureau's enabling act does not specify the sanction for failure of a person to obey a subpoena, we may infer that only the usual procedures for relief to litigants under *Rule* 1:10-3 would be available. *See In re Daniels*, 118 N.J. 51, 60, 570 A.2d 416 (outlining the difference between criminal contempt and civil contempt in the form of relief to litigants), *cert. denied*, 498 U.S. 951, 111 S. Ct. 371, 112 L. Ed. 2d 333 (1990).

[*429] Because the [***35] party subpoenaed is, by definition, not within the jurisdiction, an order of confinement to achieve compliance would not be appropriate. *See In re Bridge*, 120 N.J. Super. 460, 468-69, 295 A.2d 3 (App.Div.) (discussing civil sanctions and confinement to secure compliance with order), *certif. denied*, 62 N.J. 80, 299 A.2d 78 (1972), *cert. denied*, 410 U.S. 991, 93 S. Ct. 1500, 36 L. Ed. 2d 189 (1973). A court granting relief to an agency seeking civil sanctions to enforce a subpoena would consider the provisions of *N.J.S.A.* 2A:10-5 (maximum $ 50 fine as penalty) and any payment to the aggrieved party authorized under *Rule* 1:10-3.

In considering other interests of due process and comity, a court may be guided by the familiar principles

of international relations that seek to minimize "infringements upon foreign sovereignty." SGPM, supra, 636 F.2d at 1324. [HN17]In deciding whether to exercise enforcement jurisdiction, courts should "balance the interests it seeks to protect against the interests of any other sovereign that might exercise authority over the same conduct." Republic of Phil. v. Westinghouse Elec. Corp., 43 F.3d 65, 76 (3d Cir.1994). Because each sovereign [***36] has an interest in the welfare of its citizens, we would add, in this context, that a court must consider (1) the extent and nature of the hardship that inconsistent enforcement actions would impose on the person subpoenaed; [**1275] (2) the extent to which the required conduct is to take place in the territory of the other state; (3) the residence of the person subpoenaed; and (4) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state. To minimize the degree of intrusion on the sovereignty of the other state, we insist that in the future the process be served only by those authorized to do so under the laws of that state.

There is a concern that the State's efforts to subpoena an out-of-state witness and the enforcement proceedings of the court will be pointless because there will be no effective way thereafter to enforce the subpoena in a New Jersey court without the physical presence of the party in the forum. Respondent reminds us that [*430] "'[t]he doctrine that a court of equity will not do a useless or vain thing is an ancient maxim of hornbook learning and general recognition.' 55 N.Y.Jur.2d *Equity* § 106 (1994)," [***37] and cites Fiedler v. Coast Finance Co., Inc., 129 N.J. Eq. 161, 169, 18 A.2d 268 (E. & A.1941) ("Decrees that would in the final result be nugatory should not be made.").

We agree that nugatory decrees should not be made. In the normal course of events, "[w]hen the process of adjudication is complete, all judgments are handed over to the litigant or executive officers, such as the sheriff or marshal, to execute. Steps which the litigant or executive department lawfully takes for their enforcement are a vindication rather than a usurpation of the court's power." United States v. Morton Salt Co., 338 U.S. 632, 641, 70 S. Ct. 357, 363, 94 L. Ed. 401, 410, (1950). [HN18]The sheriff of a New Jersey county has no authority to enter New York. However, it does not follow that an adjudication of civil contempt under our Court Rules is a fruitless exercise; such civil sanctions are entitled to full faith and credit in the foreign jurisdiction. New York v. Sacco, 242 N.J. Super. 699, 577 A.2d 1333 (Law Div.1990); Gedeon v. Gedeon, 630 P.2d 579 (Colo.1981); Robinson v. Robinson, 487 So. 2d 67 (Fla.Dist.Ct.App.1986). By later resort to the courts of the other state, [***38] the subpoenaed witness will be further guaranteed due process of law. In considering whether to accord full faith and credit to a judgment of another state, a forum state must consider whether the state rendering the judgment had jurisdiction over the defendant. May v. Anderson, 345 U.S. 528, 533, 73 S. Ct. 840, 843, 97 L. Ed. 1221, 1226-27 (1953).

IV

Fifty years ago, the U.S. Supreme Court decided that the assertion of jurisdiction by the courts of one state over a defendant from another state does not violate the Due Process Clause of the Fourteenth Amendment if the defendant has "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial [*431] justice.'" International Shoe, supra, 326 U.S. at 316, 66 S. Ct. at 158, 90 L. Ed. at 102 (quoting Milliken, supra, 311 U.S. at 463, 61 S. Ct. at 342, 85 L. Ed. at 283). Since *International Shoe,* state and federal courts have asserted original jurisdiction over residents throughout the United States, subject to the "minimum contacts" test. We believe that our decision today comports with the *International Shoe* doctrine [***39] and with the expanding role of states in the federalist system. Berkson can easily respond to the Bureau subpoena; trains, ferries, subways, buses, taxis, and private-passenger vehicles regularly cross the Hudson River to New Jersey. Moreover, the record suggests that he has been in New Jersey on several occasions in connection with the transactions that are the subject of the Bureau's investigation.

As the federal government reduces its regulatory role and state governments increase theirs, the need to develop coherent principles of cooperation among states intensifies. Ultimately, the U.S. Supreme Court may review this decision or a similar one. That review will close the circle and return the issue to the Court that decided *International Shoe.* In the meantime, a form of horizontal federalism, one in which states cooperate with each other in the discharge of their governmental duties, is both timely and reasonable. An example of such cooperation is the *Uniform Child Custody Jurisdiction Act,* codified in New Jersey at N.J.S.A. 2A:34-28 [**1276] to -52, which defines the roles of states in enforcing conflicting claims to child custody.

Practical problems will inevitably arise [***40] concerning the extraterritorial enforcement of subpoenas. One response would be to wait until the state legislatures have adopted appropriate laws. The need for such legislation extends throughout the United States. Organizations such as the Commissioners on Uniform State Laws and the American Law Institute are well situated to propose uniform or model laws for adoption in every state. See Pamela Jiminez, Comment, *International Securities Enforcement Cooperation Act and Memoranda of Un-*

derstanding, 31 Harv. Int'l L.J. 295 (1990) (providing examples of such compacts among nations). [*432] Our decision may serve to stimulate the adoption of such legislation. We believe, however, that we should respond to the issue now.

To sum up, we hold that it is reasonable to infer that the Legislature would, consistent with principles of due process, intend that the Bureau's administrative power to compel the attendance of witnesses be coextensive with its substantive mandate to investigate securities transactions "within or outside of this State." *N.J.S.A.* 49:3-68(a). Consistent with principles of due process, that authority shall be limited to subpoenaing witnesses who have purposefully availed [***41] themselves of the privilege to enter the New Jersey securities market. Before enforcing an agency subpoena, a court must determine that the party subpoenaed has engaged in such deliberate conduct. A court should consider the fairness to the witness and whether other available methods of discovery, such as videotaped depositions in the foreign state, would adequately serve the agency's needs without the inconvenience to the witness of appearing in New Jersey. Although this case presents the circumstance of a witness having to travel only a short distance from New York to Newark, there will be cases in which witnesses will need to travel from distant jurisdictions. In considering any civil sanctions to be imposed, a court shall not impose an order of arrest and shall limit monetary sanctions in accordance with the relevant principles applicable to *Rule* 1:10-3 procedures.

We express no opinion on the wisdom or fairness of the Bureau's policy of issuing subpoenas to those outside New Jersey, or the extent to which such a policy affects the relations between New Jersey and other states. We do not believe, however, that the limited breadth that we give to such subpoena power will offend [***42] principles of comity. Our decision does not authorize restraints on the liberty interests of persons outside New Jersey's borders. Finally, we acknowledge that the matter is entirely within the legislative ambit and would best be resolved there.

The judgment of the Appellate Division is reversed. The matter is remanded to the Chancery Division for further proceedings in accordance with this opinion.

[*433] **CHIEF JUSTICE WILENTZ and JUSTICES HANDLER, POLLOCK, GARIBALDI, and STEIN join in JUSTICE O'HERN's opinion. JUSTICE COLEMAN did not participate.**

Citation #2
141 NJ 412

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Silverman v. Berkson, 141 N.J. 412, 661 A.2d 1266, 1995 N.J. LEXIS 533, Blue Sky L. Rep. (CCH) P74055 (1995)

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Restrictions: *Unrestricted*
FOCUS(TM) Terms: *No FOCUS terms*
Print Format: *FULL*
Citing Ref. Signal: *Hidden*

SHEPARD'S SUMMARY

Unrestricted *Shepard's* Summary

No negative subsequent appellate history.

Citing References:

Positive Analyses:	**Followed (1)**
Neutral Analyses:	Conflict Authority (1), Dissenting Op. (2)
Other Sources:	Law Reviews (4), Statutes (5), Treatises (6), Court Documents (4)

LexisNexis Headnotes: HN1 (8), HN2 (2), HN5 (1), HN6 (1), HN7 (1), HN8 (2), HN18 (1)

PRIOR HISTORY (4 citing references)

1. Silverman v. Berkson, 276 N.J. Super. 6, 647 A.2d 160, 1994 N.J. Super. LEXIS 380 (App.Div. 1994)

2. **Certification granted by:**
Silverman v. Berkson, 138 N.J. 268, 649 A.2d 1288, 1994 N.J. LEXIS 968 (1994)

3. **Later proceeding at:**
In re Berkson, 280 N.J. Super. 180, 654 A.2d 1030, 1995 N.J. Super. LEXIS 115, Blue Sky L. Rep. (CCH) P74041 (App.Div. 1995)

4. **Certification granted by, Remanded by:**
In re N.J. Bureau of Secs. for an Open Comm'n Under Rule 4:11-5(b) to Examine Under Oath Robert G. Berkson, 142 N.J. 513, 665 A.2d 1105, 1995 N.J. LEXIS 1282 (1995)

Reversed by, Remanded by (CITATION YOU ENTERED):
Silverman v. Berkson, 141 N.J. 412, 661 A.2d 1266, 1995 N.J. LEXIS 533, Blue Sky L. Rep. (CCH) P74055 (1995)

SUBSEQUENT APPELLATE HISTORY (1 citing reference)

5. **Writ of certiorari denied:**
Berkson v. Silverman, 516 U.S. 975, 116 S. Ct. 476, 133 L. Ed. 2d 405, 1995 U.S. LEXIS 7739, 64 U.S.L.W. 3347 (1995)

CITING DECISIONS (17 citing decisions)

NEW JERSEY SUPREME COURT

6. **Cited in Dissenting Opinion at:**

State v. Fortin, 178 N.J. 540, 843 A.2d 974, 2004 N.J. LEXIS 18 (2004) **LexisNexis Headnotes HN1**
178 N.J. 540 p.654
843 A.2d 974 p.1040

7. **Cited by:**
Warren County Cmty. College v. Warren County Bd. of Chosen Freeholders, 176 N.J. 432, 824 A.2d 1073, 2003 N.J. LEXIS 667 (2003)
176 N.J. 432 p.442
824 A.2d 1073 p.1079

8. **Cited by:**
In re Commitment of W.Z., 173 N.J. 109, 801 A.2d 205, 2002 N.J. LEXIS 905 (2002) **LexisNexis Headnotes HN1**
173 N.J. 109 p.126
801 A.2d 205 p.215

9. **Cited in Dissenting Opinion at:**
Dep't of Corr. v. Int'l Fed'n. Prof'l & Tech. Eng'rs, Local 195, 169 N.J. 505, 780 A.2d 525, 2001 N.J. LEXIS 796, 167 L.R.R.M. (BNA) 2717, 144 Lab. Cas. (CCH) P59398 (2001) **LexisNexis Headnotes HN1, HN6**
169 N.J. 505 p.540
780 A.2d 525 p.547

10. **Cited by:**
State v. Johnson, 166 N.J. 523, 766 A.2d 1126, 2001 N.J. LEXIS 179 (2001) **LexisNexis Headnotes HN1**
166 N.J. 523 p.540
766 A.2d 1126 p.1136

11. **Cited by:**
Blakey v. Continental Airlines, 164 N.J. 38, 751 A.2d 538, 2000 N.J. LEXIS 650, 80 Empl. Prac. Dec. (CCH) P40458, 16 I.E.R. Cas. (BNA) 809 (2000) **LexisNexis Headnotes HN18**
164 N.J. 38 p.69
751 A.2d 538 p.556

12. **Followed by:**
In re N.J. Bureau of Secs. for an Open Comm'n Under Rule 4:11-5(b) to Examine Under Oath Robert G. Berkson, 142 N.J. 513, 665 A.2d 1105, 1995 N.J. LEXIS 1282 (1995)
142 N.J. 513 p.513
665 A.2d 1105 p.1105

NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

13. **Cited by:**
Arias v. Figueroa, 395 N.J. Super. 623, 930 A.2d 472, 2007 N.J. Super. LEXIS 293 (App.Div. 2007) **LexisNexis Headnotes HN5**
395 N.J. Super. 623 p.629
930 A.2d 472 p.476

14. **Cited by:**
Hardwicke v. American Boychoir School, 368 N.J. Super. 71, 845 A.2d 619, 2004 N.J. Super. LEXIS 113 (App.Div. 2004) **LexisNexis Headnotes HN1**
368 N.J. Super. 71 p.95
845 A.2d 619 p.634

15. **Cited by:**
Plata v. Division of Alcoholic Beverage Control, 360 N.J. Super. 92, 821 A.2d 542, 2003 N.J. Super. LEXIS 159 (App.Div. 2003)
360 N.J. Super. 92 p.97
821 A.2d 542 p.544

16. **Cited by:**
Rider Ins. Co. v. First Trenton Cos., 354 N.J. Super. 491, 808 A.2d 143, 2002 N.J. Super. LEXIS 419 (App.Div. 2002) **LexisNexis Headnotes HN2**
354 N.J. Super. 491 p.499
808 A.2d 143 p.148

17. **Among conflicting authorities noted in:**
Cavallaro 556 Valley St. Corp. v. Div. of Alcoholic Bev. Control, 351 N.J. Super. 33, 796 A.2d 938, 2002 N.J. Super. LEXIS 234 (App.Div. 2002) **LexisNexis Headnotes HN2**
351 N.J. Super. 33 p.398
796 A.2d 938 p.941

18. **Cited by:**
Greer v. New Jersey Bureau of Sec., 288 N.J. Super. 69, 671 A.2d 1080, 1996 N.J. Super. LEXIS 88, Blue Sky L. Rep. (CCH) P74102 (App.Div. 1996) **LexisNexis Headnotes HN7, HN8**
288 N.J. Super. 69 p.77
671 A.2d 1080 p.1084

NEW JERSEY SUPERIOR COURT, CHANCERY DIVISION

19. **Cited by:**
In re Parentage of Robinson, 383 N.J. Super. 165, 890 A.2d 1036, 2005 N.J. Super. LEXIS 387 (Ch.Div. 2005) **LexisNexis Headnotes HN1**
383 N.J. Super. 165 p.175
890 A.2d 1036 p.1042

20. **Cited by:**
In re Mossavi, 334 N.J. Super. 112, 756 A.2d 1076, 2000 N.J. Super. LEXIS 338 (Ch.Div. 2000) **LexisNexis Headnotes HN8**
334 N.J. Super. 112 p.119
756 A.2d 1076 p.1080

OTHER NEW JERSEY DECISIONS

21. **Cited by:**
Township of Holmdel v. New Jersey Turnpike Authority, 22 N.J. Tax 428, 2005 N.J. Tax LEXIS 16 (Tax

Ct. 2005) **LexisNexis Headnotes HN1**
22 N.J. Tax 428 p.466

3RD CIRCUIT - COURT OF APPEALS

22. **Cited by:**
Keeley v. Loomis Fargo & Co., 183 F.3d 257, 1999 U.S. App. LEXIS 16654, 138 Lab. Cas. (CCH) P58676, 5 Wage & Hour Cas. 2d (BNA) 815 (3d Cir. N.J. 1999) **LexisNexis Headnotes HN1**
183 F.3d 257 p.264

ANNOTATED STATUTES (5 Citing Statutes)

23. USCS Const. Amend. 14, @ 5

24. USCS Const. Art. IV, @ 1

25. 28 USCS @ 1738

26. N.J. Stat. @ 49:3-68

27. NY CLS CPLR @ 301

LAW REVIEWS AND PERIODICALS (4 Citing References)

28. ARTICLE: THE AUTHORITY OF AN ADMINISTRATIVE AGENCY TO DECIDE CONSTITUTIONAL ISSUES: RICHARDSON V. TENNESSEE BOARD OF DENTISTRY, 17 J. NAALJ 173 (1997)

29. 2003 L. Rev. M.S.U.-D.C.L. 115
2003 L. Rev. M.S.U.-D.C.L. 115 p.115

30. NOTE: Minimum Contacts, No Dog: Evaluating Personal Jurisdiction for Nonparty Discovery, 88 Minn. L. Rev. 968 (2004)
88 Minn. L. Rev. 968 p.968

31. ARTICLE: THE SUPREME COURT, THE GUN INDUSTRY, AND THE MISGUIDED REVIVAL OF STRICT TERRITORIAL LIMITS ON THE REACH OF STATE LAW, 2003 Mich. St. DCL L. Rev. 115 (2003)

TREATISE CITATIONS (6 Citing Sources)

32. 1-4 Blue Sky Regulation @ 4.03

33. 1-5 LexisNexis Practice Guide NJ Civil Discovery @ 5.05

34. 1-3 LexisNexis Practice Guide NJ Pretrial Practice @ 3.27

35. 1-3 LexisNexis Practice Guide NJ Pretrial Practice @ 3.28

36. 2-22 Securities Enforcement: Counseling and Defense @ 22.02

37. 7-93 Securities Law Techniques @ 93.01

BRIEFS (1 Citing Brief)

38. RECORDING INDUS. ASS'N OF AMERICA v. CHARTER COMMUNS., INC., 2003 U.S. 8th Cir. Briefs 3802, 2004 U.S. 8th Cir. Briefs LEXIS 333 (8th Cir. Jan. 26, 2004)

MOTIONS (3 Citing Motions)

39. S. BROWARD HOSP. DIST. v. MEDQUIST, INC., 2005 U.S. Dist. Ct. Motions 847510, 2006 U.S. Dist. Ct. Motions LEXIS 55640 (D.N.J. Feb. 22, 2006)

40. S. BROWARD HOSP. DIST. v. MEDQUIST, INC., 2005 U.S. Dist. Ct. Motions 847510, 2006 U.S. Dist. Ct. Motions LEXIS 55637 (D.N.J. Feb. 8, 2006)

41. S. BROWARD HOSP. DIST. v. MEDQUIST, INC., 2005 U.S. Dist. Ct. Motions 847510, 2006 U.S. Dist. Ct. Motions LEXIS 55631 (D.N.J. Jan. 20, 2006)

LEXSEE

Caution
As of: Aug 12, 2008

NEW JERSEY GUILD OF HEARING AID DISPENSERS, A NON-PROFIT CORPORATION OF THE STATE OF NEW JERSEY; JOSEPH IACONO AND ROBERT P. AHRENS, APPELLANTS, v. VIRGINIA LONG, DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS; THE DIVISION OF CONSUMER AFFAIRS, AN AGENCY OF THE STATE OF NEW JERSEY; THE HEARING AID DISPENSERS EXAMINING COMMITTEE AND THE STATE BOARD OF MEDICAL EXAMINERS, AGENCIES OF THE STATE OF NEW JERSEY UNDER THE JURISDICTION OF THE DIVISION OF CONSUMER AFFAIRS, RESPONDENTS

[NO NUMBER IN ORIGINAL]

Supreme Court of New Jersey

75 N.J. 544; 384 A.2d 795; 1978 N.J. LEXIS 178

December 13, 1977, Argued
March 9, 1978, Decided

PRIOR HISTORY: New Jersey Guild of Hearing Aid Dispensers v. Long, 145 N.J. Super. 580, 368 A.2d 929, 1976 N.J. Super. LEXIS 643 (App.Div., 1976)

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, a non-profit guild and two of its officers, appealed an order of the Appellate Division (New Jersey), which upheld the validity of regulations governing hearing aid dispensers, promulgated under the Hearing Aid Dispensers Act, N.J. Stat. Ann. § 45:9A-1 et seq.

OVERVIEW: Plaintiffs, a non-profit guild and two of its officers, challenged an appellate court decision upholding the validity of state regulations enacted under a state statute governing the sale and distribution of hearing aids. The court rejected plaintiffs' arguments, which challenged the regulations as ultra vires on the grounds that they contravened legislative intent. Plaintiffs also contended that the regulations were preempted by a proposed federal regulatory scheme. The court dissolved the stay of enforcement and affirmed the judgment on the grounds that plaintiffs' contention that the statute never envisioned regulating the business aspects of hearing aid dispensing was without foundation, and the federal regulatory scheme implicitly allowed supplemental state regulation. The court, however, voided the state statute's pre-sale test requirements for hearing aids, because they were explicitly preempted by federal regulations.

OUTCOME: The stay of enforcement of the regulations was lifted and the judgment of the appellate court was affirmed as modified by the holding that the pre-sale hearing aid test requirements of the state regulations were preempted by the proposed federal regulatory scheme.

CORE TERMS: hearing aid, preemption, dispenser, preempted, exemption, dispensing, aids, state law, federal requirements, consumer, guideline, pre-sale, profession, antitrust, testing, audiologist, preemptive, preempt, citation omitted, promulgated, medical evaluation, administrative agency, federal preemption, delegated, federal law, preemption issue, prospective purchasers, police power, promulgation, deference

LexisNexis(R) Headnotes

Governments > State & Territorial Governments > Police Power

Healthcare Law > Business Administration & Organization > Licenses > General Overview

[HN1]The Hearing Aid Dispensers Act, N.J. Stat. Ann. § 45:9A-1 et seq., defines the activity it seeks to regulate, the practice of dispensing and fitting hearing aids, as the evaluation or measurement of human hearing and the consequent selection for adaptation or sale of hearing aids intended to compensate for hearing loss. A hearing aid dispenser is defined as a person engaged in the fitting and selling of hearing aids to a person with impaired hearing. N.J. Stat. Ann. § 45:9A-2(d). The committee created for this purpose is empowered to set educational and licensing requirements for practitioners, and to grant temporary licenses in certain circumstances. N.J. Stat. Ann. § 45:9A-16.

Antitrust & Trade Law > Consumer Protection > False Advertising > State Regulation

Governments > State & Territorial Governments > Licenses

Governments > State & Territorial Governments > Police Power

[HN2]The New Jersey Director of Consumer Affairs is authorized to discipline licensees for enumerated types of misconduct, the most expansive category of which is "unethical conduct," defined to include, inter alia, the obtaining of any fee or the making of any sale by fraud or misrepresentation, N.J. Stat. Ann. § 45:9A-17(c)(1), the use of misleading or false advertising or other representations, the use of bait and switch sales tactics, N.J. Stat. Ann. § 45:9A-17(c)(4), and the use of representations connoting medical expertise. N.J. Stat. Ann. § 45:9A-17(c)(5), as well as for violations of the Hearing Aid Dispensers Act or the Committee rules and regulations, N.J. Stat. Ann. § 45:9A-17(f). In addition, violations of the Hearing Aid Dispensers Act, N.J. Stat. Ann. § 45:9A-1 et seq., are subject to penalties and, where appropriate, restitution. N.J. Stat. Ann. § 45:9A-19. They are also enjoinable at the suit of the director of Consumer Affairs. N.J. Stat. Ann. § 45:9A-20.

Governments > State & Territorial Governments > Police Power

Healthcare Law > Business Administration & Organization > Licenses > Requirements

[HN3]Specifically exempted from the coverage of the Hearing Aid Dispensers Act, N.J. Stat. Ann. § 45:9A-1 et seq., are hearing aid dispensers whose practices are affiliated with academic institutions, public programs, or charitable organizations, unless such dispensers sell hearing aids; also exempted are licensed physicians. N.J. Stat. Ann. § 45:9A-22.

Administrative Law > Agency Adjudication > Hearings > General Overview

Governments > Legislation > Effect & Operation > General Overview

Governments > State & Territorial Governments > Police Power

[HN4]Licensed dispensers are required to advise prospective purchasers at the outset of a hearing aid dispenser's lack of medical or audiological expertise and to provide all purchasers with a detailed written receipt which includes a statement that the purchaser has been so advised. N.J. Stat. Ann. § 45:9A-23. Whenever a licensee learns that a prospective purchaser has certain ascertainable medical conditions, he must, prior to fitting and selling a hearing aid to that person, recommend in writing that the person consult a hearing specialist or other physician (providing the names and addresses of at least three such physicians) and receive a receipt from the prospective purchaser acknowledging that the recommendation has been given. N.J. Stat. Ann. § 45:9A-24.

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act

Healthcare Law > Business Administration & Organization > Licenses > General Overview

Healthcare Law > Treatment > Medical Devices > Classification & Regulation

[HN5]The Federal Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 301 et seq., provides the Food and Drug Administration with specific statutory authorization to regulate "medical devices" so as to ensure their safety and effectiveness prior to their marketing to consumers.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act

Healthcare Law > Business Administration & Organization > Licenses > General Overview

[HN6]The Food and Drug Administration is given Premark clearance authority with respect to, inter alia, devices that are intended for human use and which do not operate chemically or require metabolization in order to achieve their intended effect. Pursuant to the grant of authority contained in the amended Federal Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 301 et seq., the commissioner of Food and Drugs, on behalf of the Secretary of Health, Education and Welfare, proposed regulations covering the labeling and conditions of sale of hearing aids. These regulations as originally promulgated became effective on August 25, 1977.

Contracts Law > Types of Contracts > Lease Agreements > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > General Overview
[HN7]The Food and Drug Administration (FDA) hearing aid regulations are divided into two sections, one concerned with labeling requirements for hearing aids, 21 C.F.R. § 801.420, and the other, 21 C.F.R. § 801/421, imposing certain conditions on and preconditions to their sale. The FDA distinguishes between three categories of professionals involved with hearing disabled persons: the "ear specialist," a licensed physician specializing in the diagnosis and treatment of ear diseases and hearing loss problems, 21 C.F.R. § 801.420(a)(2); the "audiologist," a trained specialist in the evaluation and rehabilitation of persons with hearing disorders, 21 C.F.R. § 801.420(a)(4); and the "dispenser," engaged in the sale, lease or rental of hearing aids to the consuming public, 21 C.F.R. § 801.420(a)(3).

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > Licenses > General Overview
[HN8]The Food and Drug Administration has established the medical evaluation of the prospective user as a mandatory precondition to the sale of a hearing aid to that person; said evaluation must have been made within the preceding six months. 21 C.F.R. § 801.421(a)(1). However, the medical evaluation may be waived by a prospective adult user under certain specified conditions. 21 C.F.R. § 801.421(a)(2).

Administrative Law > Agency Rulemaking > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > Licenses > General Overview
[HN9]The amended Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C.S. § 301 et seq., contains an explicit statutory provision concerning the preemptive effect of the FDCA and regulations promulgated pursuant thereto on any state or local requirements. A procedure is established whereby otherwise preempted state and local requirements may receive an exemption from preemption by the FDCA upon meeting certain enumerated criteria. 21 U.S.C.S. § 360k. The Food and Drug Administration has promulgated proposed regulations detailing the administrative procedures to be followed in determining whether a particular state or local requirement is preempted by the FDCA and in applying, if necessary, for an exemption from federal preemption. Proposed 21 C.F.R. § 808.1 et seq., 42 Fed. Reg. 30383-9 (June 14, 1977).

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > Licenses > General Overview
[HN10]See 21 U.S.C.S. § 360k.

Administrative Law > Agency Rulemaking > State Proceedings
[HN11]Quasi-legislative administrative rulemaking does not require specific findings of fact based on evidence adduced at the public hearing in support of each regulatory provision subsequently adopted and further that the existence of such supporting factual bases would be presumed until rebutted by the party attacking the administrative action.

Administrative Law > Agency Rulemaking > State Proceedings
Administrative Law > Judicial Review > Standards of Review > General Overview
[HN12]Administrative regulations must be accorded a presumption of reasonableness and place the burden on the attacking party to demonstrate that they are arbitrary, capricious, unduly onerous or otherwise unreasonable.

Administrative Law > Agency Rulemaking > State Proceedings
Administrative Law > Judicial Review > Standards of Review > General Overview
[HN13]Administrative rules and regulations have in their support the rebuttable presumption of validity if they come within the ambit of delegated authority, and that unless such regulations are clearly ultra vires on their face, the party contesting them has the burden of proving their invalidity.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > Validity
Administrative Law > Separation of Powers > Legislative Controls > General Overview
Environmental Law > Litigation & Administrative Proceedings > Judicial Review
[HN14]The reviewing court is not confined to consideration of the statutory authority for a particular regulation

cited by the administrative agency but may consider the entire enabling legislation in order to ascertain if there is in fact sufficient underlying authority. As a result of this customary rebuttable presumption of validity and regularity afforded to administrative regulations generally, an ultra vires finding is disfavored.

Administrative Law > Agency Rulemaking > State Proceedings
Administrative Law > Judicial Review > Standards of Review > General Overview
[HN15]An administrative regulation, purporting to effectuate a statute, will not be set aside on the ground that it transgresses the statute unless the transgression is plain; the presumption is in favor of validity.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
[HN16]An administrative regulation must be within the fair contemplation of the delegation of the enabling statute. The authority possessed by an administrative agency consists of the powers expressly granted, which in turn are attended by those incidental powers that are reasonably necessary or appropriate to effectuate the specific delegation.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
[HN17]The grant of authority to an administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and that the courts should readily imply such incidental powers as are necessary to effectuate fully the legislative intent.

Administrative Law > Separation of Powers > Legislative Controls > General Overview
Governments > State & Territorial Governments > Licenses
[HN18]Where the task of the regulatory agency is to protect the health and welfare of members of the public by assuring that all licensed practitioners are qualified, competent and honest, the grant of implied powers is particularly important.

Administrative Law > Judicial Review > Standards of Review > General Overview
Administrative Law > Separation of Powers > Constitutional Controls > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
[HN19]In determining whether a particular administrative act enjoys statutory authorization, the reviewing court may look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives. The purpose of this inquiry is to ascertain whether the requisite authority may be said to be implicitly supplied, as that which is implied is as much a part of the law as that which is expressed.

Administrative Law > Judicial Review > Reviewability > Factual Determinations
Administrative Law > Judicial Review > Standards of Review > General Overview
[HN20]Another basic tenet of judicial review is that the courts are not free to substitute their judgment as to the wisdom of a particular administrative action for that of the agency so long as that action is statutorily authorized and not otherwise defective because arbitrary or unreasonable.

Administrative Law > Judicial Review > Reviewability > Factual Determinations
Administrative Law > Judicial Review > Standards of Review > General Overview
[HN21]If there is any fair argument in support of the course taken by the agency or any reasonable ground for difference of opinion among intelligent and conscientious officials, the decision is conclusively legislative, and will not be disturbed unless patently corrupt, arbitrary or illegal. Doubts held by the court as to the wisdom of the administrator's decision do not alter the case.

Antitrust & Trade Law > Exemptions & Immunities > Parker State-Action Doctrine > General Overview
[HN22]See N.J. Admin. Code tit. 13, § 35-8.24(k)(4).

Antitrust & Trade Law > Exemptions & Immunities > Parker State-Action Doctrine > General Overview
Antitrust & Trade Law > Sherman Act > General Overview
[HN23]The threshold inquiry in determining if an anticompetitive activity is state action of the type the Sherman Act, 15 U.S.C.S. § 1 et seq., was not meant to proscribe is whether the activity is required by the state

acting as sovereign. The anticompetitive activities must be compelled by direction of the state acting as a sovereign.

Governments > State & Territorial Governments > Licenses
Healthcare Law > Business Administration & Organization > Licenses > General Overview
[HN24]There is no need to regulate all professions alike.

Governments > State & Territorial Governments > Licenses
[HN25]The landmark case on the constitutional requirements on the regulations of professions holds that remedial legislative action may take one step at a time, addressing itself to the phase of the problem that seems most acute to the legislative mind.

Governments > State & Territorial Governments > Licenses
[HN26]The Legislature may attempt to regulate a given area without having to undertake a complete reform of all potential abuses.

Governments > State & Territorial Governments > Licenses
Governments > State & Territorial Governments > Police Power
Healthcare Law > Business Administration & Organization > Licenses > General Overview
[HN27]The fact that the Legislature might have selected hearing aid dispensing to be the first profession of its type subjected to pervasive state regulation in the public interest does not render that choice any less a permissible exercise of the police power or constitute a denial of equal protection.

Governments > Local Governments > Ordinances & Regulations
Governments > Local Governments > Police Power
Real Property Law > Landlord & Tenant > Rent Regulation > General Overview
[HN28]Legislative enactments regulating prices, including municipal rent control ordinances, are subject to the same narrow scope of review under principles of substantive due process as are other enactments under the police power: could the legislative body rationally have concluded that the enactment would serve the public interest without arbitrariness or discrimination?

Constitutional Law > Equal Protection > Level of Review
Governments > State & Territorial Governments > Licenses
Governments > State & Territorial Governments > Police Power
[HN29]So far as the requirement of due process is concerned, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adopted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the Legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders the court functus officio.

Constitutional Law > Equal Protection > Level of Review
Governments > State & Territorial Governments > Licenses
Governments > State & Territorial Governments > Police Power
[HN30]Legislative bodies are presumed to act on the basis of adequate factual support and, absent a sufficient showing to the contrary, it will be assumed that their enactments rest upon some rational basis within their knowledge and experience. This presumption can be overcome only by proofs that preclude the possibility that there could have been any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest. The judiciary will not evaluate the weight of the evidence for and against the enactment nor review the wisdom of any determination of policy which the legislative body might have made.

Constitutional Law > Equal Protection > Level of Review
Governments > State & Territorial Governments > Licenses
Governments > State & Territorial Governments > Police Power
[HN31]If pursuit of a particular occupation or the practice of any of the learned or statutory professions can be said to have a connection with or an impact upon the public weal, and there is any reasonable basis for regulation or control thereof to protect or preserve the particular public interest affected, the legislature may do so constitutionally, so long as the means adopted are not

arbitrary and are reasonably related to the felt public need. If the need is not wholly illusory and the regulation imposed is reasonably calculated to satisfy the need, the wisdom or unwisdom of the particular form of regulation cannot be a matter of judicial concern. If the subject is within the police power of the state, even debatable questions as to reasonableness of the means employed are not for the courts but for the legislature.

Constitutional Law > Supremacy Clause > General Overview
[HN32]Resolution of the issue of preemption entails consideration of Congress' command as to the preemptive effect of its regulatory scheme in this field; that command may be explicitly stated in the statute's language or implicitly contained in its structure and purpose.

Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Police Power
[HN33]Only where Congress' preemptive intent is "clear and manifest" will an exercise of the police power in a field traditionally subject to state regulation be superseded by federal law.

Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Legislatures
Governments > State & Territorial Governments > Police Power
[HN34]The United States Supreme Court is reluctant to find an intent to preempt where state legislation has been enacted to protect public health.

Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Licenses
Governments > State & Territorial Governments > Police Power
[HN35]For purposes of ascertaining whether a tradition of plenary state regulatory power in a particular field exists, it is appropriate to utilize an expansive approach wherein consideration is given to state regulation of activities with attributes similar to hearing aid dispensing. Regulation of dispensing practices is equatable with regulation of other activities affecting public welfare for those purposes. Professional licensing and regulation of professional misconduct are activities which have long been committed to the states, whose regulatory power over such matters is substantially plenary.

Constitutional Law > Supremacy Clause > General Overview
[HN36]The inquiry into a claim of federal preemption of state law must normally take into account both the "explicit" and "implicit" branches of that doctrine, even where Congress has expressly stated its wishes as to the preemptive reach of a particular enactment.

Constitutional Law > Supremacy Clause > General Overview
[HN37]Where it would be possible to comply with the state law without triggering federal enforcement action, the state requirement is not inconsistent with federal law.

Constitutional Law > Supremacy Clause > General Overview
[HN38]A state law is not inconsistent with, and thus not "different from," federal law for preemption purposes where it is possible to comply with the state requirement without violating any federal requirements.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Police Power
[HN39]The Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C.S. § 521(a), expressly preempts non-federal regulation of any device intended for human use where such regulation seeks to impose requirements which are "different from, or in addition to" whatever federal requirements are applicable to the device and which purport to relate to the safety or effectiveness of the device or to any other matter included in an FDCA requirement applicable to the device. 21 U.S.C.S. § 360k(a). Thus, for a state, i.e., non-federal, regulation to be preempted it must (1) be a requirement applicable to the device within the meaning of the FDCA (2) which relates to a matter included in a federal requirement applicable to the device and (3) which is "different from, or in addition to," any such federal requirements so applicable under the FDCA and any Food and Drug Administration regulations thereunder.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Police Power
[HN40]State regulations applicable to a device that are "different from, or in addition to" the federal requirements but which do not "relate" to any matter included in any federal requirements for that device would not appear to be preempted by Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a). Nor would state regulations that do so "relate" but are not "different from, or in addition to" the applicable federal requirements appear to be preempted.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Licenses
[HN41]State regulations applicable to devices that are preempted under the Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), may be saved from invalidity pursuant to the procedure established in 21 U.S.C.S. § 521(b). The secretary of Health, Education and Welfare (who has delegated his authority to the Food and Drug Administration commissioner) is there empowered to exempt state regulations otherwise preempted by 21 U.S.C.S. § 521(a) by granting an exemption from federal preemption that authorizes the continued imposition of the state regulation.

Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Licenses
[HN42]In order to qualify for an exemption from preemption by federal law, the state regulation must be either more stringent than the corresponding federal requirement that would otherwise preempt it or be required by compelling local conditions and not cause a violation of any applicable federal requirements.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Licenses
[HN43]It is important to note that for preemption to occur, the state regulation must meet both of the criteria set forth in Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), as the phrasing there is in the conjunctive. On the other hand, for the state regulation to be eligible for a preemption exemption, it need only qualify under one of the 21 U.S.C.S. § 521(b) tests, as they are phrased in the disjunctive. The criteria for an exemption from preemption are not to be confused with the criteria for preemption itself; 21 U.S.C.S. § 521(b) comes into play only after it has been determined that the particular state law has been preempted under 21 U.S.C.S. § 521(a).

Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Licenses
[HN44]See Proposed 21 C.F.R. § 808.1(d), 42 Fed. Reg. 30387 (June 14, 1977).

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
[HN45]It is a fundamental maxim that the opinion as to the construction of a regulatory statute of the expert administrative agency charged with the enforcement of that statute is entitled to great weight and is a substantial factor to be considered in construing the statute. Such judicial deference to the administrative interpretation of a statute is even more appropriate when the case involves the construction of a new statute by its implementing agency. This deference is, of course, not total, as the courts remain the "final authorities" on issues of statutory construction and are not obliged to "rubber stamp" their approval of the administrative interpretation.

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > Legislation > Interpretation
[HN46]The Supreme Court of New Jersey may appropriately follow the Food and Drug Administration's reasonable interpretation of the meaning of the Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), in considering the explicit preemption issue, since there are no compelling indications that it is wrong.

Administrative Law > Agency Rulemaking > General Overview
Constitutional Law > Supremacy Clause > General Overview

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act

[HN47]There is no question that Congress may authorize federal administrative agencies to preempt state laws by the promulgation of administrative regulations. Thus the promulgation of the Food and Drug Administration (FDA) hearing aid regulations has preempted state device regulations in accordance with the Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), as of their effective date. However, in an official advisory opinion, the FDA's chief counsel has expressed the view that only one section of the Committee regulations would be subject to preemption by the FDA hearing aid regulations. An opinion letter from any agency counsel has been accorded the status of an official administrative interpretation for purposes of judicial deference thereto.

Constitutional Law > Supremacy Clause > General Overview
Governments > Legislation > Interpretation
Governments > State & Territorial Governments > Licenses

[HN48]Accordingly, the opinion of the Food and Drug Administration (FDA) chief counsel as to the preemptive reach of the FDA hearing aid regulations with respect to the Committee regulations governing the practice of hearing aid dispensing in New Jersey must be considered as a very "substantial factor" weighing against an interpretation of the federal regulatory scheme that will result in a preemption finding.

Constitutional Law > Supremacy Clause > General Overview

[HN49]There is no constitutional rule that compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field is not forbidden or displaced.

Constitutional Law > Supremacy Clause > General Overview

[HN50]Where Congress has chosen to "occupy" a field, but has not undertaken to regulate every aspect of that area, the states have the implied reservation of power to fill out the scheme.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > Licenses > General Overview

[HN51]The Supreme Court of New Jersey interprets the Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), as expressly envisioning such supplemental state regulation insofar as it limits the definition of the state regulations it supersedes to state requirements "applicable to" devices, thus permitting a wide variety of conceivable state regulations to remain unaffected.

Constitutional Law > Supremacy Clause > General Overview
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Healthcare Law > Business Administration & Organization > Licenses > General Overview

[HN52]Consideration of the implicit preemption issue is inappropriate in the context of the unique preemption exemption mechanism established by Congress in the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C.S. § 521(b). The Supreme Court of New Jersey reaches this conclusion for two reasons. In specifying a detailed formula for use in determining exactly which state laws are preempted by 21 U.S.C.S. § 521(a), Congress has deliberately circumscribed the extent to which its enactment has occupied the field of device regulation. Congress' purpose thus appears to have been to control that field in a less than comprehensive manner, as it undeniably could have done had it been so inclined.

Constitutional Law > Supremacy Clause > Federal Preemption
Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Licenses

[HN53]Any state laws which are supplanted pursuant to the explicit preemption provision of the Food, Drug, and Cosmetic Act, 21 U.S.C.S. § 521(a), have not been condemned to abject invalidity -- the usual fate of state laws struck down under the Supremacy Clause, U.S. Const. art. VI. State laws so preempted may, upon application to the Food and Drug Administration and qualification under 21 U.S.C.S. § 521(b), nevertheless gain renewed vitality by receiving an exemption from preemption. The creation of this novel exemption procedure is persuasive evidence of a congressional intent to permit supplementary state regulation in the same field.

Constitutional Law > Supremacy Clause > General Overview

Governments > Agriculture & Food > Federal Food, Drug & Cosmetic Act
Governments > State & Territorial Governments > Licenses
[HN54]The goal of Congress seems to have been to preclude only those state laws regulating devices encompassed by the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C.S. § 521(a). By expressly permitting certain state laws that are explicitly preempted under 21 U.S.C.S. § 521(a) to remain in effect pursuant to 21 U.S.C.S. § 521(b), Congress has manifested its disinclination to have those state laws not reached by 21 U.S.C.S. § 521(a) stricken down on implicit preemption grounds. Indeed, any such finding of implicit preemption would be corrosive of the Congressional purpose of having the preemptive reach of the FDCA and the validity of state device regulations measured according to its carefully constructed test in 21 U.S.C.S. § 521(a). Judicial expansion of the narrow preemption flowing from 21 U.S.C.S. § 521(a) would be discordant with that legislative objective.

Constitutional Law > Supremacy Clause > General Overview
[HN55]A precise Congressional delimitation of the extent to which federal law shall supersede and, in certain instances, tolerate concurrent state regulation, suggests that Congress is satisfied that effectuation of its goals in enacting the federal regulatory scheme is possible without a total exclusion of state law. In such circumstances, ascribing to Congress an implicit intent to have supplemental state regulations, not explicitly preempted, nevertheless invalidated as alleged "obstacles" to the accomplishment of those goals seems quite anomalous.

COUNSEL: [***1] *Mr. Jack B. Kirsten and Mr. Elmer J. Bennett* argued the cause for appellants (*Messrs. Freidin, Kirsten, Friedman & Cherin*, attorneys; *Messrs. Carpenter, Bennett and Morrissey*, of counsel; *Mr. Bennett, Mr. Kirsten and Ms. Deborah W. Babcox*, on the brief).

Mr. Steven I. Kern, Deputy Attorney General, argued the cause for respondents (*Mr. William F. Hyland*, Attorney General of New Jersey, attorney; *Mrs. Erminie L. Conley*, Deputy Attorney General, of counsel).

JUDGES: *For affirmance as modified* -- Chief Justice Hughes and Justices Mountain, Sullivan, Pashman, Clifford, Schreiber and Handler. *For reversal* -- None. The opinion of the court was delivered by Pashman, J.

OPINION BY: PASHMAN

OPINION

[*550] [**798] Concern over allegations of consumer abuses in the sale of hearing aids prompted the Legislature to pass the Hearing Aid Dispensers Act, *L.* 1973, *c.* 19, *N.J.S.A.* 45:9A-1 *et seq.* ("the Act"), which became law on January 31, 1973. This enactment created a Hearing Aid Dispensers Examining Committee ("the Committee") under the State Board of Medical Examiners in the Division of Consumer Affairs of the Department of Law and Public [***2] Safety. *N.J.S.A.* 45:9A-1, 3. The Committee's statutory mandate was to

> * * * ascertain the facts concerning the dispensing and sale of hearing aids, for the purpose of determining the need for, and desirability of, rules and regulations to promote the health, safety and welfare of the public and to effectuate the purposes of this act and to aid the committee in the performance of its powers and duties hereunder, and [to] make and promulgate, with the approval of the board [*i.e.*, the State Board of Medical Examiners] rules and regulations for said purposes * * *.
>
> [*N.J.S.A.* 45:9A-7]

On April 9, 1976, the Committee [1] filed its proposed rules [*551] and regulations governing the practice of hearing aid dispensing in New Jersey, which were then unanimously approved by the State Board of Medical Examiners prior to their publication in the New Jersey Register.

> 1 The Committee's membership is comprised of three qualified hearing aid dispensers (who must be certified by the National Hearing Aid Society or its equivalent), one physician who is a diplomate of the American Board of Otolaryngology, one clinical audiologist who is certified by the American Speech and Hearing Association, one public member, and the Director of the Division of Consumer Affairs, *ex officio*, or his or her designee. *N.J.S.A.* 45:9A-3.

[***3] The Committee conducted a public hearing on May 21, 1976 in Newark, at which time 19 witnesses, including the Director of the Division of Consumer Affairs ("the Director"), testified and numerous documentary exhibits were received. The Director testified that

the "major problem areas perceived by the Committee" as requiring remedial regulatory action included

> inappropriate fitting because of lack of proper supervision of the dispenser and the trainee; false advertising calculated to mislead the public into the belief that hearing aid dispensers have a medical degree or background; secrecy by the dispenser as to exactly what the consumer is paying for and exactly what he is getting, with the result that the consumer is unable to ascertain by independent means the viability of his aid; unscrupulous activity by the door-to-door salesman of hearing aids, especially with respect to the elderly; and unconscionable pricing of hearing aids. [Testimony of Virginia Long, Director, Division of Consumer Affairs, before the Hearing Aid Dispensers Examining Committee, May 21, 1976.]

The regulations as originally proposed were modified prior to their unanimous adoption by the [***4] Committee. The regulations as amended were unanimously approved by the State Board of Medical Examiners, as required by N.J.S.A. 45:9A-7, in July 1976 and thereafter filed with the Secretary of State. The final regulations appear in the New Jersey Administrative Code at N.J.A.C. 13:35-8.1 *et seq.*

In August 1976 enforcement of the Committee regulations was stayed by a single judge of the Appellate Division on the petition of the New Jersey Guild of Hearing Aid Dispensers [*552] ("the Guild"), and two of the Guild's officers in their individual capacities as hearing aid dispensers. The appeal sought review of the validity of the Committee regulations pursuant to R. 2:2-3. Consideration of the Guild's application for a stay pending appeal was consolidated with the appeal on the merits by the Appellate Division.

[**799] On December 15, 1976, Judge Botter, writing for the Appellate Division, upheld the validity of the Committee rules and regulations and denied the Guild's request that their enforcement be enjoined. 145 N.J. Super. 580 (App. Div. 1976). On December 22, 1976, the Guild filed a Petition for Rehearing and Stay of Judgment with the Appellate [***5] Division which was summarily denied on January 4, 1977. The basis for that petition was the imminent promulgation of regulations affecting the practice of hearing aid dispensing by the United States Food and Drug Administration ("FDA") and the consequent possibility of federal preemption of the Committee regulations.

On January 21, 1977 the Guild filed a petition for certification together with a notice of appeal alleging constitutional questions and a motion for a stay of the Appellate Division's judgment and enforcement of the Committee regulations pending disposition of the matter by this Court. On February 15, 1977, the Guild supplied us with advance copies of the proposed FDA regulations whose preemptive effect it had asserted below. Upon review of same, we granted the requested stay on February 15, 1977 and subsequently granted the Guild's petition for certification. 74 N.J. 247 (1977).

I

The Regulatory Background

[HN1]The Act defines the activity it seeks to regulate, the "practice of dispensing and fitting hearing aids," as "the evaluation or measurement * * * of human hearing * * * and the consequent selection of [sic] adaptation or sale of hearing aids intended [***6] to compensate for hearing loss * * *." N.J.S.A. [*553] 45:9A-2(d). A hearing aid dispenser is defined as "a person engaged in the fitting and selling of hearing aids to a person with impaired hearing." N.J.S.A. 45:9A-2(e). The Committee created for this purpose is empowered to set educational and licensing requirements for practitioners, N.J.S.A. 45:9A-8 to 15, and to grant temporary licenses in certain circumstances. N.J.S.A. 45:9A-16. [HN2]The Director of Consumer Affairs is authorized to discipline licensees for enumerated types of misconduct, the most expansive category of which is "unethical conduct," defined to include, *inter alia*, the "obtaining of any fee or the making of any sale by fraud or misrepresentation," N.J.S.A. 45:9A-17(c)(1), the use of misleading or false advertising or other representations, N.J.S.A. 45:9A-17(c)(3), the use of bait and switch sales tactics, N.J.S.A. 45:9A-17(c)(4), and the use of representations connoting medical expertise. N.J.S.A. 45:9A-17(c)(5), as well as for violations of the Act or the Committee rules and regulations. N.J.S.A. 45:9A-17(f). In addition, violations of the Act are subject to penalties [***7] and, where appropriate, restitution. N.J.S.A. 45:9A-19. They are also enjoinable at the suit of the Director of Consumer Affairs. N.J.S.A. 45:9A-20. [HN3]Specifically exempted from the coverage of the Act are hearing aid dispensers whose practices are affiliated with academic institutions, public programs, or charitable organizations, unless such dispensers sell hearing aids; also exempted are licensed physicians. N.J.S.A. 45:9A-22.

[HN4]Licensed dispensers are required to advise prospective purchasers at the outset of a hearing aid dispenser's lack of medical or audiological expertise and to provide all purchasers with a detailed written receipt which includes a statement that the purchaser has been so advised. N.J.S.A. 45:9A-23. Whenever a licensee learns

that a prospective purchaser has certain ascertainable medical conditions, he must, prior to fitting and selling a hearing aid to that person, recommend in writing that the person consult a hearing specialist or other physician (providing the names and addresses of at least three such [*554] physicians) and receive a receipt from the prospective purchaser acknowledging that the recommendation has been given. [***8] N.J.S.A. 45:9A-24.

The Guild's challenge to the Committee's regulatory action is directed at certain portions of the comprehensive substantive regulation, *N.J.A.C.* 13:35-8.24, entitled "General Rules and Regulations." It specifically [**800] objects to the provision of *N.J.A.C.* 13:25-8.24(c) which exempts from the coverage of the Act the activities of certified audiologists unless such persons engage in the dispensing of hearing aids. *N.J.A.C.* 13:35-8.24(c)(3). The Guild contends that this exemption for nondispensing audiologists is not authorized by the Act and in fact is internally inconsistent with another regulation in the same subsection, *N.J.A.C.* 13:35-8.24(c)(7), which includes certain activities preliminary to a sale within the definition of "fitting and selling hearing aids," activities in which the Guild claims certified audiologists engage.

Also contested by the Guild is the Committee's prohibition of the use of the term "certified hearing aid audiologists" by hearing aid dispensers in any advertising because of its potention misleading effect on prospective purchasers. *N.J.A.C.* 13:35-8.24(f)(3). The Guild disputes the legitimacy of that [***9] conclusion and contends that such a prohibition was not contemplated by the Act. As its source of authority for the promulgation of this rule, the Committee cites N.J.S.A. 45:9A-17(c)(3) and (5) and 23(b)(7).

The subjects of the Guild's most vehement protest are the regulatory provisions mandating advance disclosure and itemization in pricing, requiring the posting of a retail price list of all hearing aids offered for sale, and setting a price guideline for charges made for dispensing services and equipment. *N.J.A.C.* 13:35-8.24(g)(1) (prescribing a receipt form); (k)(1) and (2); (h)(4); and (k)(4), respectively. The Guild contends that these rules regulate the business and profits of hearing aid dispensers in a manner contrary to the legislative intent of the Act and not authorized thereunder. [*555] Viewing the price guideline as setting a price ceiling, the Guild argues that any such regulatory restrictions would constitute an unauthorized exemption from the proscriptions of the New Jersey Antitrust Act. N.J.S.A. 56:9-1 *et seq.*, for the practice of hearing aid dispensing. The Guild argues further that the price and price disclosure regulations are unconstitutional [***10] because they unreasonably restrict property rights, arbitrarily discriminate against the dispensing profession and unduly burden the practice of that profession without any justifying public need. Cited as statutory authority for these rules by the Committee are N.J.S.A. 45:9A-7, 17(c), 23(b) and 26.

Finally, the Guild challenges the ban on unsolicited sales visits to the homes or places of business of prospective purchasers without prior consent and the prohibition of the sale of a hearing aid to a person who has not been given a hearing test examination complying with certain specified technical standards. *N.J.A.C.* 13:35-8.24(j) and (e). The Guild contends that no legislative intent to regulate dispensing practices by proscribing home visits exists and, alternatively, that this rule is unnecessary because consumers are adequately protected by the Act's ban of unnecessary fittings and the obtaining of fees for services by fraud or misrepresentation. *See* N.J.S.A. 45:9A-17(c). The Guild argues that the testing standards imposed have an unduly burdensome effect on dispensers who cannot afford sophisticated testing equipment and that in the absence of any showing that [***11] such exacting standards are required to fit a hearing aid properly, the regulatory standards are unreasonable and constitute a denial of substantive due process.

Further complicating this picture of pervasive regulation of the hearing aid industry is the entry of the federal government into this field. Congress has enacted the "Medical Device Amendments of 1976," *Pub. L.* 94-295, 90 *Stat.* 539-583, effective May 28, 1976, to [HN5]the Federal Food, Drug, and Cosmetic Act ("the FDCA"), 21 *U.S.C.* § 301 *et seq.*, which provides the FDA with specific statutory authorization [*556] to regulate "medical devices" so as to ensure their safety and effectiveness prior to their marketing to consumers. *See generally* 1976 *U.S. Code Cong. and Admin. News* 1070 *et seq.* [HN6]The FDA is given this premarket clearance authority with respect to, *inter alia*, devices which are intended for human use and which do not operate chemically or require metabolization in order to achieve their intended effect. *See* 21 *U.S.C.* § 321(h). [**801] Pursuant to the grant of authority contained in the amended FDCA, the Commissioner of Food and Drugs, on behalf of the Secretary [***12] of Health, Education and Welfare (HEW), proposed regulations covering the labeling and conditions of sale of hearing aids on February 15, 1977. *See* 21 *U.S.C.* 360j(e)(1)(B); proposed 21 *C.F.R.* §§ 801.420, 421 (42 *Fed. Reg.* 9294-6 (February 15, 1977)). These regulations as originally promulgated became effective on August 25, 1977. [2]

2 The effective date of the hearing aid regulations was originally scheduled to be August 15, 1977; their effective date was stayed by the FDA until August 25, 1977 as a result of litigation challenging the validity of the regulations, *American Speech & Hearing Association v. Califano*, Civil No. 77-1327, United States District

Court for the District of Columbia. *See* 42 *Fed. Reg.* 40215 (August 9, 1977). The regulations were ultimately upheld by Judge Gerhard Gesell on December 19, 1977.

[HN7]The FDA hearing aid regulations are divided into two sections, one concerned with labeling requirements for hearing aids (21 *C.F.R.* § 801.420) and the other (21 [***13] *C.F.R.* § 801.421) imposing certain conditions on and preconditions to their sale. The FDA distinguishes between three categories of professionals involved with hearing disabled persons: the "ear specialist," a licensed physician specializing in the diagnosis and treatment of ear diseases and hearing loss problems (21 *C.F.R.* § 801.420(a)(2)); the "audiologist," a trained specialist in the evaluation and rehabilitation of persons with hearing disorders (21 *C.F.R.* § 801.420(a)(4)); and the "dispenser," engaged in the "sale, [*557] lease or rental of hearing aids" to the consuming public (21 *C.F.R.* § 801.420(a)(3)).

[HN8]The FDA has established the medical evaluation of the prospective user as a mandatory precondition to the sale of a hearing aid to that person; said evaluation must have been made within the preceding six months. 21 *C.F.R.* § 801.421(a)(1). However, the medical evaluation may be waived by a prospective adult user under certain specified conditions. 21 *C.F.R.* § 801.421(a)(2).

[HN9]The amended FDCA contains an explicit statutory provision concerning the preemptive effect of the FDCA and regulations promulgated pursuant thereto on any state [***14] or local requirements. A procedure is established whereby otherwise preempted state and local requirements may receive an exemption from preemption by the FDCA upon meeting certain enumerated criteria. *FDCA* § 521, 21 *U.S.C.* § 360k. [3] [*558] The FDA has promulgated proposed regulations detailing the administrative procedures to be followed in determining whether a particular state or local requirement is preempted by the FDCA and in applying, if necessary, for an exemption from federal preemption. Proposed 21 *C.F.R.* § 808.1 *et seq.* (42 Fed. Reg. 30383-9 (June 14, 1977)). [4]

3 *FDCA* § 521, 21 *U.S.C.* § 360k, provides:

[HN10]State and local requirements respecting devices -- General rule

(a) Except as provided in subsection (b) of this section, no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement --

(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and

(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter.

Exempt requirements

(b) Upon application of a State or a political subdivision thereof, the Secretary may, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a device intended for human use if --

(1) the requirement is more stringent that a requirement under this chapter which would be applicable to the device if an exemption were not in effect under this subsection; or

(2) the requirement --

(A) is required by compelling local conditions and

(B) compliance with the requirement would not cause the device to be in violation of any applicable requirement under this chapter.

[***15]

4 Public comments on these proposed regulations were to be submitted by August 15, 1977, with the final regulations to become effective 60 days after publication in the Federal Register; as

of this date, they have not yet been published in final form. On October 18, 1977, the FDA said that applications for preemption exemptions would be processed in accordance with the proposed regulations. *See* 42 *Fed. Reg.* 55648-49 (October 18, 1977).

[**802] As a result of the timing of the promulgation of the FDA hearing aid and "preemption-exemption" regulations, the Appellate Division did not have the opportunity to review those regulations in considering the Guild's argument that the Committee's regulations were federally preempted under the FDCA. Another significant development in the case also came too late for consideration by the Appellate Division. In responding to the federal preemption claim advanced by the Guild, the Director of Consumer Affairs offers a letter dated June 2, 1977 from the Chief Counsel of the FDA to the Deputy Attorney General who is the Committee's counsel, which [***16] states that in the opinion of the FDA the only provision of the Committee regulations which would be preempted by the FDA hearing aid regulations was the presale hearing test requirement of *N.J.A.C.* 13:35-8.24(e). The stated basis for this conclusion is that the Committee regulation "establishes conditions of sale that are different from those provided in the FDA regulations." The FDA consequently concluded that the "provisions of [§ 8.24(e)] relating to conditions of sale are preempted" under *FDCA* § 521(a), 21 *U.S.C.* § 360k(a).

Pursuant to this administrative opinion letter, the Director concedes that *N.J.A.C.* 13:35-8.24(e) is federally preempted. Nevertheless the Director relies on this expression [*559] of FDA opinion as dispositive authority on the issue of the Guild's contention that the remainder of the Committee regulations are similarly preempted by the FDA hearing aid regulations. [5] The Director advises that the State has applied to the FDA for an exemption from preemption for *N.J.A.C.* 13:35-8.24(e), [6] which will remain preempted until such time as an exemption is granted, and contends that it is unnecessary for the Court to decide the preemption [***17] issue with respect to that regulation.

5 Although the opinion letter of the FDA Chief Counsel is not a formal FDA advisory opinion as to the preemption *vel non* of state or local device requirements as contemplated by proposed 21 *C.F.R.* § 808.5, to our knowledge that opinion letter has not been challenged nor repudiated. We therefore assume for purposes of this opinion that this constitutes the current position of the FDA.

6 As of this date, the FDA has not granted the State's request for an exemption from preemption with respect to *N.J.A.C.* 13:35-8.24(e).

In upholding the validity of the Committee's regulations, the Appellate Division rejected the Guild's arguments that the challenged regulations contravene the legislative intent underlying the Act by regulating the business aspects of hearing aid dispensing and thus exceed the scope of the authority delegated to the Committee by the Act. *See* 145 *N.J. Super.* at 584. The court found no federal preemption resulting from *FDCA* [***18] § 521 standing alone and felt that consideration of the preemptive effect of any FDA hearing aid regulations was premature prior to their becoming effective in final form. *Id.* at 588. We shall address these arguments and the Guild's other bases of attack on the Committee regulations *seriatim*.

II

A. *The Scope of the Regulatory Power Delegated By the Act*

The Director concurs in the Guild's observation that the Committee regulations go substantially beyond mere regulation [*560] of the competency of the dispensers and the safety and effectiveness of the hearing aids they sell. The abuses which some of the challenged regulations were intended to correct were described by the Director at the public hearing:

> They prohibit the use of terms calculated to connot non-existent medical competency. [*N.J.A.C.* 13:35-8.24(f)(3)] They require an itemized receipt, in conformity with the trend in consumerism, to provide an individual with full knowledge of the product he is buying in advance of sale, which receipt will assist the Division in [**803] the enforcement of the Act by requiring full disclosure of the charges assessed for various phases of [***19] the dispensing procedure and the actual cost of the hearing aid. [*N.J.A.C.* 13:35-8.24(g), (h)(4), and (k)(1) and (2)]
>
> Further, the rules prohibit unsolicited home visits as a means of avoiding the fast talking, high pressure of the unethical practitioner. [*N.J.A.C.* 13:35-8.24(j)]
>
> And, in addition, they take a giant step forward by reallocating the burden in price gouging cases so that the onus is not on the consumer to show unfairness but on the dispenser to show that no overreaching occurred and that the price charged was not unconscionable. [*N.J.A.C.* 13:35-8.24(k)(4)]

In response to the Guild's assertions that these regulations are *ultra vires*, the Director urges that the challenged regulations are "well within the statutory authority of the Committee, and in many cases are pursuant to specific statutory mandates."

The seminal case concerning the standards applicable to judicial review of the validity of regulations promulgated by an administrative agency is *Consolidation Coal Co. v. Kandle*, 105 *N.J. Super.* 104 (App. Div. 1969), aff'd o.b. 54 *N.J.* 11 (1969). Judge Goldmann, writing for the court, there held that [HN11]quasi-legislative [***20] administrative rulemaking does not require specific findings of fact based on evidence adduced at the public hearing in support of each regulatory provision subsequently adopted and further that the existence of such supporting factual bases would be presumed until rebutted by the party attacking the administrative action. 105 *N.J. Super.* at 113-120; *see also In re* [*561] *Promulgation of Rules of Practice*, 132 *N.J. Super.* 45, 49 (App. Div. 1974) certif. den. 67 *N.J.* 95 (1975).

Kandle also established that [HN12]administrative regulations "must be accorded a presumption of reasonableness" and placed the burden on the attacking party to demonstrate that they are arbitrary, capricious, unduly onerous or otherwise unreasonable. 105 *N.J. Super.* at 118; *see also In re Matter of Public Hearings*, 142 *N.J. Super.* 136, 156 (App. Div. 1976); *City Consumer Services v. Dept. of Banking*, 134 *N.J. Super.* 588, 594 (App. Div.) certif. den. 69 *N.J.* 73 (1975). Earlier decisions of this Court had established that [HN13]"[a]dministrative rules and regulations have in their support the rebuttable presumption of validity if they come within the ambit of delegated [***21] authority," and that unless such regulations are "clearly *ultra vires* on their face," the party contesting them has the burden of proving their invalidity. *In re Regulation F-22, Office of Milk Industry*, 32 *N.J.* 258, 261-262 (1960); *In re Weston*, 36 *N.J.* 258, 263 (1961); *see also Cole Nat. Corp. v. State Bd. of Examiners*, 57 *N.J.* 227, 231 (1970). The *Weston* court also held that [HN14]the reviewing court is not confined to consideration of the statutory authority for a particular regulation cited by the administrative agency but may consider the entire enabling legislation in order to ascertain "if there is in fact sufficient underlying authority." 36 *N.J.* at 263. As a result of this "customary rebuttable presumption of validity and regularity afforded to administrative regulations generally," *Motyka v. McCorkle*, 58 *N.J.* 165, 181 (1971), an *ultra vires* finding is disfavored:

> [HN15]An administrative regulation, purporting to effectuate a statute, will not be set aside on the ground that it transgresses the statute unless the transgression is plain; the presumption is in favor of validity.
>
> [*Lane v. Holderman* 40 *N.J. Super.* 329, [***22] 335 (App. Div. 1956) aff'd 23 *N.J.* 304 (1956)]

[HN16]An administrative regulation "must be within the fair contemplation of the delegation of the enabling statute." [*562] *So. Jersey Airways v. Nat. Bk. of Secaucus*, 108 *N.J. Super.* 369, 383 (App. Div. 1970). The authority possessed by an administrative agency "* * * consists of the powers expressly granted which in turn are attended by those incidental powers [**804] which are reasonably necessary or appropriate to effectuate the specific delegation." *In re Regulation F-22, Office of Milk Industry, supra*, 32 *N.J.* at 261 (citation omitted); *Cammarata v. Essex County Park Comm'n*, 26 *N.J.* 404, 411 (1958). This Court has held that [HN17]the grant of authority to an administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and that the courts should readily imply such incidental powers as are necessary to effectuate fully the legislative intent. *See In re Suspension of Heller*, 73 *N.J.* 292, 303 (1977); *Cammarata v. Essex County Park Comm'n, supra*, 26 *N.J.* at 411; *Lane v. Holderman, supra*, 23 *N.J.* at 315. *In Heller* [***23] , Chief Justice Hughes stated:

> [HN18]Where, as here, the task of the regulatory agency is "to protect the health and welfare of members of the public" by assuring that all licensed practitioners are qualified, competent and honest, the grant of implied powers is particularly important.
>
> [73 *N.J.* at 303-304 (citation omitted)]

[HN19]In determining whether a particular administrative act enjoys statutory authorization, the reviewing

court may look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives. Id. at 303 and cases there cited. The purpose of this inquiry is to ascertain whether the requisite authority may be said to be implicitly supplied, as "[t]hat which is implied is as much a part of the law as that which is expressed." *Id.; In re Gastman*, 147 *N.J. Super.* 101, 109 (App. Div. 1977).

[HN20]Another basic tenet of judicial review is that the courts are not free to substitute their judgment as to the wisdom of a particular administrative action for that of the [*563] agency so long as that action is statutorily authorized and not [***24] otherwise defective because arbitrary or unreasonable:

> * * * [HN21]If there is any fair argument in support of the course taken [by the agency] or any reasonable ground for difference of opinion among intelligent and conscientious officials, the decision is conclusively legislative, and will not be disturbed unless patently corrupt, arbitrary or illegal. Doubts held by the court as to the wisdom of the administrator's decision do not alter the case * * *.
>
> [*Flanagan v. Civil Service Dept.*, 29 *N.J.* 1, 12 (1959) (citations omitted); *see also City of Elizabeth v. Sullivan*, 125 *N.J. Super.* 569, 574 (App. Div. 1973)]

Application of the foregoing principles to the Guild's challenge to the Committee regulations on *ultra vires* grounds confirms the correctness of the Appellate Division's conclusion that the regulations do not exceed the authority delegated to the Committee by the Act. The Guild's contention that the Act did not contemplate regulation of the business aspects of hearing aid dispensing is without foundation and indeed would amount to an interpretation of the Act in a manner contrary to its manifest purpose. The extremely circumscribed [***25] interpretation of the Act's purposes proffered by the Guild hardly comports with the liberal construction mandated for regulatory enactments in the field of public welfare. Furthermore, the Guild can point to nothing on the face of any of the regulations warranting a conclusion of *ultra vires* so as to deprive them of the presumption of validity ordinarily accorded administrative regulations.

Our evaluation of the Act and its legislative history convinces us that the Committee has been delegated substantially plenary authority over the entire field of hearing aid dispensing, including the business practices of dispensers. Its regulations do not exceed the scope of that broad delegation and are fully consistent with the underlying legislative goals of correcting abuses and promoting professionalism in the sale of hearing aids. The challenged regulations constitute [*564] permissible administrative selections of the appropriate means of accomplishing [**805] the salutary objectives of the Act; as such, further judicial inquiry into their wisdom and the possible existence of more desirable regulatory alternatives is foreclosed.

B. *Alleged Antitrust Problems*

[***26] Nor do we find merit in the Guild's assertion that validation of the regulatory price guideline in *N.J.A.C.* 13:35-8.24(k)(4) would create an unwarranted exception to the New Jersey Antitrust Act, *L.* 1970, *c.* 73, *N.J.S.A.* 56:9-1, *et seq.*, and would result in a conflict with the federal antitrust laws. [7] The Guild argues that the price guideline will effectively operate as a price ceiling (notwithstanding the specific disclaimer of such a purpose in the regulation itself) and thus constitutes an impermissible exception to the state antitrust law unintended by the Legislature in view of the Act's lack of authorization therefor. We agree with the Appellate Division's conclusion that the regulation means what it says and merely establishes a price guideline which forewarns dispensers that they must be able to justify a retail charge for services and equipment in excess thereof. Our Antitrust Act specifically exempts such fee guidelines from its proscriptions. *N.J.S.A.* 56:9-5(b)(9). However, even if the guideline constituted a price restriction in restraint of trade, the Guild's argument must fail, as the express terms of the Antitrust Act itself indicate its [***27] inapplicability to any anticompetitive action authorized by state law. *N.J.S.A.* 56:9-5(c).

7 *N.J.A.C.* 13:35-8.24(k)(4) provides:

> [HN22]A retail charge for services and equipment referred to in paragraph 2 of this subsection of greater than three times the price initially charged to the dispenser for the hearing aid itself by a hearing aid manufacturer may be deemed evidence of overreaching and fraud in the sale of a hearing aid. This section shall not, however, be construed to set a maximum or minimum allowable fee.

[*565] The claimed conflict of the price guideline with the federal antitrust laws is similarly spurious. Again, even if the regulation did set an anticompetitive price ceiling, it would nevertheless qualify for the so-called "state-action exemption" to the federal antitrust laws. That doctrine was first announced in *Parker v. Brown*, 317 *U.S.* 341, 63 *S. Ct.* 307, 87 *L. Ed.* 315 (1943), where the Supreme Court held that the Sherman Act, 15 *U.S.C.* § 1 *et seq.* [***28] , was not intended to apply to certain types of governmental action by the states even though a restraint of trade resulted.

> [HN23]The threshold inquiry in determining if an anticompetitive activity is State action of the type the Sherman Act was not meant to proscribe is whether the activity is required by the State acting as sovereign * * * [the] anticompetitive activities must be compelled by direction of the State acting as a sovereign.
>
> [*Goldfarb v. Virginia State Bar*, 421 *U.S.* 773, 790-91, 95 *S. Ct.* 2004, 2015, 44 *L. Ed.* 2d 572, 587 (1975); *see also Cantor v. Detroit Edison Co.*, 428 *U.S.* 579, 590-91, 96 *S. Ct.* 3110, 3117, 49 *L. Ed.* 2d 1141, 1149-50 (1976)]

The most recent consideration of the appropriate circumstances for application of this exemption was in *Bates v. Arizona State Bar*, 433 *U.S.* 350, 97 *S. Ct.* 2691, 53 *L. Ed.* 2d 810 (1977). There the Supreme Court held that the disciplinary rules of the Arizona Supreme Court regulating the practice of law were entitled to the state-action exemption because those rules "reflect[ed] a clear articulation of the State's policy with regard to professional behavior" [***29] in an area "at the core of the State's power to protect the public" and emanated from "the ultimate body wielding the State's power over the practice of law." 433 *U.S.* at 360-362, 97 *S. Ct.* at 2698, 53 *L. Ed.* 2d at 821-22. The Court took pains to distinguish *Cantor, supra*, and *Goldfarb, supra*, both of which had held certain state regulatory action not protected by the antitrust exemption, as cases where that conclusion did not have the "undesired effect" of diminishing the authority of the states to regulate their professions. *See* [*566] *Bates*, 433 *U.S.* at 359-363 and 360 n. 11, 97 *S. Ct.* at 2696-2698 and 2697 n. 11, 53 *L. Ed.* 2d at 820-822 and 821 n. 11.

[**806] It is manifest that the Committee's regulatory price guideline is entitled to the antitrust exemption under the *Bates* rationale. The regulation is a formal expression of this State's policy concerning ethical behavior of members of the dispensing profession regulated by the Act for the purpose of protecting the public. The price guideline is a key element of the Act's comprehensive scheme to eliminate fraudulent and unconscionable practices in the dispensing of hearing [***30] aids to the public and thus is essential to the accomplishment of the Legislature's purpose in enacting the Act and creating the Committee. Accordingly, we are satisfied the regulatory price guideline of *N.J.A.C.* 13:35-8.24(k) (4) would qualify for the state-action exemption from the federal antitrust laws.

C. *The Constitutionality of the Act*

The Guild further argues that if the challenged regulations are found not to exceed the powers delegated to the Committee, the provisions of the Act authorizing those regulations are unconstitutional. The Guild's claim that the Act unfairly and arbitrarily burdens dispensers with detailed regulation imposed on no other similar profession need not long detain us. In rejecting an identical argument, this Court has previously observed that "there [HN24]is no need to regulate all professions alike." *In re Weston*, 36 *N.J.* 258, 265 (1961), citing *Williamson v. Lee Optical Co.*, 348 *U.S.* 483, 489, 75 *S. Ct.* 461, 99 *L. Ed.* 563 (1955) and *Semler v. Oregon State Bd. of Dental Examiners*, 294 *U.S.* 608, 610, 55 *S. Ct.* 570, 79 *L. Ed.* 1086 (1935). *Williamson, supra*, [HN25]the landmark case on the constitutional [***31] requirements in this area, held that remedial legislative action "may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." [*567] 348 *U.S.* at 489, 75 *S. Ct.* at 465. We have only recently reaffirmed the vitality of this principle:

> * * * [T]he [HN26]Legislature may attempt to regulate a given area without having to undertake a complete reform of all potential abuses.
>
> [*Common Cause v. N.J. Elec. Law Enforcement Comm'n*, 74 *N.J.* 231, 245 n. 4 (1977) (citations omitted)]

Thus, [HN27]the fact that the Legislature might have selected hearing aid dispensing to be the first profession of its type subjected to pervasive state regulation in the public interest does not render that choice any less a permissible exercise of the police power or constitute a denial of equal protection. N.J. Chapter, Amer. I.P. v. N.J. State Bd. of Prof. Planners, 48 N.J. 581, 601-03, 609-09 (1967), app. dism'd and *cert.* den. 389 U.S. 8, 88 S. Ct. 70, 19 L. Ed. 2d 8 (1967).

Nor need we dwell too long on the Guild's substantive due process attack on the Act if it is construed to authorize [***32] the regulatory price guideline and the pre-sale testing requirement. This Court has recently engaged in a comprehensive review of the "* * * limited role of the judiciary in applying the principles of substantive due process to economic and social legislation" in the context of municipal rent control ordinances in Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 562 (1975). A brief recapitulation of the salient points of that decision enables us to dispense with a detailed discussion of most of the Guild's arguments. The portion of its holding relevant for present purposes was that

> [HN28]legislative enactments regulating prices, including municipal rent control ordinances, are subject to the same narrow scope of review under principles of substantive due process as are other enactments under the police power: could the legislative body rationally have concluded that the enactment would serve the public interest without arbitrariness or discrimination?
>
> [68 N.J. at 563-64 (citations omitted)]

[*568] We emphasized the limited function of reviewing courts in this area:

> [HN29]"So far as the requirement of due process is concerned, [***33] * * * a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adopted to its purpose. The courts [**807] are without authority either to declare such policy, or, when it is declared by the Legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders the court *functus officio*."
>
> [*Hutton Park, supra* at 563, quoting *Nebbia v. New York*, 291 U.S. 502, 537, 54 S. Ct. 505, 78 L. Ed. 940 (1934)]

Hutton Park also addressed the burden of proof which must be met by a substantive due process challenger:

> [HN30]Legislative bodies are presumed to act on the basis of adequate factual support and, absent a sufficient showing to the contrary, it will be assumed that their enactments rest upon some rational basis within their knowledge and experience. * * * This presumption can be overcome only by proofs that preclude the possibility that there could have been [***34] any set of facts known to the legislative body or which could reasonably be assumed to have been known which would rationally support a conclusion that the enactment is in the public interest. * * * The judiciary will not evaluate the weight of the evidence for and against the enactment nor review the wisdom of any determination of policy which the legislative body might have made.
>
> [68 N.J. at 564-65 (citations omitted)]

See also Brunetti v. Borough of New Milford, 68 N.J. 576, 594 (1975).

In N.J. Chapt., Amer. I.P. v. N.J. State Bd. of Prof. Planners, *supra*, we recognized the appropriate extent of

judicial deference to a legislative exercise of the police power:

> [HN31]If pursuit of a particular occupation or the practice of any of the learned or statutory professions can be said to have a connection with or an impact upon the public weal, and there is any reasonable [*569] basis for regulation or control thereof to protect or preserve the particular public interest affected, the legislature may do so constitutionally, so long as the means adopted are not arbitrary and are reasonably related to the felt public need. If the need is not [***35] wholly illusory and the regulation imposed is reasonably calculated to satisfy the need, the wisdom or unwisdom of the particular form of regulation cannot be a matter of judicial concern. If the subject is within the police power of the State, even debatable questions as to reasonableness of the means employed are not for the courts but for the Legislature.
>
> [48 *N.J.* at 599-600 (citations omitted)]

See also Abelson's, Inc. v. N.J. State Bd. of Optometrists, 5 *N.J.* 412, 419-421 (1950).

Notwithstanding the foregoing admonitions, the Guild persists in urging this Court to question the legislative judgment as to the public need for the Committee regulations promulgated pursuant to the Act's directive. However, the Guild has utterly failed to negative the existence of any conceivable state of facts which would establish a public need for the Act and its implementing regulations. Nor has the Guild demonstrated any irrationality in the relationship between the means adopted for the accomplishment of the undeniably proper legislative purpose of eliminating abuses in a health-related profession and that salutary goal. Similarly absent is any cogent showing [***36] that compliance with the regulations is impossible -- at best, the Guild's complaints indicate that compliance with the pre-sale testing requirement of *N.J.A.C.* 13:35-8.24(e) would be inconvenient and expensive for some dispensers. In view of the Guild's failure to carry the burden of proof demanded in such constitutional attacks, we perceive no basis for invalidation of the Act on due process grounds.

III

Federal Preemption

The Guild asserts that the Committee regulations are preempted pursuant to the command of *FDCA* § 521(a) [*570] as a result of the promulgation of the FDA's hearing aid regulations. [HN32]Resolution of this issue entails consideration of Congress' command [**808] as to the preemptive effect of its regulatory scheme in this field; that command may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 *U.S.* 519, 525, 97 *S. Ct.* 1305, 1309, 51 *L. Ed.* 2d 604, 613-14 (1977) (citations omitted). In *Jones, supra*, the most recent authoritative explication of the principles governing a claim that federal regulation of a particular subject matter precludes [***37] concurrent state regulation thereof, the Court noted that [HN33]only where Congress' preemptive intent is "'clear and manifest'" will an exercise of the police power in a field traditionally subject to state regulation be superseded by federal law. *Id.* at 525, 97 *S. Ct.* at 1309, 51 *L. Ed.* 2d at 614, quoting *Rice v. Santa Fe Elevator Corp.*, 331 *U.S.* 218, 230, 67 *S. Ct.* 1146, 91 *L. Ed.* 1447 (1947).

We have noted [HN34]the Supreme Court's reluctance "to find an intent to preempt where state legislation has been enacted to * * * protect public health." *City of Philadelphia v. State of New Jersey*, 73 *N.J.* 562, 570 (1977) *prob. juris. noted* _ *U.S.* _, 98 *S. Ct.* 501, 54 *L. Ed.* 2d 448 (1977). Our initial task then is to determine whether New Jersey's regulation of hearing aid dispensing practices constitutes an exercise of the police power in an area of regulation traditionally within the exclusive domain of state power and thus is entitled to the benefit of this presumption against preemption.

[HN35]For purposes of ascertaining whether a tradition of plenary state regulatory power in a particular field exists, it is appropriate to utilize an expansive [***38] approach wherein consideration is given to state regulation of activities with attributes similar to hearing aid dispensing. Regulation of dispensing practices is equatable with regulation of other activities affecting public welfare for those purposes. Professional licensing and regulation of professional misconduct are activities which have long been committed to the [*571] states, whose regulatory power over such matters is substantially plenary. *See* Barsky v. Bd. of Regents, 347 *U.S.* 442, 451, 74 *S. Ct.* 650, 98 *L. Ed.* 829 (1954); Semler v. Oregon Bd. of Dental Examiners, 294 *U.S.* 608, 612, 55 *S. Ct.* 570, 79 *L. Ed.* 1086 (1935); Linder v. United States, 268 *U.S.* 5, 18 (1925); S.P.S. Consultants v. Lefkowitz, 333 *F. Supp.* 1373, 1376-77 (S.D. N.Y. 1971) (three-judge court); F.T.C. v. Simeon Mgmt. Corp., 391 *F. Supp.* 697, 705 (N.D. Cal. 1975). This Court has rec-

ognized the broad scope of the State's regulatory power over professional pursuits. N.J. Chapter, Amer. I.P. v. N.J. State Bd. of Prof. Planners, supra, 48 N.J. at 599-600; *see* In re Suspension of Heller, supra, 73 N.J. at 306 (pharmacy); *Abelson's,* [***39] Inc. v. N.J. State Bd. of Optometrists, supra, 5 N.J. at 418-421. We perceive no distinction between the professions involved in those cases and hearing aid dispensing sufficient to warrant a conclusion that the extent of the regulatory power is diminished with respect to the latter. In view of the historical recognition of and deference to the substantially plenary power of the states to regulate professions affecting the public welfare, we are satisfied that the policy disfavoring a finding of preemption, which is based on considerations of federalism, *see* Jones, 430 U.S. at 525, 97 S. Ct. at 1309, 51 L. Ed. 2d at 614 is applicable.

Under *Jones, supra,* [HN36]the inquiry into a claim of federal preemption of state law must normally take into account both the "explicit" and "implicit" branches of that doctrine, even where Congress has expressly stated its wishes as to the preemptive reach of a particular enactment. One of the issues in *Jones* was the preemptive effect to be accorded a provision of the Fair Packaging and Labeling Act, 15 U.S.C. § 1451 *et seq.*, which stated a Congressional intent to supersede state laws which were "less stringent" [***40] or required labeling information "different from" that mandated by the federal law. 15 U.S.C. § 1461. In construing this express preemption provision, the Court interpreted the term "different from" to evince a Congressional intent to [*572] preempt only state laws "which impose requirements inconsistent with those imposed by federal law." 430 U.S. at 540, 97 S. Ct. at 1316, 51 [**809] L. Ed. 2d at 623. Applying that interpretation to the state law before it, the Court stated:

> [HN37]Since it would be possible to comply with the state law without triggering federal enforcement action we conclude that the state requirement is not inconsistent with federal law.
>
> [*Id.*]

The Court accordingly held that the particular state law was not preempted by the "explicit" preemption provision of the federal statute. *Jones* has authoritatively established that [HN38]a state law is not inconsistent with, and thus not "different from," federal law for preemption purposes where it is possible to comply with the state requirement without violating any federal requirements. The dissenting justices agreed that noninconsistency was the proper test for determining [***41] the explicit preemption issue and that a conclusion to that effect "dictates" a holding that "* * * Congress has not expressly prohibited state regulation in this field." 430 U.S. at 544, 97 S. Ct. at 1318, 51 L. Ed. 2d at 625.

[HN39]*FDCA* § 521(a) expressly preempts nonfederal regulation of any device intended for human use where such regulation seeks to impose requirements which are "different from, or in addition to" whatever federal requirements are applicable to the device *and* which purport to "relate[s] to the safety or effectiveness of the device or to any other matter included in a [FDCA] requirement applicable to the device." 21 U.S.C. § 360k(a). Thus, for a state [*i.e.*, non-federal] regulation to be preempted it must (1) be a "requirement applicable to the device" within the meaning of the FDCA (2) which relates to a matter included in a federal requirement applicable to the device and (3) which is "different from, or in addition to," any such federal requirements so applicable under the FDCA and any FDA regulations thereunder. [HN40]State regulations applicable to a device which are "different from, or in addition to" the federal requirements [***42] [*573] but which do not "relate" to any matter included in any federal requirements for that device would not appear to be preempted by § 521(a). Nor would state regulations which do so "relate" but are not "different from, or in addition to" the applicable federal requirements appear to be preempted.

[HN41]State regulations applicable to devices which are preempted under § 521(a) may be saved from invalidity pursuant to the procedure established in § 521(b). The Secretary of HEW (who has delegated his authority to the FDA Commissioner) is there empowered to exempt state regulations otherwise preempted by § 521(a) by granting an "exemption from federal preemption" which authorizes the continued imposition of the state regulation. 21 U.S.C. § 360k(b). [HN42]In order to qualify for such an exemption, the state regulation must be either more stringent than the corresponding federal requirement which would otherwise preempt it *or* be required by "compelling local conditions" and not cause a violation of any applicable federal requirements. *Id.* [HN43]It is important to note that for preemption to occur, the state regulation must meet both of the criteria set forth in § 521(a), [***43] as the phrasing there is in the conjunctive. On the other hand, for the state regulation to be eligible for a preemption exemption, it need only qualify under one of the § 521(b) tests, as they are phrased in the disjunctive. The criteria for an exemption from preemption are not to be confused with the criteria for preemption itself; § 521(b) comes into play only after

it has been determined that the particular state law has been preempted under § 521(a).

In one of its proposed preemption-exemption regulations, the FDA has stated its interpretation of the scope of § 521(a)'s preemption and enumerates certain types of state regulations which may "affect devices" but are nevertheless not regarded as preempted by § 521(a):

> [HN44]State or local requirements are preempted only when the Food and Drug Administration has established *specific counterpart regulations* [*574] or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device [**810] different from, or in addition to, the specific Food and Drug Administration requirements. There are other State [***44] or local requirements that affect devices which are not preempted by section 521(a) of the act because they are not "requirements applicable to a device" within the meaning of section 521(a). The following are examples of State or local requirements that are not regarded as preempted by section 521 of the act:
>
> (1) Section 521(a) does not preempt State or local requirements of general applicability where the purpose of the requirement relates either to other products in addition to devices e.g., requirements such as general electrical codes, and the Uniform Commercial Code (warranty of fitness), or to unfair trade practices in which requirements are not limited to devices.
>
> (2) Section 521(a) does not preempt State or local requirements that are *equal to, or substantially identical to*, requirements imposed by or under the act.
>
> (3) Section 521(a) does not preempt State or local permits, licenses, registrations, certifications, or other requirements relating to the approval or sanction of the practice of medicine, dentistry, optometry, pharmacy, nursing, podiatry, or any other of the healing arts or allied medical sciences or related professions or occupations that administer, [***45] dispense, or * * * sell devices.

[Proposed 21 C.F.R. § 808.1(d) 42 Fed. Reg. 30387 (June 14, 1977) (emphasis added)]

With respect to subsection (3) of proposed 21 *C.F.R.* § 808.1(d) above, the FDA has amplified on the reasoning behind its conclusion of non-preemption of such professional licensing regulations:

> Such regulations are not *directly* applicable to devices within the meaning of the Act and, therefore, are not preempted.

[42 Fed. Reg. 30384 (June 14, 1977) (comment to proposed 21 C.F.R. §§ 808.1 *et seq.*) (emphasis added)]

The two alternative bases for an FDA determination of non-preemption by § 521(a) are whether the particular state regulation

> [*575] * * * is (i) equal to or substantially identical to a requirement under the act applicable to the device, or (ii) is not a requirement within the meaning of section 521 of the act and therefore is not preempted;

[Proposed 21 *C.F.R.* § 808.5(b)(1) 42 Fed. Reg. 30388 (June 14, 1977)]

[HN45]It is a fundamental maxim that the opinion as to the construction of a regulatory statute of the expert administrative agency charged with the enforcement [***46] of that statute is entitled to great weight and is a "substantial factor to be considered in construing the statute." *Youakim v. Miller*, 425 *U.S.* 231, 235, 96 *S. Ct.* 1399, 1402, 47 *L. Ed.* 2d 701 (1976); *N.Y. Dept. of Social Services v. Dublino*, 413 *U.S.* 405, 421, 93 *S. Ct.* 2507, 37 *L. Ed.* 2d 688 (1973); *Red Lion Broadcasting v. F.C.C.*, 395 *U.S.* 367, 381, 89 *S. Ct.* 1794, 23 *L. Ed.* 2d 371 (1969); *Matawan Borough v. Monmouth Cty. Tax Bd.*, 51 *N.J.* 291, 300 (1968); *State v. LeVien*, 44 *N.J.* 323, 330 n. 5 (1965). Such judicial deference to the ad-

ministrative interpretation of a statute is even more appropriate "when the case involves the construction of a new statute by its implementing agency." *Natural Resources Defense Council, Inc. v. Train*, 166 *U.S. App. D.C.* 312, 326, 510 *F.* 2d 692, 706 (D.C. Cir. 1975); *Udall v. Tallman*, 380 *U.S.* 1, 16, 85 *S. Ct.* 792, 13 *L. Ed.* 2d 616 (1965). This deference is, of course, not total, as the courts remain the "final authorities" on issues of statutory construction and are not obliged to "rubber stamp" their approval of the administrative interpretation. *Federal* [***47] *Maritime Commission v. Seatrain Lines, Inc.*, 411 *U.S.* 726, 745-46, 93 *S. Ct.* 1773, 36 *L. Ed.* 2d 620, quoting *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 *U.S.* 261, 272, 88 *S. Ct.* 929, 19 *L. Ed.* 2d 1090 (1968). [HN46]This Court may appropriately follow the FDA's reasonable interpretation of the meaning of *FDCA* § 521(a) in considering the explicit preemption issue, since there are no "compelling [*576] indications that it is wrong." *Red Lion Broadcasting Co. v. F.C.C., supra*, 395 *U.S.* at 381, 89 *S. Ct.* at 1802.

[**811] [HN47]There is no question that Congress may authorize federal administrative agencies to preempt state laws by the promulgation of administrative regulations. *See, e.g., Burbank v. Lockheed Air Terminal, Inc.*, 411 *U.S.* 624, 93 *S. Ct.* 1854, 36 *L. Ed.* 2d 547 (1973) (FAA regulations). Thus the promulgation of the FDA hearing aid regulations has preempted state device regulations in accordance with *FDCA* § 521(a) as of their effective date. However, in an official advisory opinion, the FDA's Chief Counsel has expressed the view that only one section of the Committe regulations ([***48] *N.J.A.C.* 13:35-8.24(e)) would be subject to preemption by the FDA hearing aid regulations. An opinion letter from any agency counsel has been accorded the status of an official administrative interpretation for purposes of judicial deference thereto. *See Thorpe v. Housing Authority of Durham*, 393 *U.S.* 268, 276, 89 *S. Ct.* 518, 21 *L. Ed.* 2d 474 (1969). *Udall v. Tallman*, 380 *U.S.* 1, 16, 85 *S. Ct.* 792, 13 *L. Ed.* 2d 616 (1965); *Brubaker v. Morton*, 500 *F.* 2d 200, 202 (9 Cir. 1974). [HN48]Accordingly, the opinion of the FDA Chief Counsel as to the preemptive reach of the FDA hearing aid regulations with respect to the Committee regulations governing the practice of hearing aid dispensing in New Jersey must be considered as a very "substantial factor" weighing against an interpretation of the federal regulatory scheme that will result in a preemption finding.

However, wholly apart from any deference to the FDA's opinion that none of the Committee regulations other than *N.J.A.C.* 13:35-8.24(3) is federally preempted, we are satisfied from our own investigation that the narrow scope of the explicit preemption mandated by FDCA § 521(a) as interpreted [***49] by the FDA dictates an identical conclusion. Key aspects of dispensing sales practices covered by the Committee regulations are left largely unregulated by the FDA hearing aid regulations, which relate predominantly to requirements [*577] of labeling and conditions of sale. [8] As stated in a venerable preemption case:

> * * * [HN49]There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field * * * is not forbidden or displaced.
>
> [*Kelly v. Washington*, 302 *U.S.* 1, 10, 58 *S. Ct.* 87, 92, 82 *L. Ed.* 3 (1937)]

More recently, the Fifth Circuit has observed:

> * * * [HN50]Where Congress has chosen to "occupy" a field, but has not undertaken to regulate every aspect of that area, the states have the implied reservation of power to fill out the scheme.
>
> [*Chemical Specialties Mfrs. Ass'n, Inc. v. Clark*, 482 *F.* 2d 325, 327 (5 Cir. 1973); citing *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 *U.S.* 132, 142, 83 *S. Ct.* 1210, 10 *L. Ed.* 2d 248 (1963)]

[HN51]We [***50] interpret *FDCA* § 521(a) as expressly envisioning such supplemental state regulation insofar as it limits the definition of the state regulations it supersedes to state requirements "applicable to" devices, thus permitting a wide variety of conceivable state regulations to remain unaffected.

8 We note that the FDA has formally stated its view that trade regulations proposed by the Federal Trade Commission governing hearing aid industry sales practices, *see* 40 *Fed. Reg.* 26646-51 (June 24, 1975), portions of which are substan-

tially identical to several provisions of the Committee regulations, "* * * complement, rather than conflict with [the] FDA regulations relating to labeling and conditions of sale of hearing aids." *See* 42 Fed. Reg. 9286 (February 15, 1977) (comment to proposed 21 *C.F.R.* § 801.420, 421). As of this date, the FTC rules have not been finally promulgated and their effect, if any, on the Committee regulations is not an issue in this case.

Most of the Committee regulations [***51] would not seem to qualify as requirements directly "applicable to" a device within the meaning of § 521(a) and would therefore fall within the area unregulated by the federal scheme. The Committee regulations exempting certified audiologists from the [*578] coverage of the Act, proscribing the use of the term "certified hearing aid audiologist" and requiring dispensers to post retail price lists plainly implicate no matter of [**812] federal concern and could not seriously be regarded as subject to federal preemption. The exemption for certified audiologists relates only to the administration of the Act in New Jersey and cannot even remotely be characterized as a requirement applicable to a device. The Committee's ban of the use of a misleading professional title similarly is not a requirement directly applicable to a device and in any event would certainly fall within the category of state licensing requirements for device dispensers which the FDA views as not preempted by § 521(a). *See* proposed 21 *C.F.R.* § 808.1(d)(3), 42 Fed. Reg. 30387 (June 14, 1977), *ante* at 574. The mandatory posting of retail price lists similarly does not constitute a requirement [***52] applicable to a device.

The Committee regulations banning non-consensual home visits by dispensers and setting price guidelines, would also appear to qualify as non-preempted state professional licensing rules for dispensers, as by their express terms they are concerned with ethical practices. Further reasons for our conclusion that these Committee regulations are not preempted are their manifest inapplicability to a device for § 521(a) purposes and their total unrelatedness to any federal requirements imposed by or under the Act.

However, preemption of *N.J.A.C.* 13:35-8.24(e), the Committee's pre-sale testing requirement, would appear to be dictated because that regulation makes a hearing test in conformity with the standards therein set forth a condition precedent to the sale of a hearing aid. As noted by the FDA Chief Counsel, this condition is at variance with the conditions of sale imposed by the FDA's "specific counterpart" regulation in 21 *C.F.R.* § 801.421(a). However, unlike the FDA Chief Counsel, we believe that the reason the Committee regulation is preempted under § 521(a) is that it would operate to create a prerequisite to the sale of a hearing aid that [***53] is "in addition to" that specified in the federal regulation, [*579] since a dispenser would be forced to comply with two variant rules prior to dispensing a hearing aid. His opinion that the basis of premption is the fact that the Committee regulation is "different from" the FDA regulation, *see ante* at 558 would appear untenable in light of the interpretation given to the identical statutory language in *Jones, supra*, by the Supreme Court. *See ante* at 571. Because it would be possible for a dispenser to comply with both the Committee's pre-sale testing requirement and the FDA's pre-sale medical evaluation requirements, the state regulation is not "inconsistent with," and thus not "different from," the applicable federal regulation. However, our quarrel with the Chief Counsel's interpretation of the effect of *FDCA* § 521(a) in this regard is inconsequential, since this Committee regulation is preempted on the alternative theory in any event. Nevertheless, the state will in all likelihood be granted the exemption from preemption already applied for with respect to *N.J.A.C.* 13:35-8.24(e), as it is "more stringent" than the corresponding FDA regulation and [***54] its implementation would afford a "higher degree of protection" to prospective users than the corresponding federal requirement. *See* proposed 21 *C.F.R.* § 808.3(c), 42 Fed. Reg. 30388 (June 14, 1977). Upon the grant of the exemption from preemption, both the federal medical evaluation requirement and the New Jersey pre-sale hearing test requirement will be in force and must be complied with by dispensers.

At first blush the Committee regulations requiring dispensers to provide consumers, in advance of any sale, with itemized receipts and specifying the contents thereof also seem to impose conditions of sale "in addition to" those included in the FDA regulations. However, certain significant differences exist between these regulations and the pre-sale testing requirement which would justify a contrary conclusion. The pre-sale testing requirement had a "specific counterpart" in the FDA regulation which requires (absent a waiver) a medical evaluation prior to the dispensing of any hearing aide. 21 *C.F.R.* § 801.421(a). The pre-sale [*580] testing requirement was thus a requirement applicable to a device which related to a matter included in a federal requirement [***55] and was "in addition to" that federal requirement, [**813] consequently falling within the express terms of § 521(a). It and its "specific counterpart" regulation both established required procedures in advance of the actual dispensing of a hearing aid which were designed to ensure that the use of an aid by the prospective purchaser was appropriate and necessary. Since the Committee regulation sought to accomplish that purpose in a manner to some extent duplicative of that called for by the directly applicable federal requirement, its invalidation necessarily followed.

Unlike the situation with respect to the pre-sale testing requirement, the Committee receipt regulations do not have any "specific counterpart" FDA regulation nor are they seeking to accomplish the same purpose as, and thus arguably duplicative of, the FDA's medical evaluation requirement. The Committee receipt rules specify only the "business procedures" which must accompany any sale of an aid and do not purport to deal with the issue of the prospective user's need for and potential benefit from a hearing aid. They are thus less directly applicable to the device than the pre-sale testing requirement, as well [***56] as being "unrelated" to any matter included in a federal requirement, since the FDA regulations are silent as to any "business procedures" attendant upon the dispensing of an aid and the receipt requirements do not seek to achieve the same end as the FDA medical evaluation rule.

We discern no potential areas of even slight conflict between the state requirements applicable to the practice of dispensing and the FDA hearing aid regulations. None of the Committee regulations is "inconsistent with" the federal regulations within the meaning of that term for purposes of the test for explicit preemption under *Jones, supra.* Accordingly, we hold that with the exception of the pre-sale testing requirement of *N.J.A.C.* 13:35-8.24(e), the Committee regulations challenged by the Guild are not preempted [*581] under *FDCA* § 521(a) by the FDCA or the FDA hearing aid regulations promulgated thereunder.

Ordinarily, the next step in our preemption analysis would be consideration of the "implicit" branch of that doctrine, which necessitates an inquiry into "whether both [federal and state] regulations can be enforced without impairing the Federal superintendence of the field * [***57] * *." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 *U.S.* 132, 142, 83 *S. Ct.* 1210, 1217, 10 *L. Ed.* 2d 248 (1963), quoted in *City of Philadelphia v. State of New Jersey, supra*, 73 *N.J.* at 569. However, notwithstanding the Supreme Court's admonition in *Jones, supra*, that a holding of no explicit preemption does not resolve the preemption issue, 430 *U.S.* at 540, 97 *S. Ct.* at 1316, 51 *L. Ed.* 2d at 623, we feel that [HN52]consideration of the implicit preemption issue is inappropriate in the context of the unique preemption exemption mechanism established by Congress in *FDCA* § 521(b). We reach this conclusion for two reasons. In specifying a detailed formula for use in determining exactly which state laws are preempted by § 521(a), Congress has deliberately circumscribed the extent to which its enactment has occupied the field of device regulation. Congress' purpose thus appears to have been to control that field in a less than comprehensive manner, as it undeniably could have done had it been so inclined.

Moreover, [HN53]any state laws which are supplanted pursuant to the explicit preemption provision of § 521(a) have not been condemned to abject [***58] invalidity -- the usual fate of state laws struck down under the Supremacy Clause, *U.S. Const.* Art. VI. State laws so preempted may, upon application to the FDA and qualification under § 521(b), nevertheless gain renewed vitality by receiving an exemption from preemption. The creation of this novel exemption procedure is persuasive evidence of a Congressional intent to permit supplementary state regulation in the same field. In *Jones, supra*, where the Court felt compelled to consider the implicit preemption issue after determining that no explicit [*582] preemption resulted from the statutory language, no similar preemption exemption provision existed. Our research has revealed no other [**814] federal statutes containing any authorization for the grant of an exemption from preemption by the administrative agency charged with enforcement of the federal regulatory scheme. However, in view of the establishment of this innovative exemption mechanism, it seems accurate to say that there is nothing "implicitly contained in the [FDCA's] structure and purpose," *Jones, supra*, 430 *U.S.* at 525, 97 *S. Ct.* at 1309, 51 *L. Ed.* 2d at 614, from which an unambiguous [***59] Congressional intent to preempt concurrent state regulation is reasonably inferable.

In fact, the structure and purpose of *FDCA* § 521 seem to point affirmatively to a contrary conclusion, as [HN54]the goal of Congress seems to have been to preclude only those state laws regulating devices encompassed by § 521(a). By expressly permitting certain state laws which are explicitly preempted under § 521(a) to remain in effect pursuant to § 521(b), Congress has manifested its disinclination to have those state laws *not* reached by § 521(a) stricken down on implicit preemption grounds. Indeed, any such finding of implicit preemption would be corrosive of the Congressional purpose of having the preemptive reach of the *FDCA* and the validity of state device regulations measured according to its carefully constructed test in § 521(a). Judicial expansion of the narrow preemption flowing from § 521(a) would be discordant with that legislative objective. [HN55]Such a precise Congressional delimitation of the extent to which federal law shall supersede and, in certain instances, tolerate concurrent state regulation, suggests that Congress is satisfied that effectuation of its goals in [***60] enacting the federal regulatory scheme is possible without a total exclusion of state law. In such circumstances, ascribing to Congress an implicit intent to have supplemental state regulations, not explicitly preempted, nevertheless invalidated as alleged "obstacles" to the accomplishment of those goals, *see Hines v. Davidowitz*, 312 *U.S.* 52, 67, 61 *S. Ct.* 399, 85 *L. Ed.* 581 [*583] (1941), quoted in *Jones, supra*, 430 *U.S.* at 526,

540, 97 *S. Ct.* at 1309, 1316, 51 *L. Ed.* 2d at 614, 623, seems quite anomalous.

For the foregoing reasons, the judgment of the Appellate Division, as modified by our finding of preemption as to the pre-sale test requirement of *N.J.A.C.* 13:35-8.24(e), is affirmed. Our stay of the enforcement of the Committee regulations is hereby dissolved.

The Director may move for modification of our judgment with respect to that regulation upon receipt of the appropriate exemption from preemption in regard thereto from the FDA. We retain jurisdiction for this limited purpose.

Citation #3
75 NJ 544

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New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 384 A.2d 795, 1978 N.J. LEXIS 178 (1978)

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LexisNexis Headnotes: HN1 (3), HN2 (5), HN3 (2), HN5 (1), HN8 (1), HN9 (6), HN11 (6), HN12 (52), HN13 (15), HN14 (42), HN15 (4), HN16 (55), HN17 (69), HN18 (5), HN19 (18), HN20 (26), HN21 (6), HN23 (1), HN28 (1), HN30 (1), HN31 (2), HN33 (1), HN34 (3), HN35 (1), HN41 (1), HN42 (1), HN43 (1), HN45 (52), HN46 (4), HN47 (13), HN48 (4), HN51 (3), HN52 (2), HN53 (4), HN55 (1)

PRIOR HISTORY (2 citing references)

1. New Jersey Guild of Hearing Aid Dispensers v. Long, 145 N.J. Super. 580, 368 A.2d 929, 1976 N.J. Super. LEXIS 643 (App.Div. 1976)

2. **Certification granted:**
New Jersey Guild of Hearing Aid Dispensers v. Long, 74 N.J. 247, 377 A.2d 653, 1977 N.J. LEXIS 654 (1977)

Affirmed by (CITATION YOU ENTERED):
New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 384 A.2d 795, 1978 N.J. LEXIS 178 (1978)

CITING DECISIONS (268 citing decisions)

NEW JERSEY SUPREME COURT

3. **Cited by:**
In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 852 A.2d 167, 2004 N.J. LEXIS 1251 (2004)
LexisNexis Headnotes HN12, HN17, HN45, HN47
180 N.J. 415 p.431
852 A.2d 167 p.177

4. **Cited by:**
Glukowsky v. Equity One, Inc., 180 N.J. 49, 848 A.2d 747, 2004 N.J. LEXIS 553 (2004) **LexisNexis**

Headnotes HN45
180 N.J. 49 p.69
180 N.J. 49 p.71
848 A.2d 747 p.758
848 A.2d 747 p.760

5. **Followed by, Cited by:**
New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (1999) **LexisNexis Headnotes HN12, HN13, HN16, HN17**
Followed by:
158 N.J. 211 p.228
729 A.2d 21 p.30

Cited by:
158 N.J. 211 p.222
729 A.2d 21 p.27

6. **Followed by:**
G.S. v. Department of Human Servs., 157 N.J. 161, 723 A.2d 612, 1999 N.J. LEXIS 54 (1999) **LexisNexis Headnotes HN45**
157 N.J. 161 p.170
723 A.2d 612 p.616

7. **Cited by:**
Koch v. Director, Division of Taxation, 157 N.J. 1, 722 A.2d 918, 1999 N.J. LEXIS 4 (1999) **LexisNexis Headnotes HN45**
157 N.J. 1 p.8
722 A.2d 918 p.921

8. **Cited in Dissenting Opinion at, Cited by:**
Board of Pub. Utils. v. Valley Rd. Sewerage Co. (In re Valley Rd. Sewerage Co.), 154 N.J. 224, 712 A.2d 653, 1998 N.J. LEXIS 576 (1998) **LexisNexis Headnotes HN16, HN17**
Cited in Dissenting Opinion at:
154 N.J. 224 p.242
712 A.2d 653 p.662

Cited by:
154 N.J. 224 p.235
712 A.2d 653 p.659

9. **Cited by:**
Marsh v. New Jersey Dep't of Envtl. Protection, 152 N.J. 137, 703 A.2d 927, 1997 N.J. LEXIS 552 (1997) **LexisNexis Headnotes HN16**
152 N.J. 137 p.149
703 A.2d 927 p.932

10. **Cited by:**
National Waste Recycling v. Middlesex County Improvement Auth., 150 N.J. 209, 695 A.2d 1381, 1997 N.J. LEXIS 214 (1997) **LexisNexis Headnotes HN1, HN2, HN45, HN47, HN48**

150 N.J. 209 p.228
695 A.2d 1381 p.1392

11. **Cited by:**
In re Registrant C.A., 146 N.J. 71, 679 A.2d 1153, 1996 N.J. LEXIS 965 (1996)
146 N.J. 71 p.89
679 A.2d 1153 p.1162

12. **Cited by:**
Silverman v. Berkson, 141 N.J. 412, 661 A.2d 1266, 1995 N.J. LEXIS 533, Blue Sky L. Rep. (CCH) P74055 (1995) **LexisNexis Headnotes HN16, HN17**
141 N.J. 412 p.417
661 A.2d 1266 p.1269

13. **Cited by:**
Richard's Auto City v. Director, Division of Taxation, 140 N.J. 523, 659 A.2d 1360, 1995 N.J. LEXIS 266 (1995) **LexisNexis Headnotes HN14, HN16, HN17, HN47**
140 N.J. 523 p.530
659 A.2d 1360 p.1363

14. **Cited by:**
Fanelli v. City of Trenton, 135 N.J. 582, 641 A.2d 541, 1994 N.J. LEXIS 493, 1995-1 Trade Cas. (CCH) P70876 (1994) **LexisNexis Headnotes HN23**
135 N.J. 582 p.594
641 A.2d 541 p.547

15. **Cited by:**
Limongelli v. New Jersey State Bd. of Dentistry, 137 N.J. 317, 645 A.2d 677, 1993 N.J. LEXIS 1583 (1993) **LexisNexis Headnotes HN45**
137 N.J. 317 p.330
645 A.2d 677 p.683

16. **Cited by:**
In re Commissioner of Insurance's Order Regarding the Rate Filing by the Mkt. Transition Facility, 132 N.J. 209, 624 A.2d 565, 1993 N.J. LEXIS 102 (1993) **LexisNexis Headnotes HN12**
132 N.J. 209 p.221
624 A.2d 565 p.571

17. **Cited by:**
Kaprow v. Board of Educ., 131 N.J. 572, 622 A.2d 237, 1993 N.J. LEXIS 68 (1993) **LexisNexis Headnotes HN16**
131 N.J. 572 p.581
622 A.2d 237 p.241

18. **Cited by:**
In re Township of Warren, 132 N.J. 1, 622 A.2d 1257, 1993 N.J. LEXIS 57 (1993) **LexisNexis Headnotes HN12**

132 N.J. 1 p.26
622 A.2d 1257 p.1270

19. **Cited by:**
In re Adoption of N.J.A.C. 7:26B, N.J. Dkt. No. A-84 (July 7, 1992)
N.J. Dkt. No. A-84

20. **Cited by:**
In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 608 A.2d 288, 1992 N.J. LEXIS 400, 35 Env't Rep. Cas. (BNA) 1458 (1992) **LexisNexis Headnotes HN14, HN17**
128 N.J. 442 p.449
608 A.2d 288 p.291

21. **Cited by:**
Probst v. Board of Educ., 127 N.J. 518, 606 A.2d 345, 1992 N.J. LEXIS 368 (1992) **LexisNexis Headnotes HN21**
127 N.J. 518 p.529
606 A.2d 345 p.350

22. **Cited by:**
Citizens for Equity v. New Jersey Dep't of Environmental Protection, 126 N.J. 391, 599 A.2d 507, 1991 N.J. LEXIS 823 (1991) **LexisNexis Headnotes HN14**
126 N.J. 391 p.394
599 A.2d 507 p.508

23. **Cited by:**
In re Amendment of N.J.A.C. 8:31B-3.31 & N.J.A.C. 8:31B-3.51, 119 N.J. 531, 575 A.2d 481, 1990 N.J. LEXIS 76 (1990) **LexisNexis Headnotes HN19**
119 N.J. 531 p.545
575 A.2d 481 p.488

24. **Cited by:**
Lower Main Street Associates v. New Jersey Housing & Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798, 1989 N.J. LEXIS 20 (1989) **LexisNexis Headnotes HN12**
114 N.J. 226 p.236
553 A.2d 798 p.803

25. **Cited by:**
In re Kimber Petroleum Corp., 110 N.J. 69, 539 A.2d 1181, 1988 N.J. LEXIS 34, 27 Env't Rep. Cas. (BNA) 1668, 18 Envtl. L. Rep. 20933 (1988) **LexisNexis Headnotes HN18**
110 N.J. 69 p.74
539 A.2d 1181 p.1184

26. **Cited by:**
In re Request for Solid Waste Utility Customer Lists, 106 N.J. 508, 524 A.2d 386, 1987 N.J. LEXIS 299 (1987) **LexisNexis Headnotes HN16, HN17**
106 N.J. 508 p.516

524 A.2d 386 p.390

27. **Cited by:**
Board of Education v. Cooperman, 105 N.J. 587, 523 A.2d 655, 1987 N.J. LEXIS 300, 60 A.L.R.4th 1 (1987)
105 N.J. 587 p.597
523 A.2d 655 p.660

28. **Cited by:**
In re Promulgation of Guardianship Services Regulations, 103 N.J. 619, 512 A.2d 453, 1986 N.J. LEXIS 1224 (1986) **LexisNexis Headnotes HN16, HN45**
103 N.J. 619 p.625
512 A.2d 453 p.456

29. **Cited by:**
Department of Labor v. Titan Constr. Co., 102 N.J. 1, 504 A.2d 7, 1985 N.J. LEXIS 3308, 106 Lab. Cas. (CCH) P55741, 27 Wage & Hour Cas. (BNA) 725 (1985) **LexisNexis Headnotes HN17, HN19**
102 N.J. 1 p.11
504 A.2d 7 p.12

30. **Cited by:**
In re Board of Education, 99 N.J. 523, 494 A.2d 279, 1985 N.J. LEXIS 2344, 119 L.R.R.M. (BNA) 3354 (1985)
99 N.J. 523 p.534
494 A.2d 279 p.284

31. **Cited by:**
Waterfront Com. of New York Harbor v. Mercedes-Benz of North America, Inc., 99 N.J. 402, 493 A.2d 504, 1985 N.J. LEXIS 2339, 117 Lab. Cas. (CCH) P56510 (1985) **LexisNexis Headnotes HN45**
99 N.J. 402 p.415
493 A.2d 504 p.511

32. **Cited by:**
Exxon Corp. v. Hunt, 97 N.J. 526, 481 A.2d 271, 1984 N.J. LEXIS 2729, 21 Env't Rep. Cas. (BNA) 1794, 14 Envtl. L. Rep. 20923 (1984) **LexisNexis Headnotes HN45**
97 N.J. 526 p.541
481 A.2d 271 p.279

33. **Cited by:**
State v. Stroger, 97 N.J. 391, 478 A.2d 1175, 1984 N.J. LEXIS 2707 (1984)
97 N.J. 391 p.410
478 A.2d 1175 p.1185

34. **Cited by:**
Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 478 A.2d 742, 1984 N.J. LEXIS 2694 (1984) **LexisNexis Headnotes HN45**
97 N.J. 313 p.327

478 A.2d 742 p.749

35. **Cited by:**
Bergen Pines County Hospital v. New Jersey Dep't of Human Services, 96 N.J. 456, 476 A.2d 784, 1984 N.J. LEXIS 2715 (1984) **LexisNexis Headnotes HN12, HN13, HN14, HN47**
96 N.J. 456 p.477
476 A.2d 784 p.794

36. **Cited in Dissenting Opinion at:**
In re Egg Harbor Associates (Bayshore Centre), 94 N.J. 358, 464 A.2d 1115, 1983 N.J. LEXIS 2740 (1983) **LexisNexis Headnotes HN16, HN17**
94 N.J. 358 p.375
464 A.2d 1115 p.1124

37. **Cited by:**
Gloucester County Welfare Bd. v. State Civil Service Com., 93 N.J. 384, 461 A.2d 575, 1983 N.J. LEXIS 2718 (1983) **LexisNexis Headnotes HN20**
93 N.J. 384 p.391
461 A.2d 575 p.579

38. **Cited by:**
In re Schedule of Rates for Barnert Memorial Hospital, 92 N.J. 31, 455 A.2d 469, 1983 N.J. LEXIS 2340 (1983) **LexisNexis Headnotes HN17**
92 N.J. 31 p.39
455 A.2d 469 p.473

39. **Cited by:**
A.A. Mastrangelo, Inc. v. Commissioner of Dep't of Environmental Protection, 90 N.J. 666, 449 A.2d 516, 1982 N.J. LEXIS 2172, 18 Env't Rep. Cas. (BNA) 1229, 13 Envtl. L. Rep. 20376 (1982) **LexisNexis Headnotes HN12, HN14, HN47, HN48**
90 N.J. 666 p.683
449 A.2d 516 p.525

40. **Cited by:**
Dougherty v. Department of Human Services, Div. of Medical Assistance & Health Services, 91 N.J. 1, 449 A.2d 1235, 1982 N.J. LEXIS 2190 (1982) **LexisNexis Headnotes HN12, HN20**
91 N.J. 1 p.6
449 A.2d 1235 p.1238

41. **Cited by:**
Newark Firemen's Mut. Benevolent Asso. v. Newark, 90 N.J. 44, 447 A.2d 130, 1982 N.J. LEXIS 2136, 113 L.R.R.M. (BNA) 2775 (1982) **LexisNexis Headnotes HN13, HN14, HN15, HN19**
90 N.J. 44 p.50
90 N.J. 44 p.52
447 A.2d 130 p.133
447 A.2d 130 p.134

42. **Cited by:**
Texter v. Department of Human Services, 88 N.J. 376, 443 A.2d 178, 1982 N.J. LEXIS 1879 (1982) **LexisNexis Headnotes HN12, HN14, HN16, HN20**
88 N.J. 376 p.387
88 N.J. 376 p.389
443 A.2d 178 p.183
443 A.2d 178 p.185

43. **Cited by:**
United Bldg. & Constr. Trades Council v. Camden, 88 N.J. 317, 443 A.2d 148, 1982 N.J. LEXIS 1876 (1982) **LexisNexis Headnotes HN13, HN14, HN17, HN18**
88 N.J. 317 p.325
443 A.2d 148 p.152

44. **Cited by:**
Worthington v. Fauver, 88 N.J. 183, 440 A.2d 1128, 1982 N.J. LEXIS 1870 (1982) **LexisNexis Headnotes HN34**
88 N.J. 183 p.194
440 A.2d 1128 p.1134

45. **Cited by:**
Gormley v. Lan, 88 N.J. 26, 438 A.2d 519, 1981 N.J. LEXIS 1685 (1981)
88 N.J. 26 p.38
438 A.2d 519 p.525

46. **Cited by:**
County of Morris v. Skokowski, 86 N.J. 419, 432 A.2d 31, 1981 N.J. LEXIS 1645 (1981) **LexisNexis Headnotes HN12**
86 N.J. 419 p.424
432 A.2d 31 p.33

47. **Cited by:**
Bally Mfg. Corp. v. New Jersey Casino Control Com., 85 N.J. 325, 426 A.2d 1000, 1981 N.J. LEXIS 1600, 1981-1 Trade Cas. (CCH) P63957 (1981) **LexisNexis Headnotes HN52**
85 N.J. 325 p.335
426 A.2d 1000 p.1005

48. **Cited by:**
Levine v. State Dep't of Institutions & Agencies, 84 N.J. 234, 418 A.2d 229, 1980 N.J. LEXIS 1390 (1980) **LexisNexis Headnotes HN17**
84 N.J. 234 p.267
418 A.2d 229 p.246

49. **Cited by:**
In re Health Care Administration Board, 83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 (1980) **LexisNexis Headnotes HN13, HN14, HN17**
83 N.J. 67 p.79
83 N.J. 67 p.81

415 A.2d 1147 p.1153
415 A.2d 1147 p.1154

50. **Followed by:**
Newark v. Natural Resource Council in Dep't of Environmental Protection, 82 N.J. 530, 414 A.2d 1304, 1980 N.J. LEXIS 1344 (1980) **LexisNexis Headnotes HN21**
82 N.J. 530 p.539
414 A.2d 1304 p.1308

51. **Cited by:**
Heir v. Degnan, 82 N.J. 109, 411 A.2d 194, 1980 N.J. LEXIS 1315 (1980) **LexisNexis Headnotes HN13, HN47**
82 N.J. 109 p.121
82 N.J. 109 p.122
411 A.2d 194 p.199
411 A.2d 194 p.200

52. **Cited by:**
New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Com., 82 N.J. 57, 411 A.2d 168, 1980 N.J. LEXIS 1316 (1980) **LexisNexis Headnotes HN17**
82 N.J. 57 p.83
411 A.2d 168 p.181

53. **Cited by:**
In re William B. Kessler Memorial Hospital, 78 N.J. 564, 397 A.2d 656, 1979 N.J. LEXIS 1168 (1979)
78 N.J. 564 p.578
397 A.2d 656 p.663

54. **Followed by:**
Peper v. Princeton University Board of Trustees, 77 N.J. 55, 389 A.2d 465, 1978 N.J. LEXIS 207, 18 Empl. Prac. Dec. (CCH) P8784, 20 Fair Empl. Prac. Cas. (BNA) 607 (1978) **LexisNexis Headnotes HN45**
77 N.J. 55 p.70
389 A.2d 465 p.472

55. **Cited by:**
State v. State Supervisory Employees Ass'n, 78 N.J. 54, 393 A.2d 233, 1978 N.J. LEXIS 220 (1978) **LexisNexis Headnotes HN47**
78 N.J. 54 p.84
393 A.2d 233 p.248

56. **Cited by:**
Galloway Twp. Bd. of Educ. v. Galloway Twp. Ass'n of Educ. Secretaries, 78 N.J. 1, 393 A.2d 207, 1978 N.J. LEXIS 223, 99 L.R.R.M. (BNA) 2421 (1978) **LexisNexis Headnotes HN13**
78 N.J. 1 p.15
393 A.2d 207 p.214

NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

57. **Cited by:**
In re Adamar of New Jersey, Inc., 401 N.J. Super. 247, 950 A.2d 231, 2008 N.J. Super. LEXIS 144 (App.Div. 2008) **LexisNexis Headnotes HN17**
401 N.J. Super. 247 p.274
950 A.2d 231 p.246

58. **Cited by:**
M.F. v. Department of Human Services, Div. of Family Development, 395 N.J. Super. 18, 928 A.2d 71, 2007 N.J. Super. LEXIS 266 (App.Div. 2007) **LexisNexis Headnotes HN3, HN12, HN14, HN16, HN19, HN47**
395 N.J. Super. 18 p.29
928 A.2d 71 p.78

59. **Cited by:**
Lourdes Med. Ctr. v. Bd. of Review, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656, 182 L.R.R.M. (BNA) 3259 (App.Div. 2007) **LexisNexis Headnotes HN13, HN14, HN16, HN19, HN47**
394 N.J. Super. 446 p.457
927 A.2d 164 p.171

60. **Cited by:**
Bedford v. Riello, 392 N.J. Super. 270, 920 A.2d 693, 2007 N.J. Super. LEXIS 114 (App.Div. 2007) **LexisNexis Headnotes HN16**
392 N.J. Super. 270 p.278
920 A.2d 693 p.697

61. **Cited by:**
In re Amendments and New Regulations at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 920 A.2d 111, 2007 N.J. Super. LEXIS 109 (App.Div. 2007) **LexisNexis Headnotes HN12**
392 N.J. Super. 117 p.133
920 A.2d 111 p.121

62. **Cited by:**
Campo Jersey, Inc. v. Director, Div. of Taxation, 390 N.J. Super. 366, 23 N.J. Tax 370, 915 A.2d 600, 2007 N.J. Super. LEXIS 41 (App.Div. 2007) **LexisNexis Headnotes HN12**
390 N.J. Super. 366 p.381
23 N.J. Tax 370 p.384
915 A.2d 600 p.609

63. **Cited by:**
In re Herrmann, 387 N.J. Super. 450, 904 A.2d 764, 2006 N.J. Super. LEXIS 243 (App.Div. 2006) **LexisNexis Headnotes HN11**
387 N.J. Super. 450 p.455
904 A.2d 764 p.767

64. **Cited by:**
Teeters v. Division of Youth and Family Services, 387 N.J. Super. 423, 904 A.2d 747, 2006 N.J. Super.

LEXIS 242 (App.Div. 2006)
387 N.J. Super. 423 p.428
904 A.2d 747 p.750

65. **Cited by:**
In re Stormwater Management Rules, 384 N.J. Super. 451, 894 A.2d 1241, 2006 N.J. Super. LEXIS 107 (App.Div. 2006) **LexisNexis Headnotes HN17, HN19, HN21**
384 N.J. Super. 451 p.461
894 A.2d 1241 p.1247

66. **Cited by:**
In re Military Service Credit For State Teachers, 378 N.J. Super. 277, 875 A.2d 978, 2005 N.J. Super. LEXIS 185, 177 L.R.R.M. (BNA) 3010 (App.Div. 2005) **LexisNexis Headnotes HN45**
378 N.J. Super. 277 p.281
875 A.2d 978 p.980

67. **Cited by:**
In re Adoption of N.J.A.C. 7:26E-1.13, 377 N.J. Super. 78, 871 A.2d 711, 2005 N.J. Super. LEXIS 128 (App.Div. 2005) **LexisNexis Headnotes HN16**
377 N.J. Super. 78 p.98
871 A.2d 711 p.725

68. **Cited by:**
Estate of F.K. v. Division of Medical Assistance and Health Services, 374 N.J. Super. 126, 863 A.2d 1065, 2005 N.J. Super. LEXIS 7 (App.Div. 2005) **LexisNexis Headnotes HN45, HN47**
374 N.J. Super. 126 p.142
863 A.2d 1065 p.1075

69. **Cited by:**
In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 855 A.2d 582, 2004 N.J. Super. LEXIS 344 (App.Div. 2004) **LexisNexis Headnotes HN14**
372 N.J. Super. 61 p.92
855 A.2d 582 p.600

70. **Cited by:**
In re Red Bank Charter School, 367 N.J. Super. 462, 843 A.2d 365, 2004 N.J. Super. LEXIS 109 (App.Div. 2004)
367 N.J. Super. 462 p.477
843 A.2d 365 p.374

71. **Cited by:**
In re Adopted Amendments to N.J.A.C., 365 N.J. Super. 255, 839 A.2d 60, 2003 N.J. Super. LEXIS 395 (App.Div. 2003) **LexisNexis Headnotes HN14**
365 N.J. Super. 255 p.264
839 A.2d 60 p.66

72. **Followed by:**

State v. Bond, 365 N.J. Super. 430, 839 A.2d 888, 2003 N.J. Super. LEXIS 389 (App.Div. 2003) **LexisNexis Headnotes HN13, HN17**
365 N.J. Super. 430 p.442
839 A.2d 888 p.895

73. **Cited by:**
Borough of Haledon v. Borough of North Haledon, 358 N.J. Super. 289, 817 A.2d 965, 2003 N.J. Super. LEXIS 100 (App.Div. 2003) **LexisNexis Headnotes HN16**
358 N.J. Super. 289 p.299
817 A.2d 965 p.971

74. **Cited by:**
In re Virgo's, Inc., 355 N.J. Super. 590, 810 A.2d 1175, 2002 N.J. Super. LEXIS 483 (App.Div. 2002) **LexisNexis Headnotes HN16**
355 N.J. Super. 590 p.595
810 A.2d 1175 p.1178

75. **Cited by:**
In re Coastal Permit Program Rules, 354 N.J. Super. 293, 807 A.2d 198, 2002 N.J. Super. LEXIS 259 (App.Div. 2002) **LexisNexis Headnotes HN14, HN16, HN17**
354 N.J. Super. 293 p.329
807 A.2d 198 p.221

76. **Cited by:**
In re N.J. Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1, 353 N.J. Super. 494, 803 A.2d 639, 2002 N.J. Super. LEXIS 372 (App.Div. 2002) **LexisNexis Headnotes HN17**
353 N.J. Super. 494 p.523
803 A.2d 639 p.658

77. **Cited by:**
Coalition for Quality Health Care v. N.J. Dep't of Banking & Ins., 348 N.J. Super. 272, 791 A.2d 1085, 2002 N.J. Super. LEXIS 111 (App.Div. 2002)
348 N.J. Super. 272 p.294
791 A.2d 1085 p.1098

78. **Followed by:**
Reck v. Director, Division of Taxation, 345 N.J. Super. 443, 785 A.2d 476, 2001 N.J. Super. LEXIS 442 (App.Div. 2001) **LexisNexis Headnotes HN12**
345 N.J. Super. 443 p.448
785 A.2d 476 p.479

79. **Cited by:**
Univ. of Med. & Dentistry - University Hosp. v. Grant, 343 N.J. Super. 162, 778 A.2d 473, 2001 N.J. Super. LEXIS 305, 75 Soc. Sec. Rep. Service 457 (App.Div. 2001) **LexisNexis Headnotes HN14**
343 N.J. Super. 162 p.174
778 A.2d 473 p.480

80. **Cited by:**
Dentists for Quality Care, Inc. v. State Bd. of Dentistry, 339 N.J. Super. 257, 771 A.2d 659, 2001 N.J. Super. LEXIS 165 (App.Div. 2001) **LexisNexis Headnotes HN12, HN14, HN16, HN17, HN19, HN47**
339 N.J. Super. 257 p.263
339 N.J. Super. 257 p.264
771 A.2d 659 p.663

81. **Cited by:**
Baer v. Klagholz, 339 N.J. Super. 168, 771 A.2d 603, 2001 N.J. Super. LEXIS 141 (App.Div. 2001) **LexisNexis Headnotes HN12, HN15**
339 N.J. Super. 168 p.190
771 A.2d 603 p.616

82. **Cited by:**
Lewis v. Catastrophic Illness in Children Relief Fund Comm'n, 336 N.J. Super. 361, 764 A.2d 1035, 2001 N.J. Super. LEXIS 18 (App.Div. 2001) **LexisNexis Headnotes HN14**
336 N.J. Super. 361 p.370
764 A.2d 1035 p.1040

83. **Cited by:**
Knight v. City of Hoboken Rent Leveling & Stabilization Bd. , 332 N.J. Super. 547, 753 A.2d 1231, 2000 N.J. Super. LEXIS 284 (App.Div. 2000) **LexisNexis Headnotes HN14, HN17**
332 N.J. Super. 547 p.552
753 A.2d 1231 p.1234

84. **Cited by:**
In re Public Serv. Elec. & Gas Company's Rate Unbundling, Stranded Costs & Restructuring Filings, 330 N.J. Super. 65, 748 A.2d 1161, 2000 N.J. Super. LEXIS 150 (App.Div. 2000) **LexisNexis Headnotes HN12, HN45**
330 N.J. Super. 65 p.98
330 N.J. Super. 65 p.100
748 A.2d 1161 p.1178
748 A.2d 1161 p.1180

85. **Cited by:**
County of Hudson v. Department of Law & Public Safety, 328 N.J. Super. 308, 746 A.2d 5, 2000 N.J. Super. LEXIS 59 (App.Div. 2000) **LexisNexis Headnotes HN12, HN13, HN16, HN17**
328 N.J. Super. 308 p.323
746 A.2d 5 p.14

86. **Cited by:**
In re Route 206 at New Amwell Rd. (Hillsborough), 322 N.J. Super. 345, 731 A.2d 56, 1999 N.J. Super. LEXIS 220 (App.Div. 1999) **LexisNexis Headnotes HN16, HN19**
322 N.J. Super. 345 p.352
731 A.2d 56 p.60

87. **Cited by:**
New Jersey Coalition of Health Care Prof'ls, Inc. v. New Jersey Dep't of Banking & Ins., 323 N.J. Super.

207, 732 A.2d 1063, 1999 N.J. Super. LEXIS 276 (App.Div. 1999) **LexisNexis Headnotes HN16, HN17**
323 N.J. Super. 207 p.228
323 N.J. Super. 207 p.229
732 A.2d 1063 p.1076

88. **Cited by:**
In re an Allegation of Physical Abuse Concerning L.R., 321 N.J. Super. 444, 729 A.2d 463, 1999 N.J. Super. LEXIS 176 (App.Div. 1999) **LexisNexis Headnotes HN17**
321 N.J. Super. 444 p.452
729 A.2d 463 p.467

89. **Cited by:**
Board of Educ. v. State Health Benefits Comm'n, 314 N.J. Super. 486, 715 A.2d 358, 1998 N.J. Super. LEXIS 377 (App.Div. 1998) **LexisNexis Headnotes HN16, HN17**
314 N.J. Super. 486 p.492
715 A.2d 358 p.361

90. **Followed by:**
New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 (App.Div. 1998) **LexisNexis Headnotes HN17**
310 N.J. Super. 224 p.239
708 A.2d 708 p.715

91. **Cited by:**
In re A-1 Jersey Moving & Storage, 309 N.J. Super. 33, 706 A.2d 752, 1998 N.J. Super. LEXIS 68 (App.Div. 1998) **LexisNexis Headnotes HN16**
309 N.J. Super. 33 p.40
706 A.2d 752 p.756

92. **Cited by:**
In re Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6 & 4.3, 305 N.J. Super. 389, 702 A.2d 838, 1997 N.J. Super. LEXIS 439 (App.Div. 1997) **LexisNexis Headnotes HN12**
305 N.J. Super. 389 p.402
702 A.2d 838 p.844

93. **Cited by:**
In re Allegations of Violations of Law & Admin. Code by A. Fiore & Sons, Inc., 305 N.J. Super. 192, 701 A.2d 1303, 1997 N.J. Super. LEXIS 435 (App.Div. 1997) **LexisNexis Headnotes HN17**
305 N.J. Super. 192 p.208
701 A.2d 1303 p.1311

94. **Cited by:**
In re Allegations of Physical Abuse at Blackacre Academy, 304 N.J. Super. 168, 698 A.2d 1275, 1997 N.J. Super. LEXIS 366 (App.Div. 1997) **LexisNexis Headnotes HN17**
304 N.J. Super. 168 p.179
698 A.2d 1275 p.1281

95. **Cited by:**
In re Certificate of Need of the Visiting Nurse Ass'n, 302 N.J. Super. 85, 694 A.2d 1038, 1997 N.J. Super. LEXIS 263 (App.Div. 1997) **LexisNexis Headnotes HN20**
302 N.J. Super. 85 p.95
694 A.2d 1038 p.1043

96. **Cited by:**
In re Liquidation of Sussex Mut. Ins. Co., 301 N.J. Super. 595, 694 A.2d 312, 1997 N.J. Super. LEXIS 262 (App.Div. 1997) **LexisNexis Headnotes HN45**
301 N.J. Super. 595 p.600
694 A.2d 312 p.314

97. **Cited by:**
In re Holy Name Hosp., 301 N.J. Super. 282, 693 A.2d 1259, 1997 N.J. Super. LEXIS 261 (App.Div. 1997) **LexisNexis Headnotes HN20**
301 N.J. Super. 282 p.296
693 A.2d 1259 p.1266

98. **Cited by:**
In re Eligibility of Certain Assistant Union County Prosecutors, 301 N.J. Super. 551, 694 A.2d 289, 1997 N.J. Super. LEXIS 260 (App.Div. 1997) **LexisNexis Headnotes HN45**
301 N.J. Super. 551 p.561
694 A.2d 289 p.294

99. **Cited by:**
Ingraham v. Trowbridge Builders, 297 N.J. Super. 72, 687 A.2d 785, 1997 N.J. Super. LEXIS 40 (App.Div. 1997) **LexisNexis Headnotes HN45**
297 N.J. Super. 72 p.79
687 A.2d 785 p.789

100. **Cited by:**
Board of Pub. Utils. v. Valley Rd. Sewerage Co. (In re Valley Rd. Sewarage Co.), 295 N.J. Super. 278, 685 A.2d 11, 1996 N.J. Super. LEXIS 409 (App.Div. 1996) **LexisNexis Headnotes HN12, HN16, HN17**
295 N.J. Super. 278 p.287
685 A.2d 11 p.15

101. **Distinguished by:**
Chopper Express v. Department of Ins., 293 N.J. Super. 536, 681 A.2d 1226, 1996 N.J. Super. LEXIS 357 (App.Div. 1996) **LexisNexis Headnotes HN16, HN17**
293 N.J. Super. 536 p.542
681 A.2d 1226 p.1229

102. **Cited by:**
Kramer v. Board of Trustees of Pub. Emples. Retirement Sys., 291 N.J. Super. 46, 676 A.2d 1117, 1996 N.J. Super. LEXIS 239 (App.Div. 1996) **LexisNexis Headnotes HN45**
291 N.J. Super. 46 p.56
676 A.2d 1117 p.1122

103. **Cited by:**
Sutton Warehousing v. Director, N.J. Div. of Taxation, 290 N.J. Super. 686, 676 A.2d 615, 1996 N.J. Super. LEXIS 233 (App.Div. 1996) **LexisNexis Headnotes HN20**
290 N.J. Super. 686 p.697
676 A.2d 615 p.621

104. **Cited by:**
In re CAFRA Permit No. 87-0959-5, 290 N.J. Super. 498, 676 A.2d 161, 1996 N.J. Super. LEXIS 208 (App.Div. 1996)
290 N.J. Super. 498 p.515
676 A.2d 161 p.170

105. **Cited by:**
E.I. du Pont de Nemours & Co. v. Department of Envtl. Protection & Energy, 283 N.J. Super. 331, 661 A.2d 1314, 1995 N.J. Super. LEXIS 264 (App.Div. 1995) **LexisNexis Headnotes HN16, HN19**
283 N.J. Super. 331 p.340
661 A.2d 1314 p.1319

106. **Cited by:**
In re Chief Clerk, 282 N.J. Super. 530, 660 A.2d 1217, 1995 N.J. Super. LEXIS 252 (App.Div. 1995) **LexisNexis Headnotes HN53**
282 N.J. Super. 530 p.537
660 A.2d 1217 p.1220

107. **Cited by:**
Smith v. Board of Review, Dep't of Labor, 281 N.J. Super. 426, 658 A.2d 310, 1995 N.J. Super. LEXIS 175 (App.Div. 1995)
281 N.J. Super. 426 p.434
658 A.2d 310 p.315

108. **Cited by:**
P.P. v. New Jersey Dep't of Human Servs., 280 N.J. Super. 1, 654 A.2d 471, 1994 N.J. Super. LEXIS 596, 46 Soc. Sec. Rep. Service 728 (App.Div. 1994) **LexisNexis Headnotes HN12, HN31**
280 N.J. Super. 1 p.6
654 A.2d 471 p.473

109. **Cited by:**
Waste Management v. Department of Envtl. Protection & Energy, 278 N.J. Super. 56, 650 A.2d 379, 1994 N.J. Super. LEXIS 501 (App.Div. 1994) **LexisNexis Headnotes HN14, HN20**
278 N.J. Super. 56 p.64
650 A.2d 379 p.383

110. **Cited by:**
Department of Law & Pub. Safety, Div. of Gaming Enforcement v. Gonzalez, 273 N.J. Super. 239, 641 A.2d 1060, 1994 N.J. Super. LEXIS 221 (App.Div. 1994) **LexisNexis Headnotes HN20**
273 N.J. Super. 239 p.262
641 A.2d 1060 p.1071

111. **Cited by:**
Richard's Auto City v. Director, Division of Taxation, 270 N.J. Super. 92, 14 N.J. Tax 436, 636 A.2d 572, 1994 N.J. Super. LEXIS 28 (App.Div. 1994) **LexisNexis Headnotes HN11, HN12, HN16, HN17**
270 N.J. Super. 92 p.97
14 N.J. Tax 436 p.449
636 A.2d 572 p.575

112. **Cited by:**
In re Certification of Need Application of Chilton Memorial Hosp., 269 N.J. Super. 426, 635 A.2d 986, 1993 N.J. Super. LEXIS 896 (App.Div. 1993) **LexisNexis Headnotes HN20**
269 N.J. Super. 426 p.438
635 A.2d 986 p.992

113. **Cited by:**
Del Tufo v. J.N., 268 N.J. Super. 291, 633 A.2d 572, 1993 N.J. Super. LEXIS 830 (App.Div. 1993) **LexisNexis Headnotes HN18**
268 N.J. Super. 291 p.298
633 A.2d 572 p.575

114. **Cited by:**
Coastal Group v. Planned Real Estate Dev. Section, Dep't of Community Affairs, 267 N.J. Super. 49, 630 A.2d 814, 1993 N.J. Super. LEXIS 756 (App.Div. 1993) **LexisNexis Headnotes HN17, HN18**
267 N.J. Super. 49 p.59
630 A.2d 814 p.819

115. **Followed by, Cited by:**
In re Commissioner of Ins's Issuance of Orders A92-189, 274 N.J. Super. 385, 644 A.2d 616, 1993 N.J. Super. LEXIS 941 (App.Div. 1993) **LexisNexis Headnotes HN12, HN14, HN45**
Followed by:
274 N.J. Super. 385 p.397
644 A.2d 616 p.622

Cited by:
274 N.J. Super. 385 p.398

116. **Cited by:**
Rosen v. New Jersey Div. of Developmental Disabilities, 256 N.J. Super. 629, 607 A.2d 1030, 1992 N.J. Super. LEXIS 203 (App.Div. 1992) **LexisNexis Headnotes HN17**
256 N.J. Super. 629 p.642
607 A.2d 1030 p.1036

117. **Cited by:**
In re Adoption of N.J.A.C. 7:1E, 255 N.J. Super. 469, 605 A.2d 733, 1992 N.J. Super. LEXIS 128 (App.Div. 1992) **LexisNexis Headnotes HN12, HN14**
255 N.J. Super. 469 p.474
255 N.J. Super. 469 p.475
605 A.2d 733 p.736

118. **Cited by:**
Syria v. Lichtenstein, 1991 N.J. Super. LEXIS 270 (App.Div. Aug. 6, 1991) **LexisNexis Headnotes HN19**

119. **Cited by:**
Reuben H. Donnelley Corp. v. Director, Division of Taxation, 12 N.J. Tax 255, 1991 N.J. Tax LEXIS 33 (App.Div. 1991)
12 N.J. Tax 255 p.262

120. **Cited by:**
A.R. Criscuolo & Assoc., Inc. v. N.J. Dep't of Environmental Protection, 249 N.J. Super. 290, 592 A.2d 313, 1991 N.J. Super. LEXIS 230 (App.Div. 1991) **LexisNexis Headnotes HN45**
249 N.J. Super. 290 p.299
592 A.2d 313 p.318

121. **Cited by:**
New Jersey Builders Ass'n v. Fenske, 249 N.J. Super. 60, 591 A.2d 1362, 1991 N.J. Super. LEXIS 211 (App.Div. 1991) **LexisNexis Headnotes HN14**
249 N.J. Super. 60 p.68
591 A.2d 1362 p.1366

122. **Cited by:**
In re Adoption of Amendments to N.J.A.C. 6:11-8.4 & N.J.A.C. 6:11-8.5, 249 N.J. Super. 52, 592 A.2d 9, 1991 N.J. Super. LEXIS 227 (App.Div. 1991)
249 N.J. Super. 52 p.57
592 A.2d 9 p.12

123. **Cited by:**
New Jersey Hosp. Ass'n v. New Jersey State Dep't of Health, 249 N.J. Super. 194, 592 A.2d 265, 1991 N.J. Super. LEXIS 218 (App.Div. 1991)
249 N.J. Super. 194 p.204
592 A.2d 265 p.269

124. **Cited by:**
In re "Plan for Orderly Withdrawal" of Twin City Fire Ins. Co., 248 N.J. Super. 616, 591 A.2d 1005, 1991 N.J. Super. LEXIS 201 (App.Div. 1991)
248 N.J. Super. 616 p.640
591 A.2d 1005 p.1017

125. **Followed by:**
In re Adoption of N.J.A.C. 7:26B, 250 N.J. Super. 189, 593 A.2d 1193, 1991 N.J. Super. LEXIS 157 (App.Div. 1991) **LexisNexis Headnotes HN1, HN2, HN16, HN17, HN35**
250 N.J. Super. 189 p.205
593 A.2d 1193 p.1202

126. **Cited by:**
Lally v. Public Employees' Retirement System, 246 N.J. Super. 270, 587 A.2d 303, 1991 N.J. Super. LEXIS

57 (App.Div. 1991) **LexisNexis Headnotes HN45**
587 A.2d 303 p.304

127. **Cited by:**
In re Boyan, 246 N.J. Super. 300, 587 A.2d 640, 1991 N.J. Super. LEXIS 58 (App.Div. 1991) **LexisNexis Headnotes HN13, HN45**
587 A.2d 640 p.650

128. **Cited by:**
Alevras v. Delanoy, 245 N.J. Super. 32, 583 A.2d 778, 1990 N.J. Super. LEXIS 438 (App.Div. 1990) **LexisNexis Headnotes HN12**
245 N.J. Super. 32 p.36
583 A.2d 778 p.780

129. **Followed by:**
Terminal Constr. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J. Super. 537, 582 A.2d 1288, 1990 N.J. Super. LEXIS 422 (App.Div. 1990)
244 N.J. Super. 537 p.548
582 A.2d 1288 p.1293

130. **Cited by:**
Division of Consumer Affairs v. General Electric Co., 244 N.J. Super. 349, 582 A.2d 831, 1990 N.J. Super. LEXIS 412 (App.Div. 1990) **LexisNexis Headnotes HN45**
244 N.J. Super. 349 p.353
582 A.2d 831 p.833

131. **Cited by:**
Citizens for Equity v. N.J. Dep't of Envtl. Prot., 252 N.J. Super. 62, 599 A.2d 516, 1990 N.J. Super. LEXIS 519 (App.Div. 1990) **LexisNexis Headnotes HN12**
252 N.J. Super. 62 p.70
599 A.2d 516 p.521

132. **Cited by:**
New Jersey Chapter of Nat'l Ass'n of Industrial & Office Parks v. New Jersey Dep't of Environmental Protection, 241 N.J. Super. 145, 574 A.2d 514, 1990 N.J. Super. LEXIS 161 (App.Div. 1990) **LexisNexis Headnotes HN18**
241 N.J. Super. 145 p.159
574 A.2d 514 p.521

133. **Cited by:**
Trauma Nurses, Inc. v. Board of Review, New Jersey Dep't of Labor, 242 N.J. Super. 135, 576 A.2d 285, 1990 N.J. Super. LEXIS 227 (App.Div. 1990)
242 N.J. Super. 135 p.141
576 A.2d 285 p.288

134. **Cited by:**
In re Application by Pennsauken Solid Waste Management Authority, 238 N.J. Super. 233, 569 A.2d 826,

1990 N.J. Super. LEXIS 42 (App.Div. 1990)
238 N.J. Super. 233 p.252
569 A.2d 826 p.835

135. **Cited in Dissenting Opinion at, Cited by:**
Fisch v. Bureau of Constr. Code Enforcement, 238 N.J. Super. 410, 570 A.2d 2, 1990 N.J. Super. LEXIS 34 (App.Div. 1990) **LexisNexis Headnotes HN9, HN21**
Cited in Dissenting Opinion at:
238 N.J. Super. 410 p.429
570 A.2d 2 p.12

Cited by:
238 N.J. Super. 410 p.423
570 A.2d 2 p.8

136. **Cited by:**
In re Long-Term Out-of-State Waste Disposal Agreement etc., 237 N.J. Super. 516, 568 A.2d 547, 1990 N.J. Super. LEXIS 10 (App.Div. 1990) **LexisNexis Headnotes HN14**
237 N.J. Super. 516 p.529
568 A.2d 547 p.554

137. **Cited by:**
In re Petition of Paterson Counseling Center, Inc., 237 N.J. Super. 240, 567 A.2d 282, 1989 N.J. Super. LEXIS 431 (App.Div. 1989) **LexisNexis Headnotes HN17**
237 N.J. Super. 240 p.244
567 A.2d 282 p.284

138. **Cited by:**
Pollution Control Financing Authority v. New Jersey Dep't of Environmental Protection, 237 N.J. Super. 163, 567 A.2d 243, 1989 N.J. Super. LEXIS 428 (App.Div. 1989)
237 N.J. Super. 163 p.170
567 A.2d 243 p.247

139. **Cited by:**
In re Adoption of N.J.A.C., 240 N.J. Super. 224, 573 A.2d 162, 1989 N.J. Super. LEXIS 527 (App.Div. 1989)
240 N.J. Super. 224 p.228
573 A.2d 162 p.164

140. **Cited by:**
In re Freshwater Wetlands Protection Act Rules, 238 N.J. Super. 516, 570 A.2d 435, 1989 N.J. Super. LEXIS 497 (App.Div. 1989) **LexisNexis Headnotes HN12, HN14, HN16, HN17, HN45**
238 N.J. Super. 516 p.525
238 N.J. Super. 516 p.526
570 A.2d 435 p.440
570 A.2d 435 p.441

141. **Followed by:**

Emmer v. Merin, 233 N.J. Super. 568, 559 A.2d 845, 1989 N.J. Super. LEXIS 230 (App.Div. 1989) **LexisNexis Headnotes HN21, HN45**
233 N.J. Super. 568 p.581
559 A.2d 845 p.852

142. **Cited by:**
Last Chance Dev. Partnership v. Kean, 232 N.J. Super. 115, 556 A.2d 796, 1989 N.J. Super. LEXIS 127 (App.Div. 1989) **LexisNexis Headnotes HN14, HN16**
232 N.J. Super. 115 p.127
556 A.2d 796 p.802

143. **Cited by:**
In re Berwick Ice, Inc., 231 N.J. Super. 391, 555 A.2d 735, 1989 N.J. Super. LEXIS 105 (App.Div. 1989) **LexisNexis Headnotes HN45**
231 N.J. Super. 391 p.397
555 A.2d 735 p.738

144. **Cited by:**
Hills Dev. Co. v. Bernards, 229 N.J. Super. 318, 551 A.2d 547, 1988 N.J. Super. LEXIS 456 (App.Div. 1988)
229 N.J. Super. 318 p.329
551 A.2d 547 p.553

145. **Followed by, Cited by:**
Medical Soc. of New Jersey v. New Jersey Dep't of Law & Public Safety, Div. of Consumer Affairs, 229 N.J. Super. 128, 550 A.2d 1272, 1988 N.J. Super. LEXIS 446 (App.Div. 1988) **LexisNexis Headnotes HN13, HN16, HN17**
Followed by:
229 N.J. Super. 128 p.134
550 A.2d 1272 p.1276

Cited by:
550 A.2d 1272 p.1275

146. **Cited by:**
Golden Nugget Atlantic City Corp. v. Atlantic City Electric Co., 229 N.J. Super. 118, 550 A.2d 1267, 1988 N.J. Super. LEXIS 444 (App.Div. 1988) **LexisNexis Headnotes HN20**
229 N.J. Super. 118 p.122
550 A.2d 1267 p.1269

147. **Cited by:**
New Jersey Builders Asso. v. Coleman, 227 N.J. Super. 23, 545 A.2d 783, 1988 N.J. Super. LEXIS 326 (App.Div. 1988) **LexisNexis Headnotes HN14**
227 N.J. Super. 23 p.25
545 A.2d 783 p.784

148. **Cited in Dissenting Opinion at:**
Franklin v. New Jersey Dep't of Human Services, 225 N.J. Super. 504, 543 A.2d 56, 1988 N.J. Super.

LEXIS 210 (App.Div. 1988) **LexisNexis Headnotes HN14, HN16**
225 N.J. Super. 504 p.533
543 A.2d 56 p.72

149. **Cited by:**
State v. Levinson, 225 N.J. Super. 135, 541 A.2d 1110, 1988 N.J. Super. LEXIS 186 (App.Div. 1988) **LexisNexis Headnotes HN13**
225 N.J. Super. 135 p.139
541 A.2d 1110 p.1112

150. **Followed by:**
In re Appeal of Adoption of Rules Regarding Property Disposition of Casino Licensee (N.J.A.C. 19:41-7.2(A)), 224 N.J. Super. 316, 540 A.2d 523, 1988 N.J. Super. LEXIS 112 (App.Div. 1988) **LexisNexis Headnotes HN17, HN19**
224 N.J. Super. 316 p.319
540 A.2d 523 p.524

151. **Cited by:**
Patrolmen's Benevolent Assn., Local 134 v. Bergen County Bd. of Chosen Freeholders, 227 N.J. Super. 1, 545 A.2d 772, 1988 N.J. Super. LEXIS 468 (App.Div. 1988)
227 N.J. Super. 1 p.4
545 A.2d 772 p.774

152. **Cited by:**
In re Inter-County Refuse Service, Inc., 222 N.J. Super. 258, 536 A.2d 775, 1988 N.J. Super. LEXIS 10, 1988-1 Trade Cas. (CCH) P68055 (App.Div. 1988) **LexisNexis Headnotes HN31**
222 N.J. Super. 258 p.267
536 A.2d 775 p.779

153. **Cited by:**
Raymond v. New Jersey State Parole Bd., 221 N.J. Super. 381, 534 A.2d 741, 1987 N.J. Super. LEXIS 1383 (App.Div. 1987) **LexisNexis Headnotes HN15**
221 N.J. Super. 381 p.386
534 A.2d 741 p.744

154. **Cited by:**
VI-Concrete Co. v. State, Dep't of Environmental Protection, 220 N.J. Super. 176, 531 A.2d 1039, 1987 N.J. Super. LEXIS 1308 (App.Div. 1987) **LexisNexis Headnotes HN16**
220 N.J. Super. 176 p.182
531 A.2d 1039 p.1042

155. **Cited by:**
Lower Main Street Associates v. New Jersey Housing & Mortg. Finance Agency, 219 N.J. Super. 263, 530 A.2d 324, 1987 N.J. Super. LEXIS 1262 (App.Div. 1987) **LexisNexis Headnotes HN12, HN16, HN17, HN20**
219 N.J. Super. 263 p.272
530 A.2d 324 p.328

156. **Cited by:**
In re N.J.A.C. 14A:20-1.1, 216 N.J. Super. 297, 523 A.2d 686, 1987 N.J. Super. LEXIS 1103 (App.Div. 1987) **LexisNexis Headnotes HN17**
216 N.J. Super. 297 p.305
523 A.2d 686 p.691

157. **Cited by:**
In re Scioscia, 216 N.J. Super. 644, 524 A.2d 855, 1987 N.J. Super. LEXIS 1123, 1987-1 Trade Cas. (CCH) P67562 (App.Div. 1987) **LexisNexis Headnotes HN14, HN17**
216 N.J. Super. 644 p.653
524 A.2d 855 p.859

158. **Cited by:**
In re NJPDES Permit No. NJ 0055247, 216 N.J. Super. 1, 522 A.2d 1002, 1987 N.J. Super. LEXIS 1059 (App.Div. 1987) **LexisNexis Headnotes HN20**
216 N.J. Super. 1 p.11
522 A.2d 1002 p.1007

159. **Cited by:**
Pine Run v. South Jersey Gas Co., 215 N.J. Super. 54, 520 A.2d 1367, 1987 N.J. Super. LEXIS 1027 (App.Div. 1987) **LexisNexis Headnotes HN45**
215 N.J. Super. 54 p.61
520 A.2d 1367 p.1370

160. **Cited by:**
Maticka v. Atlantic City, 216 N.J. Super. 434, 524 A.2d 416, 1987 N.J. Super. LEXIS 1023 (App.Div. 1987) **LexisNexis Headnotes HN20**
216 N.J. Super. 434 p.457
524 A.2d 416 p.428

161. **Cited by:**
In re Camden County Solid Waste Management Dist., 214 N.J. Super. 247, 518 A.2d 1105, 1986 N.J. Super. LEXIS 1523 (App.Div. 1986) **LexisNexis Headnotes HN14, HN16, HN17**
214 N.J. Super. 247 p.251
518 A.2d 1105 p.1107

162. **Cited by:**
NYT Cable TV v. Homestead at Mansfield, Inc., 214 N.J. Super. 148, 518 A.2d 748, 1986 N.J. Super. LEXIS 1485 (App.Div. 1986) **LexisNexis Headnotes HN12, HN14**
214 N.J. Super. 148 p.164
518 A.2d 748 p.756

163. **Cited by:**
Fasching v. Kallinger, 211 N.J. Super. 26, 510 A.2d 694, 1986 N.J. Super. LEXIS 1271, 60 A.L.R.4th 1189 (App.Div. 1986) **LexisNexis Headnotes HN45**
211 N.J. Super. 26 p.44
510 A.2d 694 p.704

164. **Cited by:**
Barone v. Department of Human Services, Div. of Medical Assistance & Health Services, etc., 210 N.J. Super. 276, 509 A.2d 786, 1986 N.J. Super. LEXIS 1250 (App.Div. 1986) **LexisNexis Headnotes HN17, HN45**
210 N.J. Super. 276 p.285
509 A.2d 786 p.791

165. **Cited by:**
Schuenemann v. Board of Review, 208 N.J. Super. 48, 504 A.2d 1204, 1986 N.J. Super. LEXIS 1130 (App.Div. 1986) **LexisNexis Headnotes HN45**
208 N.J. Super. 48 p.51
504 A.2d 1204 p.1206

166. **Cited by:**
In re N.J.A.C. 11:1-20, 208 N.J. Super. 182, 505 A.2d 177, 1986 N.J. Super. LEXIS 1129, 57 A.L.R.4th 607 (App.Div. 1986) **LexisNexis Headnotes HN12**
208 N.J. Super. 182 p.197
505 A.2d 177 p.184

167. **Cited by:**
In re Request for Solid Waste Utility Customer Lists, 205 N.J. Super. 390, 501 A.2d 162, 1985 N.J. Super. LEXIS 1525 (App.Div. 1985) **LexisNexis Headnotes HN16**
205 N.J. Super. 390 p.394
501 A.2d 162 p.164

168. **Cited by:**
In re Promulgation of N.J.A.C. 13:35-6.14, 205 N.J. Super. 492, 501 A.2d 547, 1985 N.J. Super. LEXIS 1553 (App.Div. 1985) **LexisNexis Headnotes HN12, HN16**
205 N.J. Super. 492 p.498
501 A.2d 547 p.550

169. **Followed by:**
K.P. v. Albanese, 204 N.J. Super. 166, 497 A.2d 1276, 1985 N.J. Super. LEXIS 1452 (App.Div. 1985) **LexisNexis Headnotes HN12, HN16, HN17, HN20**
204 N.J. Super. 166 p.176
497 A.2d 1276 p.1282

170. **Cited by:**
Society for Environmental Economic Dev. v. New Jersey Dep't of Environmental Protection, 208 N.J. Super. 1, 504 A.2d 1180, 1985 N.J. Super. LEXIS 1641 (App.Div. 1985) **LexisNexis Headnotes HN16**
208 N.J. Super. 1 p.4
504 A.2d 1180 p.1181

171. **Cited by:**
In re Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272, 1985 N.J. Super. LEXIS 1453 (App.Div. 1985)

204 N.J. Super. 158 p.161
497 A.2d 1272 p.1273

172. **Cited by:**
Foreign Auto Preparation Service v. New Jersey Economic Dev. Authority, 201 N.J. Super. 428, 493 A.2d 550, 1985 N.J. Super. LEXIS 1302 (App.Div. 1985) **LexisNexis Headnotes HN9**
201 N.J. Super. 428 p.433
493 A.2d 550 p.553

173. **Cited by:**
State v. Scioscia, 200 N.J. Super. 28, 490 A.2d 327, 1985 N.J. Super. LEXIS 1221, 1985-1 Trade Cas. (CCH) P66598 (App.Div. 1985)
200 N.J. Super. 28 p.41
490 A.2d 327 p.334

174. **Cited by:**
Fulginiti v. Cape May County Sheriff's Dep't, 199 N.J. Super. 56, 488 A.2d 250, 1985 N.J. Super. LEXIS 1171 (App.Div. 1985) **LexisNexis Headnotes HN45**
199 N.J. Super. 56 p.60
488 A.2d 250 p.252

175. **Followed by:**
Ambrose v. Director, Division of Taxation, 198 N.J. Super. 546, 487 A.2d 1274, 1985 N.J. Super. LEXIS 1154 (App.Div. 1985) **LexisNexis Headnotes HN12**
198 N.J. Super. 546 p.551
487 A.2d 1274 p.1277

176. **Followed by:**
In re Guardianship Services Regulations, 198 N.J. Super. 132, 486 A.2d 888, 1984 N.J. Super. LEXIS 1281 (App.Div. 1984) **LexisNexis Headnotes HN14, HN17, HN20**
198 N.J. Super. 132 p.137
486 A.2d 888 p.891

177. **Cited by:**
Elizabeth v. State Dep't of Environmental Protection, 198 N.J. Super. 41, 486 A.2d 356, 1984 N.J. Super. LEXIS 1267 (App.Div. 1984) **LexisNexis Headnotes HN11, HN12**
198 N.J. Super. 41 p.46
198 N.J. Super. 41 p.48
486 A.2d 356 p.359
486 A.2d 356 p.360

178. **Cited by:**
Employers' Fire Ins. Co. v. Director, Division of Taxation, 6 N.J. Tax 613, 1984 N.J. Tax LEXIS 58 (App.Div. 1984) **LexisNexis Headnotes HN20**
6 N.J. Tax 613 p.621

179. **Followed by:**

Public Service Electric & Gas Co. v. New Jersey Dep't of Environmental Protection, 193 N.J. Super. 676, 475 A.2d 665, 1984 N.J. Super. LEXIS 1061 (App.Div. 1984) **LexisNexis Headnotes HN12**
193 N.J. Super. 676 p.684
475 A.2d 665 p.670

180. **Cited by:**
Exxon Corp. v. East Brunswick, 192 N.J. Super. 329, 470 A.2d 5, 1983 N.J. Super. LEXIS 1035 (App.Div. 1983) **LexisNexis Headnotes HN9**
192 N.J. Super. 329 p.337
470 A.2d 5 p.9

181. **Cited by:**
Eatough v. Board of Medical Examiners, 191 N.J. Super. 166, 465 A.2d 934, 1983 N.J. Super. LEXIS 947 (App.Div. 1983) **LexisNexis Headnotes HN19, HN20, HN46, HN51**
191 N.J. Super. 166 p.181
465 A.2d 934 p.942

182. **Cited by:**
Communications Workers of America v. New Jersey Civil Service Com., 191 N.J. Super. 162, 465 A.2d 932, 1983 N.J. Super. LEXIS 942 (App.Div. 1983) **LexisNexis Headnotes HN45**
191 N.J. Super. 162 p.165
465 A.2d 932 p.934

183. **Cited by:**
Communications Workers of America v. New Jersey Dep't of Labor & Industry, 191 N.J. Super. 1, 465 A.2d 519, 1983 N.J. Super. LEXIS 943 (App.Div. 1983) **LexisNexis Headnotes HN45**
191 N.J. Super. 1 p.6
465 A.2d 519 p.522

184. **Cited by:**
D.S. v. Board of Education, 188 N.J. Super. 592, 458 A.2d 129, 1983 N.J. Super. LEXIS 804 (App.Div. 1983) **LexisNexis Headnotes HN13, HN14, HN16, HN19**
188 N.J. Super. 592 p.597
458 A.2d 129 p.132

185. **Cited by:**
Chaleff v. Board of Trustees, 188 N.J. Super. 194, 457 A.2d 33, 1983 N.J. Super. LEXIS 777, 32 Empl. Prac. Dec. (CCH) P33631, 4 Employee Benefits Cas. (BNA) 1407 (App.Div. 1983) **LexisNexis Headnotes HN45**
188 N.J. Super. 194 p.199
457 A.2d 33 p.36

186. **Cited by:**
In re Tugender, 186 N.J. Super. 178, 451 A.2d 1328, 1982 N.J. Super. LEXIS 904 (App.Div. 1982) **LexisNexis Headnotes HN12**
186 N.J. Super. 178 p.181
451 A.2d 1328 p.1330

187. **Cited by:**
In re Egg Harbor Associates, 185 N.J. Super. 507, 449 A.2d 1324, 1982 N.J. Super. LEXIS 854 (App.Div. 1982) **LexisNexis Headnotes HN17, HN34**
185 N.J. Super. 507 p.519
449 A.2d 1324 p.1332

188. **Followed by:**
McNally v. Middletown, 182 N.J. Super. 622, 442 A.2d 1075, 1982 N.J. Super. LEXIS 682 (App.Div. 1982) **LexisNexis Headnotes HN17**
182 N.J. Super. 622 p.626
442 A.2d 1075 p.1077

189. **Followed by:**
New Jersey Asso. of Health Care Facilities v. Klein, 182 N.J. Super. 252, 440 A.2d 476, 1981 N.J. Super. LEXIS 769 (App.Div. 1981) **LexisNexis Headnotes HN9**
182 N.J. Super. 252 p.257
440 A.2d 476 p.478

190. **Cited by:**
In re Application of Boardwalk Regency Corp. for Casino License, 180 N.J. Super. 324, 434 A.2d 1111, 1981 N.J. Super. LEXIS 658 (App.Div. 1981) **LexisNexis Headnotes HN17**
180 N.J. Super. 324 p.334
434 A.2d 1111 p.1116

191. **Followed by:**
In re N.J.A.C. 11:5-1.32-Rental Location Operations, 179 N.J. Super. 294, 431 A.2d 855, 1981 N.J. Super. LEXIS 604 (App.Div. 1981) **LexisNexis Headnotes HN2, HN9**
179 N.J. Super. 294 p.298
431 A.2d 855 p.857

192. **Cited by:**
New Jersey Retail Liquor Stores Asso. v. Degnan, 180 N.J. Super. 475, 435 A.2d 842, 1981 N.J. Super. LEXIS 679, 1981-2 Trade Cas. (CCH) P64345 (App.Div. 1981) **LexisNexis Headnotes HN12**
180 N.J. Super. 475 p.481
435 A.2d 842 p.845

193. **Cited by:**
Bethlehem Township Bd. of Education v. Bethlehem Township Education Asso., 177 N.J. Super. 479, 427 A.2d 80, 1981 N.J. Super. LEXIS 470, 112 L.R.R.M. (BNA) 2141 (App.Div. 1981) **LexisNexis Headnotes HN47**
177 N.J. Super. 479 p.487
427 A.2d 80 p.85

194. **Cited by:**
In re Kaplan, 178 N.J. Super. 487, 429 A.2d 590, 1981 N.J. Super. LEXIS 541 (App.Div. 1981)
178 N.J. Super. 487 p.497
429 A.2d 590 p.595

195. **Cited by:**
State v. Dolce, 178 N.J. Super. 275, 428 A.2d 947, 1981 N.J. Super. LEXIS 512 (App.Div. 1981) **LexisNexis Headnotes HN14, HN17**
178 N.J. Super. 275 p.286
428 A.2d 947 p.953

196. **Cited by:**
Texter v. Department of Human Services, 178 N.J. Super. 104, 428 A.2d 505, 1981 N.J. Super. LEXIS 518 (App.Div. 1981) **LexisNexis Headnotes HN12, HN14**
178 N.J. Super. 104 p.108
428 A.2d 505 p.507

197. **Cited by:**
Brodie v. State Bd. of Medical Examiners, 177 N.J. Super. 523, 427 A.2d 104, 1981 N.J. Super. LEXIS 471 (App.Div. 1981)
177 N.J. Super. 523 p.532
427 A.2d 104 p.108

198. **Cited by:**
In re Board of Education, 176 N.J. Super. 553, 424 A.2d 435, 1980 N.J. Super. LEXIS 755 (App.Div. 1980) **LexisNexis Headnotes HN1, HN2, HN3, HN14, HN16, HN17, HN19, HN48**
176 N.J. Super. 553 p.563
424 A.2d 435 p.440

199. **Cited by:**
Devory v. Department of Human Services, 175 N.J. Super. 413, 419 A.2d 1131, 1980 N.J. Super. LEXIS 664 (App.Div. 1980) **LexisNexis Headnotes HN16**
175 N.J. Super. 413 p.417
419 A.2d 1131 p.1133

200. **Cited by:**
In re Applications of North Jersey Dist. Water Supply Com., 175 N.J. Super. 167, 417 A.2d 1095, 1980 N.J. Super. LEXIS 610 (App.Div. 1980)
175 N.J. Super. 167 p.198
417 A.2d 1095 p.1111

201. **Cited by:**
Humane Soc. of United States, New Jersey Branch, Inc. v. Guido, 173 N.J. Super. 223, 413 A.2d 990, 1980 N.J. Super. LEXIS 501 (App.Div. 1980) **LexisNexis Headnotes HN17**
173 N.J. Super. 223 p.231
413 A.2d 990 p.994

202. **Cited by:**
Autotote, Ltd. v. New Jersey Sports & Exposition Authority, 171 N.J. Super. 480, 410 A.2d 52, 1979 N.J. Super. LEXIS 998 (App.Div. 1979) **LexisNexis Headnotes HN45**
171 N.J. Super. 480 p.487

410 A.2d 52 p.56

203. **Cited by:**
Railroad Roofing & Bldg. Supply Co. v. Financial Fire & Casualty Co., 171 N.J. Super. 375, 409 A.2d 300, 1979 N.J. Super. LEXIS 976 (App.Div. 1979) **LexisNexis Headnotes HN45**
171 N.J. Super. 375 p.387
409 A.2d 300 p.306

204. **Cited by:**
Hillman/Kohan Eyeglasses, Inc. v. New Jersey State Board Optometrists, 169 N.J. Super. 259, 404 A.2d 1172, 1979 N.J. Super. LEXIS 841 (App.Div. 1979) **LexisNexis Headnotes HN17**
169 N.J. Super. 259 p.266
404 A.2d 1172 p.1175

205. **Cited by:**
New Jersey Builders Asso. v. Department of Environmental Protection, 169 N.J. Super. 76, 404 A.2d 320, 1979 N.J. Super. LEXIS 810 (App.Div. 1979) **LexisNexis Headnotes HN13, HN16**
169 N.J. Super. 76 p.87
404 A.2d 320 p.325

206. **Cited by:**
Livingston v. New Jersey State Bd. of Medical Examiners, 168 N.J. Super. 259, 402 A.2d 967, 1979 N.J. Super. LEXIS 765 (App.Div. 1979) **LexisNexis Headnotes HN14**
168 N.J. Super. 259 p.265
402 A.2d 967 p.970

207. **Cited by:**
New Jersey Asso. of Health Care Facilities v. Finley, 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 (App.Div. 1979) **LexisNexis Headnotes HN5, HN17, HN19**
168 N.J. Super. 152 p.161
168 N.J. Super. 152 p.162
402 A.2d 246 p.251

208. **Cited by:**
Apartment House Council v. Laezza, 158 N.J. Super. 204, 385 A.2d 936, 1978 N.J. Super. LEXIS 806 (App.Div. 1978) **LexisNexis Headnotes HN17**
158 N.J. Super. 204 p.207
385 A.2d 936 p.938

NEW JERSEY SUPERIOR COURT, CHANCERY DIVISION

209. **Cited by:**
Cohen v. Board of Trustees of University of Medicine & Dentistry, 240 N.J. Super. 188, 572 A.2d 1191, 1989 N.J. Super. LEXIS 512 (Ch.Div. 1989) **LexisNexis Headnotes HN16, HN17**
240 N.J. Super. 188 p.202
572 A.2d 1191 p.1198

NEW JERSEY SUPERIOR COURT, LAW DIVISION

210. **Cited by:**
State v. Kenison, 248 N.J. Super. 189, 590 A.2d 708, 1990 N.J. Super. LEXIS 518 (Law Div. 1990) **LexisNexis Headnotes HN17**
248 N.J. Super. 189 p.204
590 A.2d 708 p.717

211. **Cited by:**
Rollins Environmental Services, Inc. v. Logan, 199 N.J. Super. 70, 488 A.2d 258, 1984 N.J. Super. LEXIS 1296 (Law Div. 1984) **LexisNexis Headnotes HN45**
199 N.J. Super. 70 p.76
488 A.2d 258 p.260

212. **Cited by:**
Timber Properties, Inc. v. Chester, 205 N.J. Super. 273, 500 A.2d 757, 1984 N.J. Super. LEXIS 1348 (Law Div. 1984) **LexisNexis Headnotes HN12, HN14, HN46, HN51, HN52**
205 N.J. Super. 273 p.289
500 A.2d 757 p.766

213. **Cited by:**
Fine v. Galloway Township Committee, 190 N.J. Super. 432, 463 A.2d 990, 1983 N.J. Super. LEXIS 914 (Law Div. 1983) **LexisNexis Headnotes HN45**
190 N.J. Super. 432 p.441
463 A.2d 990 p.995

214. **Cited by:**
Mental Health Asso. v. Elizabeth, 180 N.J. Super. 304, 434 A.2d 688, 1981 N.J. Super. LEXIS 652 (Law Div. 1981)
180 N.J. Super. 304 p.311
434 A.2d 688 p.691

215. **Cited by:**
Klein v. County of Hudson, 187 N.J. Super. 603, 455 A.2d 583, 1980 N.J. Super. LEXIS 838 (Law Div. 1980) **LexisNexis Headnotes HN12**
187 N.J. Super. 603 p.620
455 A.2d 583 p.592

216. **Cited by:**
Addiego v. State, 163 N.J. Super. 97, 394 A.2d 179, 1978 N.J. Super. LEXIS 1131 (Law Div. 1978) **LexisNexis Headnotes HN30**
163 N.J. Super. 97 p.103
394 A.2d 179 p.182

NEW JERSEY

217. **Cited by:**
N.J. Dkt. No. A-135-1997

N.J. Dkt. No. A-135-1997

OTHER NEW JERSEY DECISIONS

218. **Cited by:**
DiStefano v. Director, Div. of Taxation, 23 N.J. Tax 609, 2008 N.J. Tax LEXIS 4 (Tax Ct. 2008) **LexisNexis Headnotes HN45**
23 N.J. Tax 609 p.617

219. **Cited by:**
Borough of Totowa v. Passaic County Bd. of Taxation, 23 N.J. Tax 466, 2007 N.J. Tax LEXIS 9 (Tax Ct. 2007) **LexisNexis Headnotes HN20**
23 N.J. Tax 466 p.469

220. **Cited by:**
Township of Dover v. Scuorzo, 22 N.J. Tax 568, 2005 N.J. Tax LEXIS 26 (Tax Ct. 2005) **LexisNexis Headnotes HN45**
22 N.J. Tax 568 p.580

221. **Cited by:**
BASF Corp. Coating and Ink Div. v. Town of Belvidere, 22 N.J. Tax 550, 2005 N.J. Tax LEXIS 25 (Tax Ct. 2005) **LexisNexis Headnotes HN45**
22 N.J. Tax 550 p.559

222. **Cited by:**
UNB Inv. Co. Inc. v. Director, Div. of Taxation, 21 N.J. Tax 354, 2004 N.J. Tax LEXIS 13 (Tax Ct. 2004) **LexisNexis Headnotes HN17**
21 N.J. Tax 354 p.373

223. **Followed by:**
Mayer & Schweitzer v. Director, Division of Taxation, 20 N.J. Tax 217, 2002 N.J. Tax LEXIS 21 (Tax Ct. 2002)
20 N.J. Tax 217 p.230

224. **Cited by:**
Miller v. Director, Division of Taxation, 19 N.J. Tax 522, 2001 N.J. Tax LEXIS 19 (Tax Ct. 2001) **LexisNexis Headnotes HN45**
19 N.J. Tax 522 p.532

225. **Cited by:**
Lenox Inc. v. Director, Division of Taxation, 19 N.J. Tax 437, 2001 N.J. Tax LEXIS 13 (Tax Ct. 2001)
19 N.J. Tax 437 p.454

226. **Cited by:**
Continental Gypsum Co. v. Director, Division of Taxation, 19 N.J. Tax 221, 2000 N.J. Tax LEXIS 21 (Tax Ct. 2000) **LexisNexis Headnotes HN21, HN45, HN46**

19 N.J. Tax 221 p.232

227. **Cited by:**
Weintraub v. Director, Division of Taxation, 19 N.J. Tax 65, 2000 N.J. Tax LEXIS 13 (Tax Ct. 2000) **LexisNexis Headnotes HN45**
19 N.J. Tax 65 p.72

228. **Cited by:**
Reck v. Director, Division of Taxation, 18 N.J. Tax 598, 2000 N.J. Tax LEXIS 8 (Tax Ct. 2000) **LexisNexis Headnotes HN45**
18 N.J. Tax 598 p.607

229. **Cited by:**
Sharps, Pixley, Inc. v. Director, Division of Taxation, 16 N.J. Tax 626, 1997 N.J. Tax LEXIS 23 (Tax Ct. 1997) **LexisNexis Headnotes HN17**
16 N.J. Tax 626 p.640

230. **Cited by:**
D.P.S. Acquisition Corp. v. Director, Division of Taxation, 16 N.J. Tax 292, 1997 N.J. Tax LEXIS 1 (Tax Ct. 1997) **LexisNexis Headnotes HN45**
16 N.J. Tax 292 p.298

231. **Cited by:**
Furmato v. Department of Treasury, Div. of Taxation, 16 N.J. Tax 10, 1996 N.J. Tax LEXIS 21 (Tax Ct. 1996) **LexisNexis Headnotes HN16**
16 N.J. Tax 10 p.15

232. **Cited by:**
General Bldg. Prods. Corp. v. Division of Taxation, 14 N.J. Tax 232, 1994 N.J. Tax LEXIS 20 (Tax Ct. 1994) **LexisNexis Headnotes HN17**
14 N.J. Tax 232 p.247
14 N.J. Tax 232 p.248

233. **Cited by:**
Steelcase, Inc. v. Director, Division of Taxation, 13 N.J. Tax 182, 1993 N.J. Tax LEXIS 4 (Tax Ct. 1993) **LexisNexis Headnotes HN15**
13 N.J. Tax 182 p.192

234. **Followed by:**
Richard's Auto City v. Director, Division of Taxation, 12 N.J. Tax 619, 1992 N.J. Tax LEXIS 31 (Tax Ct. 1992) **LexisNexis Headnotes HN12, HN14, HN17, HN20**
12 N.J. Tax 619 p.627

235. **Cited by:**
Polaris Corp. v. Director, Division of Taxation, 12 N.J. Tax 70, 1991 N.J. Tax LEXIS 25 (Tax Ct. 1991) **LexisNexis Headnotes HN45**

12 N.J. Tax 70 p.74

236. **Cited by:**
GE Solid State, Inc. v. Director, Division of Taxation, 11 N.J. Tax 320, 1990 N.J. Tax LEXIS 31 (Tax Ct. 1990)
11 N.J. Tax 320 p.340

237. **Cited by:**
Reuben H. Donnelley Corp. v. New Jersey Dep't of Treasury, Div. of Taxation, 11 N.J. Tax 241, 1990 N.J. Tax LEXIS 24 (Tax Ct. 1990) **LexisNexis Headnotes HN17**
11 N.J. Tax 241 p.251

238. **Cited by:**
Texas E. Transmission Corp. v. Department of Treasury, Div. of Taxation, 11 N.J. Tax 198, 1990 N.J. Tax LEXIS 20 (Tax Ct. 1990) **LexisNexis Headnotes HN16**
11 N.J. Tax 198 p.210

239. **Cited by:**
Estate of Darrin v. Taxation Div. Director, 9 N.J. Tax 419, 1987 N.J. Tax LEXIS 4 (Tax Ct. 1987) **LexisNexis Headnotes HN12**
9 N.J. Tax 419 p.436

240. **Cited by:**
Mutual Assurance Co. v. Gluck, 9 N.J. Tax 55, 1987 N.J. Tax LEXIS 27 (Tax Ct. 1987) **LexisNexis Headnotes HN16**
9 N.J. Tax 55 p.62

241. **Cited by:**
L.B.D. Constr., Inc. v. Director, Div. of Taxation, 8 N.J. Tax 338, 1986 N.J. Super. LEXIS 20 (Tax Ct. 1986)
8 N.J. Tax 338 p.352

242. **Cited by:**
L.B.D. Constr., Inc. v. Director, Div. of Taxation, 8 N.J. Tax 338, 8 N.J. Tax 354, 1986 N.J. Tax LEXIS 20 (Tax Ct. 1986) **LexisNexis Headnotes HN12**

243. **Cited by:**
Educational Computer Software, Inc. v. Baldwin, 8 N.J. Tax 253, 1986 N.J. Tax LEXIS 25 (Tax Ct. 1986) **LexisNexis Headnotes HN17, HN34**
8 N.J. Tax 253 p.258

244. **Cited by:**
New Jersey Dental Service Plan, Inc. v. Baldwin, 7 N.J. Tax 421, 1985 N.J. Tax LEXIS 33 (Tax Ct. 1985) **LexisNexis Headnotes HN12, HN19**
7 N.J. Tax 421 p.429

245. **Cited by:**
Smith v. Director, Division of Taxation, 7 N.J. Tax 187, 1984 N.J. Tax LEXIS 3 (Tax Ct. 1984) **LexisNexis Headnotes HN12, HN16, HN45**
7 N.J. Tax 187 p.194
7 N.J. Tax 187 p.195

246. **Cited by:**
Media Graphics, Inc. v. Director, Division of Taxation, 7 N.J. Tax 23, 1984 N.J. Tax LEXIS 17 (Tax Ct. 1984) **LexisNexis Headnotes HN20**
7 N.J. Tax 23 p.33

247. **Followed by:**
Zimmerer v. Clayton, 7 N.J. Tax 15, 1984 N.J. Tax LEXIS 20 (Tax Ct. 1984) **LexisNexis Headnotes HN11, HN16, HN17, HN20**
7 N.J. Tax 15 p.20

248. **Followed by:**
Shelter Dev. Corp. v. Taxation Div. Director, 6 N.J. Tax 547, 1984 N.J. Tax LEXIS 27 (Tax Ct. 1984) **LexisNexis Headnotes HN12, HN14, HN17, HN20**
6 N.J. Tax 547 p.553

249. **Followed by:**
Futurevision Cable Enterprises, Inc. v. Taxation Div. Director, 6 N.J. Tax 149, 1983 N.J. Tax LEXIS 7 (Tax Ct. 1983) **LexisNexis Headnotes HN12, HN14, HN17**
6 N.J. Tax 149 p.164

250. **Cited by:**
Mueller Estate v. Transfer Inheritance Tax Bureau, Div. of Taxation, 5 N.J. Tax 642, 1983 N.J. Tax LEXIS 17 (Tax Ct. 1983) **LexisNexis Headnotes HN16**
5 N.J. Tax 642 p.656

251. **Cited by:**
Elbert Lively & Co. v. Director, Division of Taxation, 5 N.J. Tax 431, 1983 N.J. Tax LEXIS 36 (Tax Ct. 1983) **LexisNexis Headnotes HN16, HN17**
5 N.J. Tax 431 p.440

252. **Followed by:**
Ski Haus, Inc. v. Taxation Div. Director, 5 N.J. Tax 26, 1982 N.J. Tax LEXIS 73 (Tax Ct. 1982) **LexisNexis Headnotes HN11, HN12, HN14, HN17, HN20**
5 N.J. Tax 26 p.30
5 N.J. Tax 26 p.31

253. **Cited by:**
Camden City v. Taxation Div. Director, 4 N.J. Tax 458, 1982 N.J. Tax LEXIS 28 (Tax Ct. 1982) **LexisNexis Headnotes HN19**
4 N.J. Tax 458 p.467

254. **Cited by:**
Jenkins v. Taxation Div. Director, 184 N.J. Super. 402, 4 N.J. Tax 127, 446 A.2d 217, 1982 N.J. Tax LEXIS 71 (Tax Ct. 1982) **LexisNexis Headnotes HN12**
184 N.J. Super. 402 p.410
4 N.J. Tax 127 p.134
446 A.2d 217 p.221

255. **Cited by:**
Wells v. Taxation Div. Director, 3 N.J. Tax 420, 1981 N.J. Tax LEXIS 20 (Tax Ct. 1981) **LexisNexis Headnotes HN16, HN17**
3 N.J. Tax 420 p.424

256. **Cited by:**
Middlesex Water Co. v. Director, Division of Taxation, 181 N.J. Super. 338, 3 N.J. Tax 233, 437 A.2d 368, 1981 N.J. Tax LEXIS 37 (Tax Ct. 1981) **LexisNexis Headnotes HN45**
181 N.J. Super. 338 p.349
3 N.J. Tax 233 p.243
437 A.2d 368 p.374

257. **Followed by, Cited by:**
Sorensen v. Director, Division of Taxation, 184 N.J. Super. 393, 2 N.J. Tax 470, 446 A.2d 213, 1981 N.J. Tax LEXIS 69 (Tax Ct. 1981) **LexisNexis Headnotes HN11, HN12, HN16, HN17, HN20**
Followed by:
184 N.J. Super. 393 p.397
2 N.J. Tax 470 p.474
446 A.2d 213 p.215

Cited by:
184 N.J. Super. 393 p.399
446 A.2d 213 p.216

258. **Cited by:**
Farber v. Director, Division of Taxation, 2 N.J. Tax 252, 1981 N.J. Tax LEXIS 91 (Tax Ct. 1981) **LexisNexis Headnotes HN12, HN20**
2 N.J. Tax 252 p.256

259. **Cited by:**
Hashomer Hatzair, Inc. v. East Windsor, 176 N.J. Super. 250, 1 N.J. Tax 115, 422 A.2d 808, 1980 N.J. Tax LEXIS 60 (Tax Ct. 1980) **LexisNexis Headnotes HN45**
176 N.J. Super. 250 p.253
1 N.J. Tax 115 p.118
422 A.2d 808 p.810

260. **Cited by:**
Hill Manor Apartments v. Brome, 164 N.J. Super. 295, 395 A.2d 1307, 1978 N.J. Super. LEXIS 1361 (Cty. Ct. 1978) **LexisNexis Headnotes HN33, HN42, HN55**
164 N.J. Super. 295 p.302
395 A.2d 1307 p.1311

2ND CIRCUIT - U.S. DISTRICT COURTS

261. **Cited by:**
Bravman v. Baxter Healthcare Corp., 842 F. Supp. 747, 1994 U.S. Dist. LEXIS 546, CCH Prod. Liab. Rep. P13791 (S.D.N.Y. 1994)
842 F. Supp. 747 p.757

3RD CIRCUIT - COURT OF APPEALS

262. **Cited by:**
Keeley v. Loomis Fargo & Co., 183 F.3d 257, 1999 U.S. App. LEXIS 16654, 138 Lab. Cas. (CCH) P58676, 5 Wage & Hour Cas. 2d (BNA) 815 (3d Cir. N.J. 1999)
183 F.3d 257 p.265

263. **Cited in Dissenting Opinion at:**
Eatough v. Albano, 673 F.2d 671, 1982 U.S. App. LEXIS 21366 (3d Cir. N.J. 1982) **LexisNexis Headnotes HN19, HN20, HN46, HN51**
673 F.2d 671 p.680

3RD CIRCUIT - U.S. DISTRICT COURTS

264. **Cited by:**
Nassimos v. Board of Examiners of Master Plumbers, 1995 U.S. Dist. LEXIS 21376, 1996-1 Trade Cas. (CCH) P71372 (D.N.J. Mar. 31, 1995) **LexisNexis Headnotes HN2**

265. **Cited by:**
New Jersey Dep't of Envtl. Protection & Energy v. Gloucester Envtl. Mgmt. Servs., 866 F. Supp. 826, 1994 U.S. Dist. LEXIS 15263 (D.N.J. 1994) **LexisNexis Headnotes HN12, HN14, HN16, HN45**
866 F. Supp. 826 p.831
866 F. Supp. 826 p.832

266. **Cited by:**
Cooper Dev. Co. v. First Nat'l Bank, 762 F. Supp. 1145, 1991 U.S. Dist. LEXIS 5556, 33 Env't Rep. Cas. (BNA) 1067, 21 Envtl. L. Rep. 21261 (D.N.J. 1991) **LexisNexis Headnotes HN16, HN45**
762 F. Supp. 1145 p.1151

267. **Cited by:**
Rennie v. Klein, 476 F. Supp. 1294, 1979 U.S. Dist. LEXIS 9795 (D.N.J. 1979) **LexisNexis Headnotes HN28**
476 F. Supp. 1294 p.1312

5TH CIRCUIT - COURT OF APPEALS

268. **Criticized by:**
Smith v. Pingree, 651 F.2d 1021, 1981 U.S. App. LEXIS 11050 (5th Cir. Fla. 1981) **LexisNexis Headnotes HN8, HN9, HN41, HN47, HN48, HN53**
651 F.2d 1021 p.1024

8TH CIRCUIT - COURT OF APPEALS

269. **Cited by:**
Mo. Bd. of Exam'rs for Hearing Instrument Specialists v. Hearing Help Express, Inc., 447 F.3d 1033, 2006 U.S. App. LEXIS 11673 (8th Cir. Mo. 2006) **LexisNexis Headnotes HN43, HN53**
447 F.3d 1033 p.1036

9TH CIRCUIT - U.S. DISTRICT COURTS

270. **Cited by:**
Ginochio v. Surgikos, Inc., 864 F. Supp. 948, 1994 U.S. Dist. LEXIS 14750, 94 D.A.R. 14907, CCH Prod. Liab. Rep. P14168 (N.D. Cal. 1994) **LexisNexis Headnotes HN53**
864 F. Supp. 948 p.952

ANNOTATED STATUTES (7 Citing Statutes)

271. USCS Const. Amend. 14, @ 5

272. 15 USCS @ 1

273. 21 USCS @ 360k

274. N.J. Stat. @ 45:1-21

275. N.J. Stat. @ 45:9A-7

276. N.J. Stat. @ 45:9A-1

277. N.J. Stat. @ 56:9-5

LAW REVIEWS AND PERIODICALS (9 Citing References)

278. ARTICLE: Nicotine Withdrawal: Assessing the FDA's Effort to Regulate Tobacco Products, 48 Ala. L. Rev. 1 (1996)

279. COMMENTS: STATE AND LOCAL TAXING AUTHORITIES: TAKING MORE THAN THEIR FAIR SHARE OF THE ELECTRONIC INFORMATION AGE, 14 J. Marshall J. Computer & Info. L. 493 (1996)

280. ARTICLE: Preemption and Medical Devices: The Courts Run Amok, 59 Mo. L. Rev. 895 (1994)

281. NOTE: Patching the "Crazy Quilt" of Cipollone: A Divided Court Rethinks Federal Preemption of Products Liability in Medtronic, Inc. v. Lohr, 75 N.C. L. Rev. 1440 (1997)

282. SYMPOSIUM: FEDERAL PREEMPTIONS OF STATE TORT LAW: THE PROBLEM OF MEDICAL DRUGS AND DEVICES: Preemption and Regulatory Failure, 33 Pepp. L. Rev. 95 (2005)
33 Pepp. L. Rev. 95 p.95

283. COMMENT: MEGAN'S LAW: PROTECTING THE VULNERABLE OR UNCONSTITUTIONALLY PUNISHING SEX OFFENDERS?, 7 Seton Hall Const. L.J. 913 (1997)

284. ARTICLES: 25 YEARS OF THE NEW JERSEY ANTITRUST ACT, 26 Seton Hall L. Rev. 637 (1996)
26 Seton Hall L. Rev. 637 p.672

285. 21 Seton Hall L. Rev. 1041
21 Seton Hall L. Rev. 1041 p.1058

286. ARTICLE: A Proposed "Tonic" with Florida Lime to Celebrate our New Federalism: How to Deal with the "Headache" of Preemption, 38 U. Miami L. Rev. 829 (1984)

TREATISE CITATIONS (1 Citing Source)

287. 7-130 Antitrust Laws and Trade Regulation, 2nd Edition @ 130.09

BRIEFS (12 Citing Briefs)

288. MEDTRONIC, INC. v. LOHR, 1995 U.S. Briefs 754, 1996 U.S. S. Ct. Briefs LEXIS 225 (U.S. Mar. 29, 1996)

289. MEDTRONIC, INC., Petitioner/Cross-Respondent v. LORA LOHR and MICHAEL LOHR, Respondents/Cross-Petitioners,, 1995 U.S. Briefs 754, 1996 U.S. S. Ct. Briefs LEXIS 166 (U.S. Mar. 13, 1996)

290. MEDTRONIC, INC., Petitioner/Cross-Respondent, v. LORA LOHR AND MICHAEL LOHR, Respondents/Cross-Petitioners., 1995 U.S. Briefs 754, 1996 U.S. S. Ct. Briefs LEXIS 192 (U.S. Mar. 12, 1996)

291. MEDTRONIC, INC., Petitioner/Cross-Respondent, v. LORA LOHR AND MICHAEL LOHR, Respondent/Cross-Petitioners., 1995 U.S. Briefs 754, 1996 U.S. S. Ct. Briefs LEXIS 122 (U.S. Mar. 1, 1996)

292. EXXON CORP. v. HUNT, 1984 U.S. Briefs 978, 1984 U.S. S. Ct. Briefs LEXIS 660 (U.S. Dec. 17, 1984)

293. UNITED BUILDING AND CONSTRUCTION TRADES COUNCIL OF CAMDEN COUNTY AND VICINITY, Appellant, v. MAYOR and COUNCIL OF THE CITY OF CAMDEN and THE DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY, Appellees., 1981 U.S. Briefs 2110, 1982 U.S. S. Ct. Briefs LEXIS 57 (U.S. May 12, 1982)

294. RIEGEL v. MEDTRONIC, 2004 U.S. 2nd Cir. Briefs 412, 2005 U.S. 2nd Cir. Briefs LEXIS 240 (2d Cir. May 27, 2005)

295. ELBERT v. HOWMEDICA, 1994 U.S. 9th Cir. Briefs 15423, 1994 U.S. 9th Cir. Briefs LEXIS 12 (9th Cir. Dec. 30, 1994)

296. In re N.J.A.C. 7:26E-1.13, 2005 NJ S. Ct. Briefs 20A, 2005 NJ S. Ct. Briefs LEXIS 52 (N.J. June 29, 2005)

297. In re N.J.A.C. 7:26E-1.13, 2005 NJ S. Ct. Briefs 20A, 2005 NJ S. Ct. Briefs LEXIS 48 (N.J. May 27, 2005)

298. In re N.J.A.C. 7:26E-1.13, 2005 NJ S. Ct. Briefs 20A, 2005 NJ S. Ct. Briefs LEXIS 49 (N.J. May 27, 2005)

299. R&R MKTG., L.L.C. v. JIM BEAM BRANDS CO., 2006 NJ App. Div. Briefs 60042A, 2005 NJ App. Div. Briefs LEXIS 107 (App.Div. Mar. 10, 2005)

LEXSEE

Positive
As of: Aug 12, 2008

AUGUSTINE V. CAMMARATA AND RICHARD COSTA, PLAINTIFFS-APPELLANTS, v. ESSEX COUNTY PARK COMMISSION AND ROBERT B. KINSEY, DEFENDANTS-RESPONDENTS

[NO NUMBER IN ORIGINAL]

Supreme Court of New Jersey

26 N.J. 404; 140 A.2d 397; 1958 N.J. LEXIS 259

March 3, 1958, Argued
April 3, 1958, Decided

PRIOR HISTORY: [***1] On certification granted.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff probationary patrolmen sought review of the judgment from the Appellate Division (New Jersey), reversing the trial court judgment directing the defendant park commission to "restore" plaintiffs to their positions in plaintiffs' action seeking reinstatement as members of the county park police.

OVERVIEW: Plaintiff probationary patrolmen brought an action against defendant park commission seeking their reinstatement as members of the county park police. Plaintiffs contended that defendant had no power to create a probationary status for its appointees, and that for this reason, they must have been appointed as regular patrolmen and always were permanent members of the park police who enjoy tenure during good behavior and cannot be discharged except after hearing and for good cause shown. On appeal, the court affirmed the judgment of the appellate court, holding that defendant had the power to establish a probationary status for its patrolmen as a necessary adjunct of the specific grant of authority to maintain a park police system and to promulgate regulations governing the appointment of its members. The court held that the requirement of probationary service was a reasonable regulation, and was, in fact, almost necessary for the securing of proper discipline and efficiency pursuant to N.J. Rev. Stat. § 40:37-156.

OUTCOME: The court affirmed the appellate court judgment reversing the trial court judgment directing defendant park commission to "restore" plaintiff probationary patrolmen to their positions. The court held that defendant had the power to establish a probationary status for its patrolmen.

CORE TERMS: appointment, probationary, patrolmen, appointed, probationary status, tenure, probationary period, constabulary, probation, patrolman, administrative agency, discipline, securing, pleasure, regular, police director, County Parks Act, police department, legislative intent, administrative discretion, sub judice, reinstatement, illegally, appointees, newly, period of probation, recommendation, prerogative, terminated, qualify

LexisNexis(R) Headnotes

Governments > Local Governments > Property
Labor & Employment Law > Wage & Hour Laws > Coverage & Definitions > Governmental Employees
[HN1]See N.J. Rev. Stat. § 40:37-156.

Governments > Local Governments > Property
Labor & Employment Law > Wage & Hour Laws > Coverage & Definitions > Governmental Employees
[HN2]See N.J. Rev. Stat. 40:37-154.

Administrative Law > Agency Rulemaking > General Overview
Administrative Law > Separation of Powers > Legislative Controls > General Overview
Governments > Legislation > General Overview
[HN3]The legislature may enact statutes setting forth in broad design its intended aims, leaving the detailed implementation of the policy thus expressed to an administrative agency. Indeed, the function of promulgating administrative rules and regulations lies at the very heart of the administrative process. Through the entrustment of such powers, lawmakers achieve expert and flexible control in areas where the diversity of circumstances and situations to be encountered forbids the enactment of legislation anticipating every possible problem which may arise and providing for its solution. There is no unconstitutional delegation of legislative authority as long as the administrative discretion is hemmed in by standards sufficiently definitive to guide its exercise.

Governments > Local Governments > Administrative Boards
Governments > Local Governments > Duties & Powers
[HN4]N.J. Const. (1947) art. IV, § VII, par. 11, enjoins the courts to construe laws concerning counties liberally in their favor and provides that their powers shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto.

Governments > Legislation > Interpretation
[HN5]The grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective. Authority delegated to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent. The purpose of the statute is not to be frustrated by an unduly narrow interpretation.

COUNSEL: *Mr. Abraham L. Friedman* argued the cause for appellants (*Mr. Doane Regan*, attorney).

Mr. John J. McDonough argued the cause for respondents (*Mr. William G. Wood*, on the brief; *Messrs. Darby & McDonough*, attorneys).

JUDGES: *For affirmance* -- Chief Justice Weintraub, and Justices Heher, Wachenfeld, Burling, Jacobs, Francis and Proctor. *For reversal* -- None. The opinion of the court was delivered by Wachenfeld, J.

OPINION BY: WACHENFELD

OPINION

[*407] [**399] This is an action in lieu of prerogative writ whereby plaintiffs seek "reinstatement" as members of the Park Police of Essex County, contending that they were illegally dismissed in violation of the tenure provisions of the County Parks Act. The Superior Court, Law Division, entered judgment directing the Essex County Park Commission to "restore" plaintiffs to their positions, but the [*408] Appellate Division reversed. We granted plaintiffs' petition for certification.

On June 17, 1954 the Essex County Park Commission authorized its police director, defendant Robert B. Kinsey, to commence examination of applicants who had applied for appointment as park [***2] police patrolmen, with a view toward filling a number of vacancies then existing on the force. At the same time, the commission unanimously approved a motion "that any person qualifying for a position as a patrolman on the Park Police of the County of Essex be employed for a probationary period of one year, during which time, upon recommendation of the Chief to the Board, the man's services may be discontinued, and at the end of the probationary period appointments to the force would be made only upon the report of the Chief that the individual had qualified."

Plaintiffs Cammarata and Costa applied for appointments as patrolmen in February of 1955. After they had taken the requisite examinations and been personally interviewed, each man was notified by a letter dated March 4, 1955 that he would be appointed a "probationary Patrolman" effective March 25, 1955. Each of these letters stated: "Your appointment to this Department is subject to your clearly understanding and accepting the provisions shown on the sheet attached hereto."

The "sheet" referred to is entitled "Information for Applicants for Appointment as Probationary Patrolmen." Its first paragraph reads:

> "Applicants [***3] successfully meeting the requirements of the Department will be appointed for a probationary period of one year and will be sworn in as *probationary* members of the Department. During said period of probation, if at any time in the opinion of the superior officers of the Department, the Director, the Police Committee or the Essex County Park Commission an applicant does not continue to justify his employment, he may be immediately terminated. At the termination of his probationary period, the applicant's record in the Department for the preceding year will be reviewed and if

> found satisfactory, he will become a regularly appointed Patrolman in the Department. Failure to qualify will preclude appointment to the department."

[*409] Cammarata and Costa each signed and returned an "Information for Applicants for Appointment as Probationary Patrolmen" form to the police director, affixing his respective signature directly beneath a provision reading: "I hereby certify that I have read, understand, acknowledge [**400] and accept the information and regulations stated above."

Four other applicants were hired by the park commission on a probationary basis at the same [***4] time as plaintiffs. During the course of their year of probation the performance of each was investigated and assessed several times by an evaluation committee. Near the end of the year, the committee's findings were reviewed by the chief of the park police, the Police Director of the Essex County Parks and an independent personnel expert. This reviewing body found that four of the probationary patrolmen had met the requirements of the department and that two had not. The park commission accepted the recommendations of the reviewing board and accordingly, on March 15, 1956, resolved that four "Probationary Patrolmen" be "appointed Regular Patrolmen of the Park Police Department" and that "the services of Augustine V. Cammarata and Richard F. Costa, those Probationary Patrolmen failing to qualify for appointment, be terminated. * * *"

[HN1]*R.S.* 40:37-156 provides in part as follows:

> "No member or officer of the police force or police department shall be removed except after trial and conviction by the park commission, or a member or members thereof, of the violation of proper rules and regulations for the appointment, control and management of members of such force or department [***5] and for the securing of proper discipline and efficiency among the members thereof."

Plaintiffs contend they were dismissed illegally since the park commission did not prefer charges and grant them a hearing within the intendment of *R.S.* 40:37-156. They base their case upon the assertion that the commission has no power to create a probationary status for its appointees. For this reason, they insist that they must have been appointed as regular patrolmen subject to the illegal condition [*410] subsequent that they would remain on probation for one year, that the validity of the appointments is unimpaired by the illegality of the annexed condition, and that therefore they were and always have been permanent members of the park police who enjoy tenure during good behavior and cannot be discharged except after hearing and for good cause shown.

None of the relevant statutes expressly empowers the park commission to establish a period of probationary service for newly employed patrolmen. Defendants urge, however, that a legislative grant of such authority is implicit in the terms of [HN2]*R.S.* 40:37-154, which reads, in part:

> "The commission may establish proper [***6] rules and regulations for the appointment, control and management of the members of the constabulary, and for the securing of proper discipline and efficiency among the members thereof."

It is settled beyond controversy that [HN3]the Legislature may enact statutes setting forth in broad design its intended aims, leaving the detailed implementation of the policy thus expressed to an administrative agency. See *Lane v. Holderman*, 23 *N.J.* 304, at *pages* 319-320 (1957), and the cases and statutes cited and discussed therein. Indeed, the function of promulgating administrative rules and regulations lies at the very heart of the administrative process. Through the entrustment of such powers, our lawmakers achieve expert and flexible control in areas where the diversity of circumstances and situations to be encountered forbids the enactment of legislation anticipating every possible problem which may arise and providing for its solution. *Como Farms, Inc., v. Foran*, 6 *N.J. Super.* 306, 313 (*App. Div.* 1950); 42 *Am. Jur., Public Administrative Law*, §§ 4 and 35. There is no unconstitutional delegation of legislative authority as long as the administrative discretion [***7] is hemmed in by standards sufficiently definitive [**401] to guide its exercise. 1 *Sutherland, Statutory Construction* (3*d ed.* 1943), § 314.

[HN4]The Constitution of 1947 enjoins us to construe laws "concerning counties" liberally in their favor and provides [*411] that their powers "shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto. * * *" *Art.* IV, *Sec.* VII, *par.* 11. Since we are concerned here with the powers of the Essex County Park Commission and not with those of the board of freeholders, plaintiffs argue that the quoted section is inapplicable. In our view of the

case, there is no necessity for resorting to the constitutional provision and therefore we do not resolve the subsidiary issue as to its meaning.

[HN5]The grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective. Lane v. Holderman, supra, 23 N.J. at page 315; Jersey City v. State Water Policy Comm., 118 N.J.L. 72 (E. & A. 1937); 3 *Sutherland, supra* at § 6604; [***8] 73 *C.J.S. Public Administrative Bodies and Procedure* § 50. See Tanis v. Passaic County, 126 N.J.L. 303, 305 (*E. & A.* 1940); Belfer v. Borrella, 9 N.J. Super. 287, 293 (*App. Div.* 1950). Authority delegated to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent. 42 *Am. Jur., supra* at § 26. The purpose of the statute is not to be frustrated by an unduly narrow interpretation.

We think the park commission has the power to establish a probationary status for its patrolmen as a necessary adjunct of the specific grant of authority to maintain a park police system and to promulgate regulations governing the appointment of its members. The requirement of probationary service is a reasonable regulation; in fact, almost necessary for, among other things, the "securing of proper discipline and efficiency."

The members of the park police occupy sensitive positions, and the manner in which they perform their duties is intimately related to the welfare of the public with whom they come into frequent contact. Recent experience has demonstrated that if our parks are not policed effectively they [***9] may well become places of peril rather than of pleasure. [*412] Setting up a probationary period is a justifiable exercise of administrative discretion, properly designed to satisfy the legislative intent that our parks should be preserved as reasonably safe recreational areas for all.

It is difficult to evaluate the character, industry, personality, and responsibility of an applicant from his performance on a written examination or through cursory personal interviews. Knowledge and intelligence do not alone make a good policeman. The crucial test of his fitness is how he fares on the job from day to day when suddenly confronted by situations demanding a breadth of resources and diplomacy. Many intangible qualities must be taken into account, and, since the lack of them may not constitute good cause for dismissal under a tenure statute, the park commission is entitled to a period of preliminary scrutiny, during which the protection of tenure does not apply, in order that it may make pragmatically informed and unrestricted decisions as to an applicant's suitability.

In 1906 the Legislature amended the original County Parks Act, *L.* 1895, *c.* 91, to permit the establishment [***10] of constabulary organizations to be known as the park police. At that time, county park policemen could be removed from office at the pleasure of the county park commissions which they served. *L.* 1895, *c.* 91, § 1, as amended by *L.* 1906, *c.* 102, § 1. The tenure section, R.S. 40:37-156, upon which plaintiffs rely was enacted as part of the Parks Act in 1928. *L.* 1928, *c.* 233, § 1. By statutes becoming effective in [**402] 1957, *L.* 1956, *c.* 232 and *L.* 1957, *c.* 98, the officers and employees of the various park commissions are placed under the protection of the Civil Service Act, which provides for probationary service before permanent appointment, *R.S.* 11:22-6, thus mooting, for the future, the issue under discussion. These latter statutes do not, however, apply to plaintiffs, who were dismissed in 1956.

Cammarata and Costa maintain that since that portion of R.S. 40:37-154 empowering the commission to "establish proper rules and regulations for the appointment * * * of the members of the constabulary" was enacted [*413] in 1906, at a time when the park commission could remove its appointees at its unrestrained pleasure, [***11] the Legislature could not have intended the cited phrase to encompass authority to hire on probation. They argue that this is so because there is no need or reason for a probationary status when the employer can terminate the employee's services at any time in his own discretion.

The answer to this contention has already been adverted to in the foregoing consideration of the legislative purpose in delegating broad rule-making powers to an administrative agency. The essential object is to permit and to encourage the adoption of administrative regulations which are suited to the exigencies of unforeseen and changing circumstances. The Legislature contemplated that the park commissions should have all of the powers concerning appointments reasonably needful to insure selection of a well qualified constabulary. Certainly, an intention to deny completely the power of the respective park commissions ever to establish a probationary status for patrolmen cannot be inferred from the mere fact that there apparently was no necessity for the creation of such a status in the year 1906.

We find no merit to plaintiffs' argument that simply because other and unrelated statutes, primarily the [***12] Civil Service Act, expressly provide for periods of probationary service, R.S. 40:37-154 cannot be deemed to permit the requirement of such.

Plaintiffs also contend that even if it be decided that their appointments on a probationary basis were entirely valid, a one-year period of probation is unreasonably long. This is primarily a matter for the exercise of a sound discretion and there is no showing that the administrative prerogative has been abused. Each newly hired

patrolman spends a considerable portion of his probationary service in training at the State Police School and in learning the rudiments of his job from experienced, permanent park police officers. The length of time occupied by theoretical work diminishes the opportunity for judging on-the-job performance, the principal reason for the creation of the [*414] probationary status. We think plaintiffs have failed to demonstrate that a requirement of one year's probation is unreasonable under the circumstances *sub judice*.

Our decision turns upon our conclusion that the park commission had power to make appointments probationary in nature. But even if we assumed the commission lacked such power, it is [***13] difficult to perceive how this would enable plaintiffs to prevail.

They were never appointed regular, permanent members of the Essex County Park Police. Such appointments were to be made only upon fulfillment of the *condition precedent* that they satisfactorily complete their year of probationary service. The park commission did not see fit to make them permanent officers and, in fact, it affirmatively found they were unqualified for such positions. Plaintiffs are asking for "reinstatement" to a status they never actually enjoyed. The situation *sub judice* is readily distinguishable from those cases where there was a valid appointment to an existing office and only the extent of the term was in controversy. *E.g.*, Lohsen v. Borough of Keansburg, 4 N.J. 498 (1950); Sheridan [**703] v. McCurnin, 124 N.J.L. 493 (*Sup. Ct.* 1940). Compare State ex rel. Wm. Eckelmann, Inc., v. Jones, 4 N.J. 207 (1950).

Plaintiffs were completely cognizant of the tentative nature of their employment and assented in writing to its limitations. They were fully paid for the work they performed. Even if both sides misapprehended the legality of the probationary [***14] appointments, this mutual mistake could not create for plaintiffs a better position than the one originally contemplated nor elevate them to a higher office than the one for which they had applied.

The Appellate Division is affirmed.

Citation #1
26 NJ 404

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Cammarata v. Essex County Park Com., 26 N.J. 404, 140 A.2d 397, 1958 N.J. LEXIS 259 (1958)

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No subsequent appellate history. Prior history available.

Citing References:

Positive Analyses:	**Followed (1)**
Neutral Analyses:	Concurring Opinion (1), Dissenting Op. (2)
Other Sources:	Law Reviews (3), Statutes (2), Treatises (1), Court Documents (1)

LexisNexis Headnotes: HN3 (23), HN4 (1), HN5 (41)

PRIOR HISTORY (1 citing reference)

1. Cammarata v. Essex County Park Com., 46 N.J. Super. 262, 134 A.2d 604, 1957 N.J. Super. LEXIS 400 (App.Div. 1957)

   Affirmed by (CITATION YOU ENTERED):
   Cammarata v. Essex County Park Com., 26 N.J. 404, 140 A.2d 397, 1958 N.J. LEXIS 259 (1958)

CITING DECISIONS (88 citing decisions)

NEW JERSEY SUPREME COURT

2. **Cited by:**
   In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 945 A.2d 692, 2008 N.J. LEXIS 410 (2008) **LexisNexis Headnotes HN5**
   194 N.J. 413 p.423
   945 A.2d 692 p.698

3. **Cited by:**
   N.J. DOL v. Pepsi-Cola Co., 170 N.J. 59, 784 A.2d 64, 2001 N.J. LEXIS 1277, 7 Wage & Hour Cas. 2d (BNA) 827 (2001) **LexisNexis Headnotes HN5**
   170 N.J. 59 p.61
   784 A.2d 64 p.65

4. **Cited by:**
   New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (1999) **LexisNexis Headnotes HN5**
   158 N.J. 211 p.223
   729 A.2d 21 p.27

5. **Cited by:**
Communications Workers v. New Jersey Dep't of Personnel, 154 N.J. 121, 711 A.2d 890, 1998 N.J. LEXIS 442 (1998) **LexisNexis Headnotes HN3**
154 N.J. 121 p.127
711 A.2d 890 p.893

6. **Cited by:**
George Harms Constr. Co. v. N.J. Turnpike Auth., 137 N.J. 8, 644 A.2d 76, 1994 N.J. LEXIS 627, 146 L.R.R.M. (BNA) 3037, 130 Lab. Cas. (CCH) P57893 (1994) **LexisNexis Headnotes HN3**
137 N.J. 8 p.33
644 A.2d 76 p.89

7. **Cited by:**
Kletzkin v. Board of Educ., 136 N.J. 275, 642 A.2d 993, 1994 N.J. LEXIS 512 (1994)
136 N.J. 275 p.280
642 A.2d 993 p.995

8. **Cited in Dissenting Opinion at:**
In re Commissioner of Insurance's Issuance of Orders A-92-189 & A-92-212, 137 N.J. 93, 644 A.2d 576, 1994 N.J. LEXIS 513 (1994) **LexisNexis Headnotes HN3**
137 N.J. 93 p.97
644 A.2d 576 p.578

9. **Cited by:**
Kaprow v. Board of Educ., 131 N.J. 572, 622 A.2d 237, 1993 N.J. LEXIS 68 (1993) **LexisNexis Headnotes HN5**
131 N.J. 572 p.580
622 A.2d 237 p.241

10. **Cited by:**
New Life Gospel Church v. New Jersey Dept. of Community Affairs, N.J. Dkt. No. A-2981-90T5 (June 11, 1992)
N.J. Dkt. No. A-2981-90T5

11. **Cited by:**
Brady v. New Jersey Redistricting Comm'n, 131 N.J. 594, 622 A.2d 843, 1992 N.J. LEXIS 1353 (1992) **LexisNexis Headnotes HN3**
131 N.J. 594 p.608
622 A.2d 843 p.849

12. **Cited by:**
Department of Labor v. Titan Constr. Co., 102 N.J. 1, 504 A.2d 7, 1985 N.J. LEXIS 3308, 106 Lab. Cas. (CCH) P55741, 27 Wage & Hour Cas. (BNA) 725 (1985) **LexisNexis Headnotes HN3**
102 N.J. 1 p.11
102 N.J. 1 p.12
504 A.2d 7 p.12

504 A.2d 7 p.13

13. **Cited by:**
Keyes Martin & Co. v. Director, Div. of Purchase & Property, Dep't of Treasury, 99 N.J. 244, 491 A.2d 1236, 1985 N.J. LEXIS 2327 (1985) **LexisNexis Headnotes HN3**
99 N.J. 244 p.254
491 A.2d 1236 p.1241

14. **Cited in Dissenting Opinion at:**
Fedders Financial Corp. v. Director, Division of Taxation, 96 N.J. 376, 476 A.2d 741, 1984 N.J. LEXIS 2672 (1984) **LexisNexis Headnotes HN5**
96 N.J. 376 p.404
476 A.2d 741 p.756

15. **Cited by:**
In re Schedule of Rates for Barnert Memorial Hospital, 92 N.J. 31, 455 A.2d 469, 1983 N.J. LEXIS 2340 (1983) **LexisNexis Headnotes HN5**
92 N.J. 31 p.39
455 A.2d 469 p.473

16. **Cited by:**
General Assembly of New Jersey v. Byrne, 90 N.J. 376, 448 A.2d 438, 1982 N.J. LEXIS 2165 (1982) **LexisNexis Headnotes HN3**
90 N.J. 376 p.385
448 A.2d 438 p.443

17. **Cited by:**
Mt. Laurel v. Department of Public Advocate, 83 N.J. 522, 416 A.2d 886, 1980 N.J. LEXIS 1375 (1980) **LexisNexis Headnotes HN3**
83 N.J. 522 p.532
416 A.2d 886 p.891

18. **Cited by:**
New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Com., 82 N.J. 57, 411 A.2d 168, 1980 N.J. LEXIS 1316 (1980) **LexisNexis Headnotes HN5**
82 N.J. 57 p.83
411 A.2d 168 p.181

19. **Cited by:**
New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 384 A.2d 795, 1978 N.J. LEXIS 178 (1978) **LexisNexis Headnotes HN5**
75 N.J. 544 p.562
384 A.2d 795 p.804

20. **Cited by:**
In re Heller, 73 N.J. 292, 374 A.2d 1191, 1977 N.J. LEXIS 205 (1977) **LexisNexis Headnotes HN5**
73 N.J. 292 p.303

374 A.2d 1191 p.1197

21. **Cited by:**
Donaldson v. Board of Education, 65 N.J. 236, 320 A.2d 857, 1974 N.J. LEXIS 176 (1974)
65 N.J. 236 p.241
320 A.2d 857 p.860

22. **Cited by:**
Wes Outdoor Advertising Co. v. Goldberg, 55 N.J. 347, 262 A.2d 199, 1970 N.J. LEXIS 152, 1 Env't Rep. Cas. (BNA) 1172 (1970)
55 N.J. 347 p.352
262 A.2d 199 p.202

23. **Cited by:**
Shelton College v. State Board of Education, 48 N.J. 501, 226 A.2d 612, 1967 N.J. LEXIS 274 (1967)
48 N.J. 501 p.524
226 A.2d 612 p.625

24. **Cited by:**
Juzek v. Hackensack Water Co., 48 N.J. 302, 225 A.2d 335, 1966 N.J. LEXIS 168 (1966) **LexisNexis Headnotes HN5**
48 N.J. 302 p.314
225 A.2d 335 p.342

25. **Cited by:**
Union County Board of Chosen Freeholders v. Union County Park Com., 41 N.J. 333, 196 A.2d 781, 1964 N.J. LEXIS 243 (1964) **LexisNexis Headnotes HN5**
41 N.J. 333 p.338
41 N.J. 333 p.339
196 A.2d 781 p.784

26. **Cited by:**
Allendale Field & Steam Asso. v. Legalized Games of Chance Control Com., 41 N.J. 209, 195 A.2d 620, 1963 N.J. LEXIS 147 (1963) **LexisNexis Headnotes HN4**
41 N.J. 209 p.217
195 A.2d 620 p.624

27. **Cited by:**
Zimmerman v. Board of Education, 38 N.J. 65, 183 A.2d 25, 1962 N.J. LEXIS 157 (1962)
38 N.J. 65 p.73
183 A.2d 25 p.29

28. **Cited by:**
Bechler v. Parsekian, 36 N.J. 242, 176 A.2d 470, 1961 N.J. LEXIS 259 (1961)
36 N.J. 242 p.251
176 A.2d 470 p.475

NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

29. **Cited by:**
Azzara v. Twp. of Waterford, 392 N.J. Super. 322, 920 A.2d 725, 2007 N.J. Super. LEXIS 120, 26 I.E.R. Cas. (BNA) 172 (App.Div. 2007)
392 N.J. Super. 322 p.329
920 A.2d 725 p.729

30. **Followed by:**
State v. Bond, 365 N.J. Super. 430, 839 A.2d 888, 2003 N.J. Super. LEXIS 389 (App.Div. 2003) **LexisNexis Headnotes HN3**
365 N.J. Super. 430 p.442
839 A.2d 888 p.895

31. **Cited by:**
Besler & Co., Inc. v. Bradley, 361 N.J. Super. 168, 824 A.2d 289, 2003 N.J. Super. LEXIS 202 (App.Div. 2003) **LexisNexis Headnotes HN3**
361 N.J. Super. 168 p.173
824 A.2d 289 p.292

32. **Cited by:**
In re Virgo's, Inc., 355 N.J. Super. 590, 810 A.2d 1175, 2002 N.J. Super. LEXIS 483 (App.Div. 2002) **LexisNexis Headnotes HN5**
355 N.J. Super. 590 p.596
810 A.2d 1175 p.1178

33. **Cited by:**
Mercer County Deer Alliance v. N.J. Dep't of Envtl. Prot., 349 N.J. Super. 440, 793 A.2d 847, 2002 N.J. Super. LEXIS 162 (App.Div. 2002) **LexisNexis Headnotes HN3**
349 N.J. Super. 440 p.451
793 A.2d 847 p.854

34. **Cited by:**
Lewis v. Catastrophic Illness in Children Relief Fund Comm'n, 336 N.J. Super. 361, 764 A.2d 1035, 2001 N.J. Super. LEXIS 18 (App.Div. 2001) **LexisNexis Headnotes HN3, HN5**
336 N.J. Super. 361 p.370
336 N.J. Super. 361 p.371
764 A.2d 1035 p.1040

35. **Cited by:**
In re Appeal of Pipes, 329 N.J. Super. 391, 748 A.2d 118, 2000 N.J. Super. LEXIS 134 (App.Div. 2000) **LexisNexis Headnotes HN5**
329 N.J. Super. 391 p.396
748 A.2d 118 p.120

36. **Cited by:**
New Jersey Coalition of Health Care Prof'ls, Inc. v. New Jersey Dep't of Banking & Ins., 323 N.J. Super.

207, 732 A.2d 1063, 1999 N.J. Super. LEXIS 276 (App.Div. 1999) **LexisNexis Headnotes HN5**
323 N.J. Super. 207 p.229
732 A.2d 1063 p.1076

37. **Cited by:**
Ensslin v. Board of Trustees, Police & Firemen's Retirement Sys., 311 N.J. Super. 333, 709 A.2d 1344, 1998 N.J. Super. LEXIS 210 (App.Div. 1998) **LexisNexis Headnotes HN5**
311 N.J. Super. 333 p.338
709 A.2d 1344 p.1346

38. **Cited by:**
In re Adoption of Regulations Governing the State Health Plan, N.J.A.C., 262 N.J. Super. 469, 621 A.2d 484, 1993 N.J. Super. LEXIS 50 (App.Div. 1993) **LexisNexis Headnotes HN3**
262 N.J. Super. 469 p.478
621 A.2d 484 p.488

39. **Cited by:**
New Life Gospel Church v. State, Dep't of Community Affairs, etc., 257 N.J. Super. 241, 608 A.2d 397, 1992 N.J. Super. LEXIS 238 (App.Div. 1992) **LexisNexis Headnotes HN5**
257 N.J. Super. 241 p.247
608 A.2d 397 p.400

40. **Cited by:**
Last Chance Dev. Partnership v. Kean, 232 N.J. Super. 115, 556 A.2d 796, 1989 N.J. Super. LEXIS 127 (App.Div. 1989) **LexisNexis Headnotes HN5**
232 N.J. Super. 115 p.127
556 A.2d 796 p.802

41. **Cited by:**
Medical Soc. of New Jersey v. New Jersey Dep't of Law & Public Safety, Div. of Consumer Affairs, 229 N.J. Super. 128, 550 A.2d 1272, 1988 N.J. Super. LEXIS 446 (App.Div. 1988) **LexisNexis Headnotes HN5**
229 N.J. Super. 128 p.134
550 A.2d 1272 p.1276

42. **Cited by:**
State v. Levinson, 225 N.J. Super. 135, 541 A.2d 1110, 1988 N.J. Super. LEXIS 186 (App.Div. 1988)
225 N.J. Super. 135 p.139
541 A.2d 1110 p.1112

43. **Cited by:**
New Jersey Housing & Mortg. Finance Agency v. Moses, 215 N.J. Super. 318, 521 A.2d 1307, 1987 N.J. Super. LEXIS 1030 (App.Div. 1987) **LexisNexis Headnotes HN5**
215 N.J. Super. 318 p.324
521 A.2d 1307 p.1310

44. **Cited by:**
In re Camden County Solid Waste Management Dist., 214 N.J. Super. 247, 518 A.2d 1105, 1986 N.J. Super.

LEXIS 1523 (App.Div. 1986) **LexisNexis Headnotes HN5**
214 N.J. Super. 247 p.251
518 A.2d 1105 p.1107

45. **Cited by:**
Flama Constr. Corp. v. Franklin, 201 N.J. Super. 498, 493 A.2d 587, 1985 N.J. Super. LEXIS 1323 (App.Div. 1985) **LexisNexis Headnotes HN3**
201 N.J. Super. 498 p.503
201 N.J. Super. 498 p.506
493 A.2d 587 p.590
493 A.2d 587 p.591

46. **Cited by:**
Keyes Martin & Co. v. Director, Div. of Purchase & Property, Dep't of Treasury, 196 N.J. Super. 52, 481 A.2d 572, 1984 N.J. Super. LEXIS 1148 (App.Div. 1984) **LexisNexis Headnotes HN3**
196 N.J. Super. 52 p.65
481 A.2d 572 p.579

47. **Cited by:**
D.S. v. Board of Education, 188 N.J. Super. 592, 458 A.2d 129, 1983 N.J. Super. LEXIS 804 (App.Div. 1983) **LexisNexis Headnotes HN5**
188 N.J. Super. 592 p.598
188 N.J. Super. 592 p.608
458 A.2d 129 p.132
458 A.2d 129 p.139

48. **Cited by:**
State v. Dolce, 178 N.J. Super. 275, 428 A.2d 947, 1981 N.J. Super. LEXIS 512 (App.Div. 1981) **LexisNexis Headnotes HN5**
178 N.J. Super. 275 p.286
428 A.2d 947 p.953

49. **Cited by:**
Hyland v. Ponzio, 159 N.J. Super. 233, 387 A.2d 1206, 1978 N.J. Super. LEXIS 911 (App.Div. 1978) **LexisNexis Headnotes HN5**
159 N.J. Super. 233 p.238
387 A.2d 1206 p.1208

50. **Cited by:**
Newark Board of Education v. Newark Teachers Union, 152 N.J. Super. 51, 377 A.2d 765, 1977 N.J. Super. LEXIS 1042, 96 L.R.R.M. (BNA) 2713 (App.Div. 1977) **LexisNexis Headnotes HN5**
152 N.J. Super. 51 p.59
377 A.2d 765 p.770

51. **Cited by:**
Board of Education v. Plainfield Education Asso., 144 N.J. Super. 521, 366 A.2d 703, 1976 N.J. Super. LEXIS 705, 94 L.R.R.M. (BNA) 2221 (App.Div. 1976) **LexisNexis Headnotes HN5**
144 N.J. Super. 521 p.524

366 A.2d 703 p.705

52. **Cited by:**
Professional Asso., State Dep't of Education v. Commissioner of Education, 132 N.J. Super. 338, 333 A.2d 566, 1975 N.J. Super. LEXIS 894 (App.Div. 1975) **LexisNexis Headnotes HN5**
132 N.J. Super. 338 p.345
333 A.2d 566 p.570

53. **Cited by:**
Merry Heart Nursing & Convalescent Home, Inc. v. Dougherty, 131 N.J. Super. 412, 330 A.2d 370, 1974 N.J. Super. LEXIS 481 (App.Div. 1974) **LexisNexis Headnotes HN3**
131 N.J. Super. 412 p.421
330 A.2d 370 p.375

54. **Cited by:**
South Brunswick v. New Jersey Turnpike Authority, 129 N.J. Super. 126, 322 A.2d 478, 1974 N.J. Super. LEXIS 584 (App.Div. 1974) **LexisNexis Headnotes HN3**
129 N.J. Super. 126 p.132
322 A.2d 478 p.481

55. **Cited by:**
Rite Aid of New Jersey, Inc. v. Board of Pharmacy, 124 N.J. Super. 62, 304 A.2d 754, 1973 N.J. Super. LEXIS 505 (App.Div. 1973) **LexisNexis Headnotes HN5**
124 N.J. Super. 62 p.66
304 A.2d 754 p.756

56. **Cited by:**
In re Hollywood, 124 N.J. Super. 50, 304 A.2d 747, 1973 N.J. Super. LEXIS 503 (App.Div. 1973) **LexisNexis Headnotes HN3**
124 N.J. Super. 50 p.54
304 A.2d 747 p.749

57. **Cited by:**
Hamilton v. New Jersey Real Estate Com., 117 N.J. Super. 345, 284 A.2d 564, 1971 N.J. Super. LEXIS 423 (App.Div. 1971) **LexisNexis Headnotes HN5**
117 N.J. Super. 345 p.347
284 A.2d 564 p.565

58. **Cited in Concurring Opinion at, Cited by:**
Brown v. State, 115 N.J. Super. 348, 279 A.2d 872, 1971 N.J. Super. LEXIS 562 (App.Div. 1971)
Cited in Concurring Opinion at:
115 N.J. Super. 348 p.351

Cited by:
279 A.2d 872 p.873

59. **Cited by:**

Irval Realty, Inc. v. Board of Public Utility Comm'rs, 115 N.J. Super. 338, 279 A.2d 866, 1971 N.J. Super. LEXIS 560 (App.Div. 1971) **LexisNexis Headnotes HN5**
115 N.J. Super. 338 p.342
279 A.2d 866 p.869

60. **Cited by:**
Mulligan v. Wilson, 110 N.J. Super. 167, 264 A.2d 745, 1970 N.J. Super. LEXIS 481 (App.Div. 1970) **LexisNexis Headnotes HN5**
110 N.J. Super. 167 p.171
264 A.2d 745 p.747

61. **Cited by:**
State v. Seligson, 106 N.J. Super. 329, 255 A.2d 795, 1969 N.J. Super. LEXIS 467 (App.Div. 1969) **LexisNexis Headnotes HN3**
106 N.J. Super. 329 p.333
255 A.2d 795 p.797

62. **Cited by:**
In re Parkwood Co., 98 N.J. Super. 263, 237 A.2d 265, 1967 N.J. Super. LEXIS 392 (App.Div. 1967) **LexisNexis Headnotes HN5**
98 N.J. Super. 263 p.272
237 A.2d 265 p.270

63. **Cited by:**
State v. Imperatore, 92 N.J. Super. 347, 223 A.2d 498, 1966 N.J. Super. LEXIS 511 (App.Div. 1966) **LexisNexis Headnotes HN5**
92 N.J. Super. 347 p.353
223 A.2d 498 p.501

64. **Cited by:**
Lowden v. Board of Review, 78 N.J. Super. 467, 189 A.2d 224, 1963 N.J. Super. LEXIS 473 (App.Div. 1963)
78 N.J. Super. 467 p.470
189 A.2d 224 p.226

65. **Cited by:**
R. H. Macy & Co. v. Director, 77 N.J. Super. 155, 185 A.2d 682, 1962 N.J. Super. LEXIS 412 (App.Div. 1962)
77 N.J. Super. 155 p.177
185 A.2d 682 p.694

66. **Cited by:**
Allendale Field & Stream Asso. v. Legalized Games of Chance Control Com., 76 N.J. Super. 313, 184 A.2d 521, 1962 N.J. Super. LEXIS 478 (App.Div. 1962) **LexisNexis Headnotes HN5**
76 N.J. Super. 313 p.317
184 A.2d 521 p.523

67. **Cited by:**
State v. Weissman, 73 N.J. Super. 274, 179 A.2d 748, 1962 N.J. Super. LEXIS 633, 93 A.L.R.2d 1001 (App.Div. 1962)
73 N.J. Super. 274 p.282
179 A.2d 748 p.752

68. **Cited by:**
Kantor v. Parsekian, 72 N.J. Super. 588, 179 A.2d 21, 1962 N.J. Super. LEXIS 712 (App.Div. 1962)
72 N.J. Super. 588 p.593
179 A.2d 21 p.23

69. **Cited by:**
State Board of Medical Examiners v. Weiner, 68 N.J. Super. 468, 172 A.2d 661, 1961 N.J. Super. LEXIS 603 (App.Div. 1961) **LexisNexis Headnotes HN5**
68 N.J. Super. 468 p.496
172 A.2d 661 p.676

NEW JERSEY SUPERIOR COURT, LAW DIVISION

70. **Cited by:**
State v. Maioranna, 225 N.J. Super. 365, 542 A.2d 510, 1988 N.J. Super. LEXIS 207 (Law Div. 1988)
225 N.J. Super. 365 p.373
542 A.2d 510 p.514

71. **Cited by:**
Atlantic City Casino Asso. v. Kimmelman, 204 N.J. Super. 652, 499 A.2d 1049, 1984 N.J. Super. LEXIS 1347 (Law Div. 1984) **LexisNexis Headnotes HN3**
204 N.J. Super. 652 p.671
499 A.2d 1049 p.1059

72. **Cited by:**
Clark v. Degnan, 163 N.J. Super. 344, 394 A.2d 914, 1978 N.J. Super. LEXIS 1117 (Law Div. 1978)
163 N.J. Super. 344 p.372
394 A.2d 914 p.928

73. **Cited by:**
Union County Park Com. v. County of Union, 154 N.J. Super. 213, 381 A.2d 77, 1976 N.J. Super. LEXIS 1060 (Law Div. 1976)
154 N.J. Super. 213 p.233
381 A.2d 77 p.87

74. **Cited by:**
Yellow Cab Corp. v. City Council of Passaic, 124 N.J. Super. 570, 308 A.2d 60, 1973 N.J. Super. LEXIS 586 (Law Div. 1973) **LexisNexis Headnotes HN5**
124 N.J. Super. 570 p.575
308 A.2d 60 p.63

75. **Cited by:**
Association of New Jersey State College Faculties, Inc. v. Board of Higher Education, 112 N.J. Super. 237, 270 A.2d 744, 1970 N.J. Super. LEXIS 357, 75 L.R.R.M. (BNA) 2613, 64 Lab. Cas. (CCH) P52433 (Law Div. 1970) **LexisNexis Headnotes HN3**
112 N.J. Super. 237 p.258
270 A.2d 744 p.755

76. **Cited by:**
Francis v. Harris, 100 N.J. Super. 313, 241 A.2d 844, 1968 N.J. Super. LEXIS 587 (Law Div. 1968)
100 N.J. Super. 313 p.320
241 A.2d 844 p.849

77. **Cited by:**
Union County Board of Chosen Freeholders v. Union County Park Com., 77 N.J. Super. 425, 186 A.2d 703, 1962 N.J. Super. LEXIS 434 (Law Div. 1962) **LexisNexis Headnotes HN5**
77 N.J. Super. 425 p.434
186 A.2d 703 p.708

OTHER NEW JERSEY DECISIONS

78. **Cited by:**
New Jersey Dental Service Plan, Inc. v. Baldwin, 7 N.J. Tax 421, 1985 N.J. Tax LEXIS 33 (Tax Ct. 1985) **LexisNexis Headnotes HN5**
7 N.J. Tax 421 p.427

79. **Cited by:**
Verden Realty Management Co. v. East Orange, 5 N.J. Tax 637, 1983 N.J. Tax LEXIS 15 (Tax Ct. 1983)
5 N.J. Tax 637 p.641

80. **Cited by:**
State v. K-Mart, 134 N.J. Super. 76, 338 A.2d 230, 1975 N.J. Super. LEXIS 994 (Cty. Ct. 1975) **LexisNexis Headnotes HN5**
134 N.J. Super. 76 p.85
338 A.2d 230 p.235

81. **Cited by:**
State v. Hubschman, 81 N.J. Super. 452, 195 A.2d 913, 1963 N.J. Super. LEXIS 534 (Cty. Ct. 1963) **LexisNexis Headnotes HN3**
81 N.J. Super. 452 p.457
195 A.2d 913 p.916

82. **Cited by:**
State v. Corbisiero, 67 N.J. Super. 170, 170 A.2d 74, 1961 N.J. Super. LEXIS 626 (Cty. Ct. 1961)
67 N.J. Super. 170 p.176
170 A.2d 74 p.78

3RD CIRCUIT - U.S. DISTRICT COURTS

83. **Cited by:**
Montgomery Nat'l Bank v. Clarke, 703 F. Supp. 1161, 1989 U.S. Dist. LEXIS 528 (D.N.J. 1989)
LexisNexis Headnotes HN3
703 F. Supp. 1161 p.1168

84. **Cited by:**
Rite Aid Corp. v. Board of Pharmacy, 421 F. Supp. 1161, 1976 U.S. Dist. LEXIS 13245 (D.N.J. 1976)
LexisNexis Headnotes HN5
421 F. Supp. 1161 p.1178

4TH CIRCUIT - U.S. DISTRICT COURTS

85. **Cited by:**
Parker v. Board of Education, 237 F. Supp. 222, 1965 U.S. Dist. LEXIS 6457 (D. Md. 1965)
237 F. Supp. 222 p.227

MARYLAND COURT OF APPEALS

86. **Cited by:**
Maryland-National Capital Park & Planning Com. v. Washington Nat'l Arena, 282 Md. 588, 386 A.2d 1216, 1978 Md. LEXIS 392 (1978)
386 A.2d 1216 p.1224

MICHIGAN SUPREME COURT

87. **Cited by:**
Munro v. Elk Rapids Schools, 383 Mich. 661, 178 N.W.2d 450, 1970 Mich. LEXIS 184 (1970)
178 N.W.2d 450 p.458

NEVADA SUPREME COURT

88. **Cited by:**
Checker, Inc. v. Public Serv. Comm'n, 84 Nev. 623, 446 P.2d 981, 1968 Nev. LEXIS 423 (1968)
LexisNexis Headnotes HN5
446 P.2d 981 p.985

OREGON COURT OF APPEALS

89. **Cited by:**
Papadopoulos v. Oregon State Board of Higher Education, 14 Ore. App. 130, 511 P.2d 854, 1973 Ore. App. LEXIS 883 (1973)
511 P.2d 854 p.868

ANNOTATED STATUTES (2 Citing Statutes)

90. N.J. Stat. @ 40:37-154

91. N.J. Stat. @ 40:37-156

LAW REVIEWS AND PERIODICALS (3 Citing References)

92. 27 Rutgers L. Rev. 659
    27 Rutgers L. Rev. 659 p.664

93. 13 Rutgers L. Rev. 78
    13 Rutgers L. Rev. 78 p.99

94. 13 Rutgers L. Rev. 33
    13 Rutgers L. Rev. 33 p.38

TREATISE CITATIONS (1 Citing Source)

95. 1-11 Unclaimed Property Law @ 11.04A

PLEADINGS (1 Citing Pleading)

96. DKM RESIDENTIAL PROPS. CORP. v. TOWNSHIP OF MONTGOMERY, 2003 NJ S. Ct. Pleadings 55338, 2003 NJ S. Ct. Pleadings LEXIS 1 (N.J. Nov. 17, 2003)