

18A:64-27; 18A:64-38

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:64-27; 18A:64-38 (Public College Auxiliary Organization Act-- includes county colleges)

LAWS OF: 1983

CHAPTER: 23

Bill No.: A1457

Sponsor(s): Pelly and others

Date Introduced: May 20, 1982

Committee: Assembly: Education

Senate: Education

Amended during passage: Yes // Amendments denoted by asterisks according to Governor's recommendations

Date of Passage: Assembly: June 28, 1982 Re-enacted 12-13-82

Senate: Oct. 18, 1982 Re-enacted 1-11-83

Date of Approval: Jan. 22, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes // 9-23-82 & 12-16-82

Fiscal Note: /// No

Veto Message: Yes //

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

A.G. opinion referred to in committee statements: F.O. no. 22 - 1980, F.O. no. 2 - 1981.

See Legislative history of 1982 c.16.

OCT 1983

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## ASSEMBLY, No. 1457

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1982

By Assemblymen PELLY, DORIA, SCHWARTZ and PATERNITI

AN ACT to amend the "Public College Auxiliary Organization Act,"  
approved April 1, 1982 (P. L. 1982, c. 16).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 2 of P. L. 1982, c. 16 (C. 18A:64-27) is amended to  
2 read as follows:

3 2. As used in this act:

4 a. "College" means any *State or county* college.

5 b. "Auxiliary organization" means an organization, subject to  
6 the provisions of this act, that performs selected functions or  
7 operations of a college while maintaining an identity distinct from  
8 that of the college.

1 \*2. Section 13 of P. L. 1982, c. 16 (C. 18A:64-38) is amended to  
2 read as follows:

3 13. As may be necessary for its operation, an auxiliary organiza-  
4 tion may appoint, retain and employ officers, agents, employees and  
5 experts, who shall be within the unclassified service of the Civil  
6 Service; *except that, officers, agents, employees and experts of an*  
7 *auxiliary organization established by a county college shall not be*  
8 *subject to the provisions of Title 11 of the Revised Statutes.\**

1 \***[2.]**\* \*3.\* This act shall take effect immediately.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.**

**Matter printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Assembly amendments adopted in accordance with Governor's recom-  
mendations December 6, 1982.

ASSEMBLY, No. 1457

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8 that of the college.

1 2. This act shall take effect immediately.

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STATEMENT

This bill amends P. L. 1982, c. 16 (C. 18A:64-26 et seq.) include  
county colleges under the provisions of the "Public College Auxili-  
ary Organization Act."

**Matter printed in italics thus is new matter.**

ASSEMBLY HIGHER EDUCATION AND REGULATED  
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1457

STATE OF NEW JERSEY

DATED: JUNE 17, 1982

This bill amends the "Public College Auxiliary Organization Act," (P. L. 1982, c. 16) to include county colleges under the provisions of that act. The "Public College Auxiliary Organization Act" provides the statutory authorization for the establishment and operation of auxiliary organizations at State colleges and requires the director of the Division of Budget and Accounting to approve the accounting and auditing methods and practices and to implement financial standards that assure the fiscal viability of these organizations.

It has been the practice of state and county colleges to operate food services, book stores and athletic activities by creating a separate corporation for the management of such functions. The Attorney General has ruled that these corporations are illegal without statutory authorization.

SENATE EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1457

STATE OF NEW JERSEY

DATED: SEPTEMBER 23, 1982

The Senate Education Committee favorably reports this bill and endorses the Assembly Higher Education and Regulated Professions Committee Statement which reads as follows:

“This bill amends the ‘Public College Auxiliary Organization Act,’ (P. L. 1982, c. 16) to include county colleges under the provisions of that act. The ‘Public College Auxiliary Organization Act’ provides the statutory authorization for the establishment and operation of auxiliary organizations at State colleges and requires the Director of the Division of Budget and Accounting to approve the accounting and auditing methods and practices and to implement financial standards that assure the fiscal viability of these organizations.

It has been the practice of State and county colleges to operate food services, book stores and athletic activities by creating a separate corporation for the management of such functions. The Attorney General has ruled that these corporations are illegal without statutory authorization.”

SENATE EDUCATION COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1457**

with Governor's recommendation

**STATE OF NEW JERSEY**

DATED: DECEMBER 16, 1982

This bill allows county colleges to establish auxiliary organizations such as food services, book stores and athletic activities.

The Governor has recommended that the bill be amended to clarify that employees of such organizations are not subject to civil service.

The Assembly has amended the bill as recommended.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

December 6, 1982

ASSEMBLY BILL NO. 1457

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1457 with my recommendations for reconsideration.

The purpose of this bill is to amend the Public College Auxiliary Organization Act to include county colleges under its provisions. The Public College Auxiliary Organization Act provides the statutory authorization for the establishment and operation of auxiliary organizations such as food services, book stores, and athletic activities at our State colleges. This bill does nothing more but extend that auxiliary organization operation to the county colleges.

Our State colleges are subject to civil service, and as such, the Public College Auxiliary Organization Act requires that the auxiliary organization may appoint employees who must be within the unclassified service of civil service. The county colleges, on the other hand, are not subject nor have they ever been subject to civil service. To maintain this longstanding policy, but also to allow the county colleges to enjoy the statutory authorization for the establishment and operation of auxiliary organizations at the State colleges do, I herewith return Assembly Bill No. 1457 and recommend that it be amended as follows:

Page 1, Section 1, After Line 8: Insert new section as follows:

"2. Section 13 of P.L. 1982, c. 16 (C. 18A:64-38) is amended to read as follows:

13. As may be necessary for its operation, an auxiliary organization may appoint, retain and employ officers, agents, employees and experts, who shall be within the unclassified service of the Civil Service; except that, officers, agents, employees and experts of an auxiliary organization established by a county college shall not be subject to the provisions of Title 11 of the Revised Statutes."

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

Page 1, Section 2, Line 1: Delete "2" insert "3"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor



ATTORNEY GENERAL

the payment of municipal taxes, be required, contrary to the clear intent of the statute, to support spending increases in excess of the 5% limit established by the statute. These consequences further demonstrate that the appropriation of Urban Aid moneys must be treated as a modification under the Local Government Cap Law.

In conclusion, you are advised that appropriations of Urban Aid moneys received pursuant to L. 1978, c. 14 should be treated as a modification under the Local Government Cap Law. You are further advised that, in the calculation of a municipality's permissible spending increase, the appropriation of Urban Aid in a municipal budget for a preceding year should be deducted from the final appropriations in that year to derive a base amount from which a permissible spending increase for a current year is determined.\*

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: DANIEL P. REYNOLDS  
*Deputy Attorney General*

\* It is provided in the 1981 State Appropriations Act that in 1980 municipal budgets appropriations of municipal aid moneys by qualifying municipalities, or line item moneys contained in the Act for municipalities that no longer qualify, may be treated as an exception to the spending limitation. It is also provided that the treatment of such moneys as an exception to this spending limitation shall not alter the amount upon which the five percent annual increase is calculated in 1980 budgets for such municipalities. In the preparation of 1981 municipal budgets, however, municipalities should be governed in their determination of appropriate spending limits by the conclusions set forth in this opinion.

October 31, 1980

T. EDWARD HOLLANDER  
*Chancellor*  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 22—1980

Dear Chancellor Hollander:

For the past several years, this office has expressed its concern over the increasing use of corporate entities formed and utilized by some of the state colleges to carry out various functions of the institutions. We have been informed that state colleges have formed corporations which operate student centers and campus pubs, manage dormitories and engage in other functions normally controlled by the college administration. As a general rule, these corporations have been set up by college personnel,

are managed by a board of directors, dominated and controlled by college employees, utilize both college facilities and office space and are funded to varying degrees with state money. Nonetheless, these corporations do not comply with any of the rules and regulations which state colleges are subjected to by statute, such as bidding laws, civil service requirements and treasury regulations concerning state funds. For the following reasons, you are hereby advised that such activities are improper and may not continue absent statutory authorization.

It is clear that the college corporations are instrumentalities of the state. The corporations are controlled by college officials, have the use of state facilities, expend state funds and effectuate state functions. Courts in various jurisdictions have uniformly held under similar circumstances that such entities are in fact instrumentalities and components of the colleges which created them. For example, in *Brown v. Wichita State University*, 540 P. 2d 66 (Kan. 1975), *mod.* 547 P. 2d 1015, (1976), the court held that a corporation created by the college and controlled by it must be "considered a mere instrumentality of the University," *Id.* at 76. In *DeBonis v. Hudson Valley Community College*, 389 N.Y.S. 2d 647 (1977), the court utilized the same analysis in concluding that a purportedly "independent" corporation controlled by the college was in actuality an arm of the state which accordingly must comply with New York's public bidding law. *See also Shriver v. Athletic Council of Kansas State University*, 564 P. 2d 451 (Kan. 1977); *Good v. Associated Students of the University of Washington*, 542 P. 2d 762 (Wash. 1975). Accordingly, the college corporations at issue are clearly state entities which are subject to all general statutory and regulatory requirements imposed upon the colleges which created them, including the fiscal, contractual and budgetary requirements mandated by N.J.S.A. 18A:64-6(e), 18A:64-6(k), and 18A:64-18.

Moreover, even if the corporations were structured so as to be truly independent of the colleges, their present operation at the colleges would remain improper. It is a settled principle of law that a statutory body may not delegate its essential managerial prerogatives to a private body. *Group Health Insurance Co. v. Howell*, 40 N.J. 436 (1963), *aff'd after remand*, 43 N.J. 104 (1964). Pursuant to N.J.S.A. 18A:64-2 and N.J.S.A. 18A:64-6, it is the college Board of Trustees which is statutorily required to exercise supervision and control over the institution. Clearly the Legislature intended that the trustees would manage and administer the colleges themselves or through their respective presidents and other officers and employees. The Legislature has given no indication that the boards or their officers and employees may authorize purportedly private, independent, non-profit corporations to assume any significant responsibilities traditionally associated with the colleges. *See N.J. Dept. of Transportation v. Brzoska*, 139 N.J. Super. 510 (App. Div. 1976); *Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education* 78 N.J. 144 (1978).

Finally, it should be noted that even if a corporation could be deemed truly independent of its parent college, and was engaged in a function which may be legitimately contracted out to a private concern, college transactions with that entity would necessarily entail compliance with statutory requirements concerning contracts with private entities. For ex-

ATTORNEY GENERAL

ample, if the college determined that it did not desire to operate a campus cafeteria service itself, there would not be any authority for the college to award the contract unilaterally to the purportedly independent college corporation. Rather, the college would be required to enter into such a contract only after compliance with applicable competitive bidding statutes. *See* N.J.S.A. 52:34-6, *et seq.*

In conclusion, you are hereby advised that state colleges may not use independent corporate entities to carry out college functions unless all statutory and administrative requirements imposed on state agencies are satisfied. Therefore, the following interim steps must immediately be taken:

1. All corporate employees must be advised that the corporations are in actuality components of the colleges and that the functions and duties of the corporations will be brought within the control of the college administration;
2. The Department of Civil Service must be provided a list of names and job functions of corporation employees so that appropriate college job titles can be created;
3. Corporate purchases must utilize the procedures set forth in the applicable state bidding laws;
4. Certified audits of corporate accounts must be forwarded to the Chancellor and the State Treasurer; and
5. The Legislature must be advised of the status of college corporate accounts prior to submission of budget requests.

Very truly yours,

JOHN J. DEGNAN

*Attorney General*

By: ROBERT A. FAGELLA

*Deputy Attorney General*

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November 17, 1980

BARRY SKOKOWSKI, *Acting Director*  
Division of Local Government Services  
Department of Community Affairs  
363 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 23—1980

Dear Mr. Skokowski:

You have raised a question with us concerning the manner in which the proceeds of the sale of municipal assets are to be treated under the Local Government Cap Law. Your question is whether such proceeds are to be treated in the same manner as all other modifications under the statute, that is, as a modification to the statute's spending limitation both in the year in which such proceeds are appropriated and in the year subsequent to such appropriation. For the reasons which are set forth in

ATTORNEY GENERAL

February 5, 1981

DR. T. EDWARD HOLLANDER  
*Chancellor*  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1981

Dear Chancellor Hollander:

A question has arisen concerning the applicability of state statutory requirements such as bidding laws, civil service, and treasury and budget laws to non-profit corporations known as alumni associations and development funds. We have been advised that these are independent organizations which are incorporated and controlled by private individuals for the primary purpose of engaging in fund-raising activities for various state colleges.

In *Formal Opinion No. 22—1980*, it was concluded that state colleges may not use independent corporate entities to carry out college functions unless statutory and administrative requirements imposed on state agencies were satisfied. In many instances those corporations are virtually indistinguishable from the state colleges with which they are associated. Such organizations are incorporated and controlled by college officials and are often utilized to carry out activities more appropriately supervised by the college administration. In contrast, however, development and alumni associations are controlled by boards of directors which are independent of both the boards of trustees and administrators of their affiliated colleges. These corporations do not utilize office space or employees of the college to any significant extent, provide for their own liability insurance and do not supervise or effectuate activities traditionally associated with a college administration. Most importantly, both the allocation and disbursement of the funds donated to, or raised by these corporations are made available to the colleges in the sole discretion of the corporate board of directors. The state colleges do not control, either directly or indirectly, the activities of these corporations, nor do these entities purport to carry out state mandated functions. For these reasons, you are advised that alumni associations and development funds which are in their organization and operation totally independent of state colleges and whose sole purpose is fund-raising activities, are not subject to statutory and other requirements imposed on state agencies.

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: ROBERT A. FAGELLA  
*Deputy Attorney General*