

# ATTORNEY GENERAL'S OPINION

January 25, 1960

Mr. Joseph E. Clayton  
Assistant Commissioner of Education  
Department of Education  
175 West State Street  
Trenton, New Jersey

FORMAL OPINION 1960 - NO. 9

Dear Mr. Clayton:

You have asked for our legal opinion on the following questions:

1. May a board of trustees of a public library established under R.S. 40:54-1 et seq., or a county library commission established under R.S. 40:33-1 et seq., enter into contracts authorized by Chapter 108, P.L. 1956, or must such contracts be made by the governing bodies of the governmental units involved?
2. May such a board of trustees or county library commission make contracts for the free public library services specified in R.S. 40:33-1 et seq., and 40:54-1 et seq., or must such contracts be made by the governing bodies of the county and municipalities, respectively?

The contracts referred to in your request for an opinion are those which counties and municipalities are authorized to enter into for the exchange and reciprocal use of library services and facilities.

R.S. 40:54-29.1 states that "The governing body of any municipality may, by resolution, contract with any other municipality which maintains a free public library, for the furnishing of library service to the inhabitants of the first municipality...". R.S. 40:54-29.2 states that "The governing body of such other municipality may, by resolution, enter into contract as provided in this act...". The contracts referred to in R.S. 40:54-29.1 and R.S. 40:54-29.2 must be made between the governing bodies of the two municipalities.

R.S. 40:33-13.1 and R.S. 40:33-13.2 are similar to R.S. 40:54-29.1 and R.S. 40:54-29.2 except that the former statute refers to "The governing body of any municipality which forms part of a county library system..." and authorizes any such municipal governing body to contract with the "governing body" of any other municipality which maintains a free library system. (Emphasis added)

R.S. 40:33-6 provides that "Upon the adoption of the provisions of this article the board of chosen freeholders [of the county] may contract with an existing library, or library board, within the county or the library commission of a county library...in another county...". Thus a county which desires to use the existing facilities of another library must contract by its board of freeholders; the existing library, which is the other party to the contract, by its "library board", "library commission", etc., and not by the governing body of the

governmental unit which operates the existing library.

Chapter 108, P.L. 1956, N.J.S.A. 40:9A-1 to 9A-4, reads in pertinent part as follows:

"The board of chosen freeholders of any county operating a library pursuant to chapter 33 of Title 40 of the Revised Statutes and any one or more municipalities, situate within such county, operating jointly or severally a library or libraries pursuant to chapter 54 of Title 40 of the Revised Statutes or any 2 or more such municipalities, situate within the same county, may contract or agree with each other to establish a federation of their libraries for the purpose of providing such forms of cooperative library service as the contracting parties shall agree upon."

R.S. 40:9A-1 thus provides that the contracts therein referred to shall be made by "board of chosen freeholders of any county" and "any one or more municipalities, situate with such county" or "2 or more such municipalities, situate within the same county". It is evident from the quoted statute that a county library may enter into a contract specified therein only by action of its board of chosen freeholders. However, R.S. 40:9A-1 does not expressly specify whether municipalities desiring to enter into the specific contracts may do so by their governing bodies or by the board of trustees of the municipal library.

Chapter 108, P.L. 1956 must be construed as being in *pari materia* with the other statutes governing cooperation between public libraries. When the other statutes refer to "municipalities" as contracting parties to agreements authorized therein, they clearly mean that the contracts are to be made by the governing bodies of the two municipalities. See R.S. 40:54-29.1, R.S. 40:33-13.1, 13.2. It is therefore our opinion that the word "municipality" in R.S. 40:9A-1 also refers to the governing body of the municipality.

Very truly yours,  
DAVID D. FURMAN  
Attorney General

By \_\_\_\_\_  
Murry Brochin  
Deputy Attorney General  
MB:ccm

## **REFERENCE TO RELATED LAWS**

### **EDITORIAL NOTE**

This section provides annotations to other laws that are of importance to the library community. The summaries have been provided to briefly point out the relevant content of these laws, which have not been covered extensively in this volume. Please refer to the complete text of these laws in the New Jersey Statutes Annotated.

#### **Child Labor N.J.S.A. 34:2-21.1 et seq.**

This act establishes hours of labor and conditions of employment of minors under the age of

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### **Civil Rights N.J.S.A. Title 10**

This title prohibits discrimination on the grounds of age, race, color, national origin, sex, etc., in many areas including employment, public accommodations (including libraries), and public contracts.

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### **Civil Service N.J.S.A. Title 11A**

This title governs public employees at the state and local levels of government including such matters as hiring and discharge procedures, promotions, leaves of absence, vacations, etc. and veterans preference.

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### **Colleges and Universities, Educational Facilities Authority Law N.J.S.A. 18A:72A-1 et seq.**

This act establishes a state authority to issue bonds for the construction and repair of facilities, including libraries in institutions of higher education in New Jersey.

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## **Colleges and Universities, Educational Facilities Authority Law N.J.S.A. 18A:72A-3 et seq.**

This section changes the definition of "educational facility" to include public libraries for the purpose of bonding for construction project funds.

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## **Contracts and Bidding**

### **County College Contract Law N.J.S.A. 18A:64A-25.1 et seq.**

This act regulates the awarding of contracts for county colleges including bidding procedures, qualification of bidders, forms of contracts and joint purchasing agreements.

### **EDITORIAL NOTE**

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### **Local Public Contracts Law N.J.S.A. 40A:11-1 et seq.**

This act regulates the awarding of contracts for goods or services by local government including bidding procedures, qualification of bidders, form of contracts and joint purchasing agreements.

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### **Lands and Buildings, Separate Plans For Various Types of Work; Bids; Contracts N.J.S.A. 40A:11-16**

This act provides that in erecting or repairing a public building, separate specifications may be provided for different types of work and that separate bids for each type of work shall be made.

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### **Municipalities and Counties, Power to Purchase under State Contracts N.J.S.A. 52:25-16.1 to 25-16.4**

This act establishes a procedure whereby municipalities may purchase material through a list of contracts established by the State.

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### **Public School Contract Law N.J.S.A. 18A:18A-1 et seq.**

This act regulates the awarding of contracts by local public school districts including bidding procedures, qualifications of bidders, form of contracts and joint purchasing agreements.

## **EDITORIAL NOTE**

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### **State Colleges - General Provisions N.J.S.A. 18A:64-6**

This act gives the state colleges the authority to act autonomously with regard to personnel, budget execution, purchasing and contracting powers.

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### **County Reorganization N.J.S.A. 40:41A-1 et seq. and N.J.S.A. 40A:9-42**

These statutes permit the reorganization of county government under certain circumstances. These reorganizations could affect a county library commission.

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### **Disorderly Conduct N.J.S.A. 2C:33-2**

This section describes the offense of disorderly conduct resulting from improper behavior or offensive language in a public place.

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### **Loitering for the purpose of illegally using, possessing or selling controlled substance N.J.S.A. 2C:33-2.1**

This section declares loitering for such purposes in libraries and other public places a disorderly persons offense.

Librarians should be aware that many types of improper behavior are criminal violations under Title 2C and this title should be consulted as the need arises. For example N.J.S.A. 2C:17-3 deals with the offense of damaging tangible property.

Also, N.J.S.A. 40:48-1 permits municipalities to adopt ordinances governing situations such as loitering.

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### **Elections N.J.S.A. Titles 19 and 40**

These titles govern both primary and general elections including qualification of candidates, voting procedures and campaign.

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### **Non-binding Referenda N.J.S.A. 19:37-1 et seq.**

This section provides for the placement of a non-binding referendum on the ballot as a result of municipal ordinance or request by voters.

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### **Special Elections - N.J.S.A. 40:45-3**

This statute governs the holding of special elections to consider a referendum.

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### **Employee Protection N.J.S.A. 34:19-1 et seq.**

The Conscientious Employee Protection Act specifies that employers shall not take any retaliatory action against employees who refuse to take part in illegal activities, or who provide information on illegal activities.

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### **Employee Safety N.J.S.A. 34:6A-25 et seq.**

The Public Employees Occupational Safety and Health Act provides standards for the development and implementation of standards for public workplaces.

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### **Employer - Employee Relations Act N.J.S.A. 34:13A et seq.**

This statute authorizes the New Jersey Public Employment Relations Commission which is responsible for collective bargaining issues which relate to public employees. These issues include the formation of negotiating units, elections, certifications and grievance procedures.

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### **Interlocal Services Act N.J.S.A. 40:8A-1 et seq.**

This act allows local governmental units to contract with other local units for the joint provision of governmental services.

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### **Municipalities and Counties N.J.S.A. Titles 40 and 40A**

#### **Consolidation of Municipalities, Officers and Employees N.J.S.A. 40:43-66.75**

This section provides that in the event of the consolidation of several municipalities, the tenure and pension rights of employees of the former municipal government shall continue in the consolidated government.

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### **Local Bond Law N.J.S.A. 40A:2-1 et seq.**

This act provides for the issuance of bonds by local government including requirements of the bond ordinance, procedure for sale, procedure for repayment, and periods of usefulness for local improvement projects.

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### **Local Budget Law N.J.S.A. 40A:4-1 et seq.**

This act governs local operational and capital budgets including adoption, reserve and expenditure determinations, emergency appropriations, etc.

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### **Local Fiscal Affairs Law N.J.S.A. 40A:5-1 et seq.**

This law covers a wide range of fiscal matters involving local governments including auditing procedures, management of various special accounts and bonding of employees.

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### **Local Lands and Buildings Law N.J.S.A. 40A:12-1 et seq.**

This act governs the procedure for acquiring, selling and leasing lands and buildings by local governments.

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### **Officers and Employees N.J.S.A. 40A:9-1 et seq.**

This act describes numerous county and municipal offices and regulates various aspects of local public employment including dual office holding and residency requirements.

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### **Special Elections N.J.S.A. 40:45-3**

This provision details the procedure for a special election when a referendum is involved.

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### **Museum Development N.J.S.A. 18A:73-44 et seq.**

This act encourages the development of museum resources, including libraries.

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### **New Jersey Historical Commission N.J.S.A. 18A:73-21 to 25.4**

The Historical Commission is established as a state agency to promote research, publications, and programs dealing with the history of New Jersey. This Commission also administers the New Jersey Afro-American history program, which assists New Jersey libraries in efforts to collect materials in this subject area.

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## **Nonprofit Corporations N.J.S.A. Title 15A**

This is the major N.J.S.A. statute which governs the formation and operation of all non-profit organizations in New Jersey which includes association libraries and Regional Library Cooperatives. This title regulates such areas as powers of trustees, meetings, benefits for employees, and annual reports.

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## **Pensions N.J.S.A. Titles 43 and 18A**

Pension programs are established for public employees generally under Title 43 and for employees of educational institutions under Title 18A. These statutes describe the eligibility requirements, contribution formula, benefits, and the management of the pension funds.

Although all of the provisions of the statutes relating to pensions are important, the following sections should be of particular interest depending on the individual's specific situation:

### **Non-Contributory Pensions**

N.J.S.A. 43:8B-1 et seq.

### **Public Employees Retirement System**

N.J.S.A. 43:15A-1 et seq.

### **Teacher's Pensions and Annuity Fund**

N.J.S.A. 18A:66-1 et seq.

### **Old Age and Survivor's Insurance For Public Employees**

N.J.S.A. 43:22-1 et seq.

### **Retirement of Certain Veterans**

N.J.S.A. 43:4-1 et seq.

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## **Public Building Construction, Handicapped N.J.S.A. 52:32-4 to 32-8**

This act requires that all plans and specifications for the construction or remodeling of any public building in the State shall provide facilities for the physically handicapped.

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### **Public Records N.J.S.A. Title 47**

This title concerns generally the maintenance of records by public agencies including the right to inspect and copy, and the procedures for destruction of public records.

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### **Reports, Manuals, Laws, Budget Messages - Distribution to Libraries**

#### **Distribution of Law Reports N.J.S.A. 2A:12-6**

This statute provides for the distribution of New Jersey Court Reports.

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#### **Legislative Manual - Copies for Public Libraries and Historical Societies N.J.S.A. 52:12-6**

This statute provides for the distribution of the New Jersey Legislative Manual to public libraries.

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#### **New Jersey State Government Official Reports N.J.S.A. 52:14-18 to 14-25**

A number of statutes which regulate the distribution, editing, and printing of each state

agency annual and special report.

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### **Copies of Budget Message to be Distributed N.J.S.A. 52:27B- 23**

This statute provides for the distribution of the annual budget message of the Governor to public libraries.

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### **Smoking N.J.S.A. Title 26**

#### **Indoor Public Place N.J.S.A. 26:3D-38**

This act controls smoking in certain indoor public places, including libraries.

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#### **Place of Employment N.J.S.A. 26:3D-23 et seq.**

This act controls smoking in specifically defined places of employment.

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#### **Institutions Providing Education or Training N.J.S.A. 26:3D-15 et seq.**

This act controls smoking in educational institutions, such as public schools.

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### **Teacher Quality Employment Act N.J.S.A. 18A:29-5.1 et seq.**

This act establishes a minimum salary of a full-time teaching staff member in any school district.

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### **Tort Claims Act N.J.S.A. Title 59**

This act specifies the liabilities of public entities such as libraries, and includes such areas as injuries occurring in public buildings.

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