

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

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ATTORNEY CLIENT PRIVILEGED AND CONFIDENTIAL

Susan Jacobucci, Director
Division of Local Government Services
101 South Broad Street
PO Box 803
Trenton, New Jersey 08625-0803

Re: 06-0002 -- Whether County Colleges Are Agencies or Instrumentalities of the County Required to Comply with the "Pay to Play" Act Limitations on Contracting.

Dear Director Jacobucci:

You have asked whether the "Pay to Play" Act, L. 2004, c.19 (N.J.S.A. 19:44A-20.4 et seq.), applies to contracting by county colleges which were established by the counties pursuant to Title 18A. We advise that, for the purposes of the "Pay to Play" Act, the county colleges are instrumentalities of the counties and will be required to comply with the provision of the "Pay to Play" Act which prohibits the award of certain contracts to contributors to county political party committees.

The answer to your inquiry necessarily begins with consideration of the relevant provision in the "Pay to Play" Act. That Act provides:

Notwithstanding the provisions of any other law to the contrary: a county, or any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance



and certified in writing by the county, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L. 1973, c. 83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded.

[N.J.S.A. 19:44A-20.4; (emphasis added)]

By its terms, the Act applies to counties, and to the agencies and instrumentalities thereof. However, the Legislature did not define these terms in the "Pay To Play" Act. Therefore, we look to case law and relevant state statutes to determine whether this provision was intended to apply to the county colleges.

County Colleges Are Not County Agencies

Title 18A recognizes two types of county colleges:

"County college" means any body corporate known as (1) the board of trustees of a county college established pursuant to chapter 64A of title 18A of the New Jersey Statutes, or

(2) the community college commission of a community college agency established pursuant to L. 1974, c.89 (C.18A:64A-30 et seq.).

[N.J.S.A. 18A:64A-25.2(b) (County College Contracts Law)]

In Title 18A, only county community colleges governed by a community college commission, are characterized as county "agencies." The term "community college agency" is not used in Title 18A in any of the provisions which refer to those county colleges which are governed by boards of trustees. Our recent survey of the 19 county colleges reveals that all are now governed by boards of trustees. None of the 19 county colleges is governed

by a county community college commission. For that reason, the county colleges currently operating pursuant to Title 18A:64A can be considered as a group when interpreting the term "county, agency or instrumentality thereof" in the "Pay to Play" Act.

Our courts have long recognized that the county colleges are independent political entities, separate from the county government, and different from those county agencies, commissions and authorities established under Title 40. State court opinions interpreting provisions of both Title 18A (Higher Education) and Title 40 (Local and County Government) emphasize the Legislative policy embodied in Title 18A which establishes educational institutions as independent of local political control. For example, in 1971, the New Jersey Supreme Court considered whether the employees of a county college were county employees under Title 11, the Civil Service Law. Atlantic Comm. College v. Civil Service Commission, 59 N.J. 102, (1971). In its opinion, the Court noted:

[W]e are not persuaded that county colleges are agencies of county government. Rather we believe that they are separate political subdivisions which serve a separate purpose and operate apart from the governing bodies of the counties in which they are situated.

[Id. at 107]

In 1978, when considering whether a county college was an agency of the county subject to re-organization under the Optional County Charter Law, the Appellate Division stated as follows:

A more basic reason for our determination that the Charter Law does not alter the relationship between the county colleges and vocational schools on the one hand and the county on the other results from a broad overview of Title 18A. This Title contains an extensive, integrated legislative scheme with established control and supervision of all education in the State. . . . This plan for education has been carefully formulated over the years and has a firm constitutional foundation. It embodies a policy of independence and freedom from political control for all forms of public education.

[Board of Trustees of Mercer County Community College v. Sypek, 106 N.J. Super. 452, 460

(App. Div. 1978) certif. denied, 78 N.J. 327
(1978)]

In 1997, the Legislature confirmed its agreement with this public policy by amending the Optional County Charter Law, N.J.S.A. 40:41A-30, to specify that the educational institutions established by the counties under Title 18A would not be considered county agencies, and would not be subject to administrative control and reorganization by the County. L. 1997, c.39 §1.

Accordingly, we conclude that the 19 county colleges are not county agencies for purposes of N.J.S.A. 19:44A-20.4 et seq.

County Colleges As Instrumentalities of the County

In determining whether a county college is an "instrumentality" of the county for purposes of pay to play we are mindful of the remedial purpose which underlies this Act. Thus, the term "instrumentality thereof" as used in the "Pay to Play" Act should be defined broadly to fully accomplish the remedial public policy goals embodied in the Act and to safeguard these educational institutions from local partisan political influence. Where the Legislature's intent is remedial, a statute should be construed liberally. E.g., Young v. Schering Corp., 141 N.J. 16, 25 (1995); Brookins v. Murray, 131 N.J. 141, 149 (1993); Torres v. Trenton Times Newspaper, 64 N.J. 458, 461 (1974). A definition of individual statutory terms or provisions that would constrict its application in a manner inconsistent with the overall purpose of the statute should be avoided. Young, supra, 141 N.J. at 25; Suter v. San Angelo Foundry & Mach. Co., 81 N.J. 150, 160 (1979); Loboda v. Township of Clark, 40 N.J. 424, 435 (1963); Wene v. Meyner, 13 N.J. 185, 197 (1953).

The term "instrumentality" has been generally defined quite broadly in the legal context. In Black's Law Dictionary, the term is defined as:

A thing used to achieve an end or purpose....
A means or agency through which a function of another entity is accomplished, such as a branch of a governing body.

[Black's Law Dictionary, 8th Ed. (2004) at p.814]

Undoubtedly, a county college is established by the county "to achieve the ends or purposes" of providing higher education. This is manifest in the definition of a "county college" as:

[A]n educational institution established or to be established by one or more counties, offering programs of instruction, extending not more than two years beyond high school, which may include but need not be limited to specialized or comprehensive curriculums, including college credit transfer courses, terminal courses in the liberal arts and sciences, and technical institute type programs;


[N.J.S.A. 18A:64A-1(c)]

In addition to falling within the plain meaning of the term "instrumentality," it is also consistent with the purpose of the Pay to Play law to include county colleges within this term. When enacting the "Pay to Play" Act, the Legislature intended to eliminate the corrupting influence of political contributions on contracting by public agencies and instrumentalities. Including the county colleges as "instrumentalities" of the county within the meaning of the "Pay to Play" Act affords the full protection of the Act to county college contracting, and, thereby, furthers the judicially-recognized legislative policy of shielding educational institutions, such as the county colleges, from local political influence. Under the purview of the "Pay to Play" Act, county political contributors can not be rewarded through the award of no-bid contracts by any county agency, authority or instrumentality, including the county colleges.

Therefore, for the reasons set forth above, we conclude that a county college is an "instrumentality" of the county for purposes of the Pay to Play Act.

Sincerely yours,

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY

By: 

Sarah T. Darrow
Deputy Attorney General