

NJ Passes New Counterfeit Cigarettes Law

On August 19, 2013, Governor Christie signed S-2516 into law as P.L. 2013, c.145. The new law, which took effect on August 19, 2013, increases civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling. Additionally, the law establishes a new crime of the third degree for importing, selling, distributing, transporting, or possessing with intent to sell "counterfeit cigarettes." The law amends and supplements the Cigarette Tax Act, N.J.S.A. 54:40A-1 et seq. and enhances penalties under the "Cigarette Sales Act," N.J.S.A. 54:40A-46 et seq.

The new law includes Section 4 which amends N.J.S.A. 54:40A-24 to increase the civil penalty for engaging in a business or activity without a license as required by the Cigarette Tax Act from not more than \$250 to not more than \$1,000. This penalty may be enforced under the "Penalty Enforcement Law of 1999" in the Superior Court and every municipal court. The amended law also increases the jail term from not exceeding 30 days to not exceeding 60 days for a defendant who refuses or fails to pay the civil penalty. It also increases the jail term from not exceeding 90 days to not exceeding 180 days for a person who, after conviction of any violation of this act, is again convicted of violating the same provision, and thereafter fails or neglects to pay the civil penalty.

Section 5 of the law amends N.J.S.A. 54:40A-24.1 to increase the civil penalty imposed upon any manufacturer's representative who sells or exchanges cigarettes other than those of his employer's manufacture from not more than \$250 to not more than \$1,000 for each separate offense.

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"One should never put on one's best trousers to go out to battle for freedom and truth."

- Henrik Ibsen

"My definition of a free society is a society where it is safe to be unpopular."

- Adlai Stevenson



the Advocate

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News Briefs

Reported by NJTVOnline.org - "The federal government has awarded New Jersey \$26.3 million to enable it to buy 89 homes in flood-prone sections of Woodbridge. The state is in the process of buying homes from willing sellers affected by Superstorm Sandy to preserve the land as open space and protect against future flooding.

Reported by NJ Law Journal - "One of New Jersey's highest-ranking lawmakers wants his state to join Colorado and Washington in legalizing marijuana for adults over age 21. "The war on marijuana has been a failure," Sen. Nicholas Scutari, D-Union, told reporters on Friday. The state should "legalize it, regulate it and tax it." Scutari, chairman of the Senate Judiciary Committee, said he is drafting legislation to do just that. New Jersey recently amended its laws to legalize marijuana for medicinal use only."

Land Owner's Rights When Building Permits Are Issued in Error

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The decision in Summer Cottagers' Association was relied upon by the Appellate Division in the subsequent case of Hill v. Board of Adjustment, 122 N.J. Super. 156 (App.Div. 1972). The Hill case involved Plaintiffs, adjacent landowners, who contended that because the building inspector had no authority under the ordinance to issue the permit in question, that the issuance of the permit was totally void ab initio and estoppel was therefore not applicable, despite Defendant homeowners' reliance upon the subject variance.

The court in Hill disagreed and held that where the permit was "irregularly" issued, but in good faith and within the ambit of the building inspector's duty, then the permit was not "utterly void" and estoppel was permissible with proper

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New Cigarette Counterfeit Law

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Section 6 of the law amends N.J.S.A. 54:40A-25 to increase the civil penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp from not more than \$250 to not more than \$1,000 for each individual carton of unstamped or illegally stamped cigarettes in the dealer's possession.



Section 7 of the law amends N.J.S.A. 54:40A-26 to upgrade the offense of engaging in manufacturing, selling, distributing, shipping or transporting cigarettes and failing to produce, on demand, in-

voices of all cigarettes purchased or received within three years prior to the demand from a civil penalty of not more than \$250 to a disorderly persons offense with a \$1,000 fine for a conviction.

Section 8 of the law amends N.J.S.A. 54:40A-27 to upgrade the offense of preventing or hindering the Director of the Division of Taxation or any other designated person from making a cigarette inventory or full inspection or preventing the inspection or inventory of invoices or books from a civil penalty of not more than \$250 to a disorderly persons offense with a \$1,000 fine for a conviction.

Section 9 of the law amends N.J.S.A. 54:40A-28 to upgrade the offense of selling cigarettes without the requisite revenue stamp from a "misdemeanor" to a crime of the third degree.

Section 12 of the law amends N.J.S.A. 54:40A-32.1 to increase the civil penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated by the Director of the Division of Taxation as not bearing a proper license or identification from not more than \$250 to not more than \$1,000.

Section 15 of the law supplements Title 54 of the Revised Statutes to make it a crime of the third degree to import into this State or offer for sale, distribute, transport, or possess with intent to sell a "counterfeit cigarette," as defined in that section.

Building Permits Issued in Error

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good faith reliance thereon by Defendants. The court further found that laches barred plaintiffs' challenge, noting that Plaintiffs had known about the proposed additions and had not warned Defendants of the possible ordinance violation until after Defendants had invested a substantial sum of money in the improvements. In reaching its decision, the Appellate Division stated:

In our view, appellants misinterpret Jantausch [Jantausch v. Borough of Verona, 41 N.J. Super. 89 (Law Div. 1956), aff'd 24 N.J. 326 (1957)]...

Plaintiff argues that since the building inspector herein had no authority under the ordinance to issue the permit and therefore erroneously issued it to defendants...

We do not agree. A reading of the cases cited by the court in Jantausch as being examples of the "void" class demonstrates what is meant by that characterization. Thus in V.F. Zahodiakin Corp. v. Bd. of Adjustment, Summit, 8 N.J. 386 (1952), it was said of the "void" action under review that it was "not professed to be an exercise of the statutory power" (Id. at 393); there was "no pretense of adherence to the statutory principle" (Id. at 394); it was "not within the province of the local authority" (Id. at 395); and it was "not a mere irregular exercise of the quasi-judicial function residing in the local authority." (Id.). In Zahodiakin, Justice Heher cited, among other cases, Bauer v. City of Newark, 7 N.J. 426 (1951), as illustrative of what he meant by an act so ultra vires as to be coram non judice and "utterly void," and thus beyond the power of resuscitation by reason of estoppel. In Bauer, Justice Heher described the distinction between an act which a municipality is "utterly without capacity to make under any and all circumstances" and an act "merely voidable for want of authority or for an irregularity in the exercise of the contractual power." Id. at 434.



Thus, the Court concluded that "relative hardship" was applicable because it would have been a severe hardship to Defendants to destroy the improvements already made and Plaintiffs had suffered "no discernible damage" by the proposed construction.

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