

highway use falling exclusively on interstate bus travel and exempting intrastate bus travel. The opinion by Justice Proctor states at 41 *N.J.* at 490-491, 197 A.2d 366:

In the absence of evidence that the tax on interstate carriers results in a heavier financial burden than the tax imposed on intrastate carriers, it cannot be said that the tax levied on interstate carriers is discriminatory merely because it differs in form or adopts a different measure or method of assessment.

Since intrastate carriers are taxed under *N.J.S.A.* 48:4-14 for the use of highways, and since the interstate operator does not pay this tax unless he elects to do a concurrent intrastate business, and in the absence of proof that in actual practice the tax imposed on the plaintiffs is more burdensome than that imposed on intrastate carriers, we conclude that *N.J.S.A.* 48:4-20 does not discriminate against interstate autobus operators in favor intrastate autobus operators.

[4] Judge Rimm in his judgment below ordered a refund to plaintiff of taxes paid by it under *N.J.S.A.* 48:4-20 from November 1977 to June 1979, when it withheld further payment, except for taxes paid for mileage on charter trips for which no exemption was claimed. He also awarded post-judgment interest at 12%.

At oral argument before us plaintiff advised that it would not oppose a credit against future taxes rather than a lump sum refund and that an agreement for such credit could be reached between it and the State.

Accordingly, we vacate the provisions of the judgment below ordering a refund of overpaid taxes from November 1977 to June 1979 and awarding post-judgment interest on the refund. We remand for resolution between the parties of the method and terms governing credit to plaintiff for overpaid taxes from November 1977 to June 1979. We otherwise affirm. We retain jurisdiction.

201 N.J.Super. 75

**NEW JERSEY STATE SPECIAL
POLICE ASSOCIATION, INC.,
Plaintiff-Appellant,**

and

Robert DeGhetto, individually and on behalf of Elmwood Park Chapter # 29, New Jersey State Special Police Association, Inc., Plaintiffs,

v.

ATTORNEY GENERAL of the State of New Jersey; Prosecutor of Bergen County; and Borough of Elmwood Park, New Jersey, Defendants-Respondents.

Superior Court of New Jersey,
Appellate Division.

Argued March 12, 1985.

Decided April 25, 1985.

Statewide association of special police officers appealed from judgment of the Superior Court, Law Division, Bergen County, declaring that special officers appointed by the Borough of Elmwood Park governing body may not carry handguns while privately employed in police-related activity without first obtaining a permit. The Superior Court, Appellate Division, held that with exception of municipalities having population in excess of 300,000, special officers appointed by municipal governing body may not by reason of that appointment carry a handgun without a permit while performing police-related work for private employers.

Affirmed.

Weapons \Leftrightarrow 11(1)

Except as provided by statute in case of municipalities having a population in excess of 300,000, a special police officer appointed by municipal governing body may not by that reason alone carry a handgun without a permit while performing police-related work for a private employer. *N.J.S.A.* 40A:14-146.

N.J. STATE SPECIAL POLICE ASS'N v. ATTY. GEN. N.J. 1019

Cite as 492 A.2d 1018 (N.J.Super.A.D. 1985)

Michael A. Noto, Old Bridge, for plaintiff-appellant.

Larry R. Etzweiler, Deputy Atty. Gen., for defendants-respondents Atty. Gen. and Prosecutor of Bergen County (Irwin I. Kimmelman, Atty. Gen., attorney; Larry R. Etzweiler of counsel and on the brief).

Zazzali, Zazzali & Kroll, Newark, for amicus curiae New Jersey State P.B.A. (Robert A. Fagella, Newark, on the brief).

No brief was filed on behalf of respondent Borough of Elmwood Park, N.J.

Before Judges PRESSLER, BRODY and COHEN.

PER CURIAM.

N.J.S.A. 2C:39-5(b) prohibits possession of a handgun without having obtained a permit to carry it. There are numerous exemptions listed in *N.J.S.A.* 2C:39-6. *N.J.S.A.* 2C:39-6(a)(7) exempts a regular municipal policeman and a special municipal policeman (special) appointed under *N.J.S.A.* 40A:14-146 "while engaged in the actual performance of his duties and when specifically authorized by the governing body to carry weapons. . . ." Any police officer not specifically listed as exempt is exempt "while in the actual performance of his official duties." *N.J.S.A.* 2C:39-6(c)(1).

N.J.S.A. 40A:14-146 authorizes a municipal governing body to appoint specials. It provides that no special "shall carry a revolver or other similar weapon when off duty" except a special "appointed by the governing body of any municipality having a population in excess of 300,000. . . ." The City of Newark is the only municipality fitting that description. A special appointed by the Newark governing body who meets the further requirements of the statute "shall be permitted to carry a revolver or other similar weapon when off duty within the municipality where he is employed." *Ibid.* See *In re Rawls*, 197 *N.J. Super.* 78, 484 A.2d 53 (Law Div.1984). In sum, unless he was appointed by the governing body of the City of Newark, a spe-

cial may not carry a handgun while off duty without having obtained a permit to do so.

Appellant, a state-wide association of specials, appeals from a judgment declaring that specials appointed by the Borough of Elmwood Park governing body may not carry handguns while privately employed in police-related activity without first obtaining a permit to carry. The issue is largely factual and depends on whether in such employment the specials are "in the actual performance" of their "official duties" or are "off duty."

N.J.S.A. 40A:14-146 provides that a special "shall be under the supervision and direction of the chief of police of a municipality wherein he is appointed. . . ." When he is not acting "under the supervision and direction of the chief of police," a special municipal policeman is not "in the actual performance" of his "official duties" even though he is engaged in police-related activities.

The kinds of private employment in question are patrolling an apartment complex, being present where cash is handled, and directing traffic off the street and into parking areas. The specials deal directly with all their private employers except the owner of the apartment complex. As a vestige of a time when the police chief assigned specials who were under his supervision and paid by the Borough to patrol apartment complexes, the chief's secretary, herself a special, is still used as a contact by the owner of the complex that continues to employ specials. The judge found, however, that the chief's role is now entirely passive. The rosters and the rate of pay for all private employment are established by the local association of specials. The private employers pay the specials and direct their activities. These specific findings and the ultimate finding that the specials are off duty when so employed are fully supported by the record and are therefore not subject to reconsideration on appeal. *Rova Farms Resort v. Investors Ins. Co.*, 65 *N.J.* 474, 483-484, 323 A.2d 495 (1974).

Plaintiff points out that the Legislature permits certain special policemen to carry a handgun without a permit even though they are hired, supervised and paid by private employers and not by a municipality. The Legislature has authorized certain private employers to appoint and pay their own police officers and special police officers who, without having obtained a permit, may carry a handgun while performing the duties they were appointed to perform. See, *e.g.*, *N.J.S.A.* 2C:39-6(c)(9) (railway police); *N.J.S.A.* 18A:6-4.2 *et seq.* and *N.J.S.A.* 2C:39-6(c)(1) (school campus police); *N.J.S.A.* 4:15-1 *et seq.* and *N.J.S.A.* 2C:39-6(c)(1) (special police appointed by agricultural fair and exhibition associations to maintain the peace on the fairgrounds and their immediate environs). It does not follow that specials appointed by a municipal governing body under *N.J.S.A.* 40A:14-146 may by reason of that appointment carry a handgun without a permit while performing police-related work for a private employer.

Affirmed.



201 N.J.Super. 79

**Joanne B. ARENA and Alfred E.
Arena, Plaintiffs-Respondents,**

v.

**Henry I. SAPHIER, M.D., and Women's
Medical Services,
Defendants-Appellants,
and**

**Joseph Riggs, M.D., and Joseph A. Riggs,
M.D., P.A., a Professional Corporation
of the State of New Jersey, Defendants-
Appellants.**

Superior Court of New Jersey,
Appellate Division.

Argued April 2, 1985.

Decided May 1, 1985.

Patient brought medical malpractice action against two physicians alleging that

their failure to properly diagnose and treat her ectopic pregnancies resulted in loss of her fallopian tubes and consequent inability to conceive. The Superior Court, Law Division, Bergen County, refused physicians' request to review consultation notes and letters pertaining to psychologist's treatment of patient, and physicians appealed. The Superior Court, Appellate Division, Baime, J.A.D., held that: (1) a psychologist may be compelled to reveal relevant confidences of treatment when patient tenders her mental or emotional condition in issue during course of litigation, subject to trial court's thorough in camera inspection of notes to determine their relevance, and (2) trial court erred by precluding physicians from reviewing psychologist's consultation notes and letters pertaining to treatment of patient.

Reversed and remanded.

1. Pretrial Procedure ⇄33

Psychologist privilege under [N.J.S.A. 45:14B-28] is not subject to provisions of [N.J.S.A. 2A:84A-22.4], which mandate full pretrial disclosure when patient's mental or emotional condition is placed in issue.

2. Pretrial Procedure ⇄382

A psychologist may be compelled to reveal relevant confidences of treatment when patient tenders her mental or emotional condition in issue during course of litigation, subject to trial court's thorough in camera inspection of notes to determine their relevance. N.J.S.A. 45:14B-28.

3. Pretrial Procedure ⇄382

In medical malpractice action in which patient's present psychological condition was directly in issue by virtue of allegations of mental anguish and depression caused by physicians' negligence, trial court erred by precluding physicians from reviewing patient's psychologist's consultation notes and letters pertaining to treat-