State of New Jersey
Department of Education
Trenton

NEW JERSEY

SCHOOL LAWS

Enacted during the Legislative Session of 1958
and Laws of 1957
Passed Too Late for Inclusion in 1957 Bulletin

SCHOOL LAW DECISIONS
1957 - 1958

Keep with 1938 Edition of New Jersey School Laws

SCHOOL LAWS, SESSION OF 1957

(Passed too late to be printed in 1957 Law Bulletin in 1957)

SUPPLEMENT

RELATED LAWS

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SCHOOL LAWS, SESSION OF 1957

(Passed too late to be printed in 1957 Law Bulletin)

SUPPLEMENT

CHAPTER 226, LAWS OF 1957

AN ACT concerning education, and supplementing chapter 14 of Title 18 of the Revised Statutes.

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

1. Each board of education may teach, by special courses or by emphasis in appropriate places of the curriculum in a manner adapted to the ages and capabilities of the pupils in the several grades and departments, the principles of humanity as the same apply to kindness, and avoidance of cruelty, to animals and birds, both wild and domesticated.

2. This act shall take effect July 1, 1957.

Approved January 14, 1958.

RELATED LAWS

CHAPTER 146, LAWS OF 1957

AN ACT providing for the establishment, development, improvement and expansion of community mental health services and providing for payment by the State of financial grants-in-aid for community mental health projects.

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

1. It is declared to be the public policy of this State to encourage the development of preventive and treatment services for mental health problems through additional community mental health programs and the improvement and expansion of existing community mental health services.

2. For the purpose of this act the following terms are hereby defined:

"Sponsoring agency" shall mean any county board of freeholders, municipal governing body, board of education or any nonprofit corporation organized for the purpose of providing health or welfare services to the community, which establishes, maintains or expands a community mental health project;

"Community mental health project" shall mean a program of mental health services provided by psychiatrists, psychiatric social workers, psychologists and such other staff as may be required for educational, consultative, diagnostic and treatment services for children or adults in the community;

"Department" shall mean the Department of Institutions and Agencies.

"Community Mental Health Advisory Council" shall mean an advisory council of 7 members to be appointed by the State Board of Control, consisting of 4 members at large, 2 members recommended by the State Association of Freeholders and 1 member recommended by the State League of Mu-

nicipalities, to be appointed annually in July of each year. The council shall have the following responsibilities and duties:

a. To consult and advise with the Commissioner of the Department of Institutions and Agencies in matters of policy affecting the administration of this chapter and the development of rules and regulations to effectuate the provisions hereof, and to review and make recommendations with respect to such rules and regulations prior to their promulgation by the commissioner. The council shall choose 1 of its members to act as chairman and shall meet as often as required to conduct the business of the council and to assist and advise in the administration of the duties and responsibilities imposed by this chapter.

3. The several counties are hereby authorized to provide for community mental health services in accordance with the provisions of this act. Each county board of freeholders, in order to participate under this act, shall appoint a county mental health board of not more than 12 residents of the county, to serve without compensation, representing local boards of health, school boards, the county welfare board, parent-teacher associations, county mental health associations, and the county medical associations and such other members as the county board of freeholders shall deem necessary. The county mental health board shall annually elect a chairman. The board of freeholders shall provide the mental health board with suitable quarters and such clerical assistance as may be required to carry out its functions.

4. The term of each member shall be for 3 years and shall terminate on January 1, provided, however, that of the members first appointed, ⅓ shall be appointed for a term expiring 1 year, ⅓ for a term expiring 2 years, and ⅓ for a term expiring 3 years from January 1 following the date of appointment. Members may not be reappointed after serving a full 3-year term until 2 years shall have elapsed since the expiration of such term.

5. Subject to the provisions of this chapter, and the regulations of the department, every board shall have the power and duty to:

a. Develop a plan of community mental health services for the county;

b. Annually appoint a professional mental health advisory committee to provide all necessary technical advice required by the board;

c. Review, advise and make recommendations with regard to community mental health service projects submitted for State financial participation;

d. Perform such other duties as may be necessary or proper to carry out the purposes of this act.

6. a. Community mental health projects shall be submitted annually by sponsoring agencies to the county mental health board in accordance with the rules and regulations of the department.

b. All projects shall include an explanation of the operation proposed and a budget showing all sources of revenue, including anticipated State financial aid, and a list of personnel requirements.

c. The county mental health board shall recommend within the formula for State financial assistance, the amount of State financial support within the county to be allocated to each such project in the county based upon an evaluation of the project, the number of people served, the scope of the services provided and such other factors as the board may deem necessary to accomplish the objectives of this act.

7. Each project application shall be submitted to the department by the sponsoring agency and shall include the recommendation of the county

mental health board. It shall contain such information and be submitted in such form and at such time as may be required by regulations of the department.

8. The commissioner, with due regard for the recommendations made by the Community Mental Health Advisory Council, shall approve for State financial participation community mental health projects which comply with all regulations of the department and which implement in an efficient and economic manner a community mental health program through educational, consultative, diagnostic and treatment services for mental health problems of children and adults in the community. The commissioner shall notify the sponsoring agency of his action and certify the amount of State financial participation allowed, if any.

9. a. Reimbursement grants shall be paid to an eligible sponsoring agency from State funds in an amount not exceeding 50% of the allowable expenditures for each project approved by the commissioner. Allowable expenditures shall include expenditures for such purposes as the commissioner shall, by regulation, determine to be necessary or required to carry out the mental health project, except that expenditures for rental or improvements to premises used for the project shall not be included. The total of the annual reimbursement grants from Federal and State funds for all community health projects in any 1 county shall not exceed an amount equal to 20 cents multiplied by the population of that county.

b. Claims for State reimbursement to the sponsoring agency shall be made in accordance with the regulations of the department.

10. The commissioner, with due regard for the recommendations made by the Community Mental Health Advisory Council, shall make, promulgate, modify, repeal and enforce such rules and regulations as may be necessary adequately to effectuate the provisions of this act and the powers conferred upon him and upon the department hereunder.

11. This act shall take effect immediately.

Approved July 15, 1957.

CHAPTER 202, LAWS OF 1957

AN ACT to amend the "Absentee Voting Law," approved July 1, 1953 (P. L. 1953, c. 211).

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

1. Section 2 of the act of which this act is amendatory is amended to read as follows:

2. Whenever used in this act, the following terms shall, unless the context indicates otherwise, be construed to have the following meaning:

"Absentee ballot" means any military service ballot or civilian absentee ballot as herein defined.

"Absentee voter" means any person qualified to vote a military service ballot or a civilian absentee ballot under the provisions of this act.

"Civilian absentee ballot" means a ballot for use by a civilian absentee voter as prescribed by this act.

"Civilian absentee voter" means any qualified and registered voter of the State who expects to be absent from the State on the day of any election

and any qualified and registered voter who will be within the State on the day of any election but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of his religion, will be unable to cast his ballot at the polling place in his election district on the day of the election.

"Election," "general election," "primary election for the general election," "municipal election," and "special election" shall mean, respectively, such elections as defined in the Title to which this act is a supplement (R. S. 19:1–1).

"Military service" means active service by any person, as a member of any branch or department of the United States Army, Navy, or Marine Corps, or as a reservist absent from his place of residence and undergoing training under Army or Navy direction, at a place other than that of such person's residence.

"Military service voter" means any person in the military service, or any patient in any veterans' hospital, located in any place other than the place of his residence, having served as a soldier, sailor, marine, or nurse in the Armed Forces of the United States in any war in which the United States has been engaged and having been discharged or released from said armed forces, who prior to entering the military service or prior to being admitted as a patient in such hospital, was a resident of this State and who, at the time of the holding of any election in this State, while this act is in effect, is a resident of the United States, is of the age of 21 years or more, is not disqualified by reason of conviction of crime from voting in this State.

"Military service ballot" means a ballot for use by a military service voter as prescribed by this act.

2. Section 3 of the act of which this act is amendatory is amended to read as follows:

3. The following persons shall be entitled to vote by absentee ballot in any election to be held in this State, in the manner hereinafter provided:

A military service voter who may be absent on the day on which such election is held from the election district in which he resides, whether such person is within or without this State, or within or without the United States, provided he has resided in this State at least 1 year and in the county in which he claims the right to vote at least 5 months counting the time he has been in the military service or a patient in a veterans' hospital in said periods of residence;

A civilian absentee voter who expects to be or may be absent outside the State or the United States on the day on which an election is held or who may be within the State on the day of any election but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of his religion, will be unable to cast his ballot at the polling place in his election district on the day of the election, provided he is a registered voter, and is not otherwise disqualified by law from voting in such election.

This act shall be liberally construed to effectuate these purposes.

3. Section 7 of the act of which this act is amendatory is amended to read as follows:

7. The officer to whom the application for an absentee ballot may be made pursuant to section 6 of this act shall publish or cause to be published the following notices in substantially the following forms:

Notice to Persons in Military Service or Patients in Veterans' Hospitals and to Their Relatives and Friends

If you are in the military service or are a patient in a veterans' hospital and desire to vote, or if you are a relative or friend of a person who is in the military service or is a patient in a veterans' hospital who, you believe, will desire to vote in the _____ election
(municipal, primary, general or other)
to be held on _____, kindly write to
(date of election)
the undersigned at once making application for a military service ballot to be voted in said election to be forwarded to you, if you are in the military service or are a patient in a veterans' hospital, stating your name, age, serial number, home address and the address at which you are stationed or can be found, or if you desire the military service ballot for a relative or friend then make an application under oath for a military service ballot to be forwarded to him, stating in your application that he is over the age of 21 years and stating his name, serial number, home address and the address at which he is stationed or can be found.

Forms of application can be obtained from the undersigned.

Dated _____

_____
(Signature and title of county clerk, municipal clerk or other official as the case may be)

_____
(Address of county clerk, municipal clerk or other official)

Notice to Persons Desiring Absentee Ballots

If you are a qualified and registered voter of the State who expects to be absent outside the State on _____, or a qualified
(date of election)
and registered voter who will be within the State on _____
(date of election)
but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of your religion, will be unable to cast your ballot at the polling place in your district on said date, and you desire to vote in the _____
(municipal, primary, general or other)
election to be held on _____ kindly write or apply
(date of election)
in person to the undersigned at once requesting that a civilian absentee ballot be forwarded to you. Such request must state your home address, and the address to which said ballot should be sent, and must be signed with your signature, and state the reason why you will not be able to vote at your usual polling place. No civilian absentee ballot will be furnished or forwarded

to any applicant unless request therefor is received not less than 8 days prior to the election, and contains the foregoing information.

Dated .....

.....

(Signature and title of county clerk, municipal clerk or other official as the case may be)

.....

(Address of county clerk, municipal clerk or other official)

Such notices shall be separately published prior to the fortieth day immediately preceding the holding of any election.

Notices relating to any State-wide or county-wide election shall be published by the county clerk in at least 2 newspapers published in the county. All other officials charged with the duty of publishing such notices shall publish the same in at least 1 newspaper published in each municipality or district in which the election is to be held or if no newspaper be published in said municipality, then in a newspaper published in the county and circulating in such municipality, municipalities or district.

4. Section 17 of the act of which this act is amendatory is amended to read as follows:

17. Upon the said margin of said flap on the envelopes to be sent to military service voters there shall be printed a certificate in the following form:

I hereby certify that

1. I am a citizen of the United States;

2. The date of my birth was .....;

3. On the date of the (Description of election in which ballot is used to be printed here.) election I will have resided in New Jersey for ..... and in ..... county for
(years and months)
.....;
(years and months)

4. My home address is at .....;
(street and number, if any, or rural route)
in .....;
(city, borough, town, township or village)

5. My military service address or veterans' hospital address is
.....;

6. My serial number is .....

.....
Write your usual signature above)

.....
(print your name clearly above)

Sworn and subscribed to before me this ..... day of ..... A. D. ..... at ..... in the State or Country of .....

.....
(signature and rank of commanding officer)

Said certificate shall be sworn to before the military service voter's commanding officer or the superintendent of the veterans' hospital in which the military service voter is a patient.

Upon said margin of said flap on the inner envelopes to be sent to civilian absentee voters there shall be printed a certificate in the following form:

I, ..., do solemnly swear that I am a registered voter of the State of New Jersey, and that I have resided in the county of ..... continuously since .....
(month, date and year)

My address in said county is .....
(street and number, if any, or rural route)

where I have resided since .....
(month, date and year)

I will be a resident of the State of New Jersey at the above address on .....
(date of election)

FILL IN ONLY IF YOU HAVE MOVED OR INTEND TO MOVE YOUR RESIDENCE AFTER

.....
(county clerk insert date of fortieth day before election)

AND BEFORE THE ELECTION

I moved or will move to the above address from my previous home address at ..... in
(street and number, if any, or rural route)

the ....., county of .....
(city, borough, town, township or village)

State of ..... on .....
(give date)

Place a cross (×) in the box preceding the applicable statement below.

My reason for voting this absentee ballot is:

☐ I will be absent from the State on the date of the election.

☐ I am unable to leave my place of confinement at .....
(home address,

..... because of
hospital address or other place of confinement)

..... and will, therefore,
(name of sickness or physical disability)

be unable to cast my ballot at the polling place in my election district on the date of the election.

☐ I will be unable to attend at my polling place on the date of the election because of the observance of a religious holiday, pursuant to the tenets of my religion.

I marked the enclosed ballot in secret.

(signature of absentee voter)

(print your name clearly above)

State of ---
County of ---} ss.
Country of ---

---, being duly sworn, deposes and says that the statements on the foregoing declaration are true.

(signature of absentee voter)

Sworn to and subscribed before me this --- day of ---, 19---, and I hereby certify that the affiant exhibited the enclosed ballot to me unmarked, and that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot and enclosed and sealed the same in this envelope without my seeing or knowing his vote, and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition.

(signature of officer authorized by law, of the place where the oath is administered, to administer oaths)

(title of officer)

5. This act shall take effect immediately.

Approved December 19, 1957.

SCHOOL LAWS, SESSION OF 1958
AMENDMENTS*

CHAPTER 21, LAWS OF 1958

AN ACT concerning education, and amending section 18:14–112 of the Revised Statutes.

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

1. Section 18:14–112 of the Revised Statutes is amended to read as follows:

18:14–112. When in any county a survey has been made setting forth facts and conditions regarding physical handicaps and mental retardation among children of school age, the results of which shall, in the opinion of the commissioner, warrant the establishment of a department of child study, there may be appointed by the commissioner, with the approval of the State Board, a supervisor of such department who shall work under the authority of the county superintendent. *The commissioner, with the approval of the State Board, may assign such supervisor to 1 or more counties.*

The term of office of the supervisor and his salary shall be fixed by the commissioner with the approval of the State Board.

2. This act shall take effect immediately.

Approved April 22, 1958.

CHAPTER 46, LAWS OF 1958

AN ACT concerning the acquisition, use and disposition of school property in certain cases, and amending sections 18:5–27 and 18:5–28 of the Revised Statutes.

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

1. Section 18:5–27 of the Revised Statutes is amended to read as follows:

18:5–27. Whenever the board of education of a municipality shall determine that all or any part of a tract of land with or without a school building or buildings erected thereon is no longer desirable or necessary, or required for school purposes, such board may transfer and convey such land or any portion thereof, with or without improvements thereon, to such municipality, board, body, commission *or volunteer fire company, actively engaged in the protection of life and property and duly incorporated under the laws of the State of New Jersey*, or may transfer or convey such land to any American Legion Post, Veterans of Foreign Wars, or other recognized veterans organization of the United States of America, located in such county or municipality, for a nominal consideration as a meeting place for any such American Legion Post, Veterans of Foreign Wars or other recognized veterans organizations of the United States of America located in such municipality or county.

* Italics show amendments of 1958.

2. Section 18:5–28 of the Revised Statutes is amended to read as follows:

18:5–28. No transfer or conveyance of school property as provided in section 18:5–27 of this Title shall be made until the board of education has adopted a resolution declaring the property to be no longer desirable or necessary or required for school purposes, and authorizing the conveyance thereof to such municipality, board, body, commission *or volunteer fire company* or authorizing the conveyance thereof to any American Legion Post, Veterans of Foreign Wars or others recognized veterans organization of the United States of America located in such municipality or county, by deed to be executed in the name and under the seal of the board of education by its president and secretary.

Any such conveyance which may be made by the board of education to any such municipality, board, body, commission *or volunteer fire company* may, in the discretion of the board of education, be made subject to a condition or limitation that, should the property thereby conveyed cease to be used for public *or fire company* purposes, such property shall thereupon revert to and the title thereof be vested in the board of education making such conveyance.

Should the property conveyed, pursuant to the terms of this act to any such veterans organization, cease to be used for any of the purposes contemplated by this statute, such property shall thereupon revert to and the title thereof be vested in the board of education making the conveyance authorized by this act.

3. This act shall take effect immediately.

Approved May 21, 1958.

Chapter 50, Laws of 1958

An Act relating to county vocational schools and amending section 18:15–53 of the Revised Statutes.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 18:15–53 of the Revised Statutes is amended to read as follows:

18:15–53. Each board of education of a county vocational school shall prior to the beginning of each school year, cause advertisement to be made for proposals for furnishing supplies required in the school and by the board during the ensuing year. If other and further supplies shall be required during the year, they shall be purchased in like manner. The board may authorize the purchase of supplies to an amount not exceeding *$1,000.00* without advertisement.

No contract for the erection of any building for the use of the school, or for enlarging a building already erected, shall be entered into except after advertisement. No contract for repairing a building at a cost of more than *$2,000.00* shall be entered into except after advertisement.

The advertisements required by this section shall be made under such regulations as the board may prescribe. Textbooks may be purchased without advertisement. No bid for erecting or repairing buildings or for supplies shall be accepted which does not conform to the specifications furnished therefor, and all contracts shall be awarded to the lowest responsible bidder.

2. This act shall take effect immediately.

Approved June 10, 1958.

CHAPTER 51, LAWS OF 1958

AN ACT concerning the conveyance of lands by school districts, and amending section 18:5–26 of the Revised Statutes.

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

1. Section 18:5–26 of the Revised Statutes is amended to read as follows:

18:5–26. A sale authorized by section 18:5–25 of this Title may be made to the State or any political subdivision thereof or to the United States of America at private sale. In all other cases such lands, buildings, rights or interests shall be sold only at public sale and to the highest bidder after an advertisement of the sale has been published in a newspaper circulating in the school district wherein the lands, buildings, rights or interests are situated at least once a week for 2 weeks prior to such sale. *In the case of public sales the board of education may by resolution fix a minimum price with or without the reservation of the right, upon the completion of said public sale, to accept or reject the highest bid made thereat, to be included in the advertisement of sale of lands and public notice thereof given at the time of sale, or may by resolution provide without fixing a minimum price, that upon the completion of the public sale, the highest bid made thereat shall be subject to acceptance or rejection by the board of education, but the acceptance or rejection thereof shall be made not later than at the second regular meeting of the board of education following the sale, and, that if the board of education shall fail or refuse to accept or reject any such highest bid, as aforesaid, the said bid shall be deemed to have been rejected.*

2. This act shall take effect immediately.

Approved June 10, 1958.

CHAPTER 55, LAWS OF 1958

AN ACT concerning schools for industrial education, and amending section 18:15–20 of the Revised Statutes.

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

1. Section 18:15–20 of the Revised Statutes is amended to read as follows:

18:15–20. There shall be a board of trustees of each of such schools, which shall consist of the Governor and the mayor or other chief executive officer of the city, town or township, in which the school is located, as ex-officio members, and 8 other persons, residents *of, or whose business interest is in, the county* in which such school is located, to be chosen and appointed by the Governor for terms of 4 years which shall commence on July 1 and expire on June 30. Except that, trustees serving on the effective date of this amendment shall continue in office for the remainder of the respective terms for which they were appointed and trustees appointed as the immediate successors of the trustees so serving, or to fill any vacancy existing on the effective date of this amendment shall serve for such terms as the Governor may designate to effectuate as soon as practicable the purpose of this amendment which is hereby declared to be "the terms of 2 members of each board of trustees, appointed by the Governor, shall expire on June 30 in each year." All trustees

shall serve until their successors shall have been appointed and qualified; but the holding over of an incumbent beyond the expiration of the term for which he was appointed shall not be held to lengthen his term but shall be held to shorten the term of his successor by the number of days the incumbent shall hold over beyond the expiration date of his term. Trustees appointed by the Governor may be removed from office by him, for cause, after notice and opportunity to be heard. Any vacancy that may occur in the board of trustees shall be filled by appointment in like manner for the unexpired term only.

2. This act shall take effect immediately.

Approved June 12, 1958.

CHAPTER 82, LAWS OF 1958

AN ACT concerning education and amending section 18:7–53 of the Revised Statutes.

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

1. Section 18:7–53 of the Revised Statutes is amended to read as follows:

18:7–53. A board shall organize annually by the election of 1 of its members as president and another as vice-president. The organization meeting shall be held at 8 o'clock P. M. on the first Monday following the annual meeting in February *or if it cannot take place on that day by reason of a lack of a quorum or for any other reason, it shall be held within 3 days thereafter. The organization meeting shall constitute a regular meeting of the board for the transaction of business.* Notice of such organization meeting shall be transmitted by the district clerk to all members constituting the new board. Upon the organization of such new board the term of the retiring members shall immediately expire. If the board shall fail to organize *as prescribed by this section,* the county superintendent of schools shall appoint, from among the members, a president and a vice-president.

A president or vice-president who shall refuse to perform a duty imposed upon him by this title may be removed by the majority vote of all the members of the board.

In case the office of president or vice-president shall become vacant, the board shall, within 30 days thereafter, fill the vacancy for the unexpired term; and if it shall fail to fill the vacancy within such time, the county superintendent of schools shall fill the vacancy for the unexpired term.

2. This act shall take effect immediately.

Approved June 25, 1958.

CHAPTER 113, LAWS OF 1958

AN ACT concerning education and amending sections 18:7–25, 18:7–46 and 18:7–89 of the Revised Statutes.

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

1. Section 18:7–25 of the Revised Statutes is amended to read as follows:

18:7–25. Nominating petitions shall be filed with the secretary of the board of education on or before *4* o'clock P. M. of the *fortieth* day before the date of the election.

2. Section 18:7–46 of the Revised Statutes is amended to read as follows:

18:7–46. All special elections shall be called in the manner provided for the calling of the annual school election, *but no special school election shall be called to be held in any municipality on any day within 20 days before or after the day fixed according to law for the holding of any primary election for the general election or general election.* The qualification of voters, conduct of the election, and establishment of voting districts together with polling places therein shall be governed in all respects by the provisions of the law regulating the annual school election, except that in the case of special school bonding elections, the form of ballot shall be controlled by the form prescribed by section 18:7–47 of this Title.

3. Section 18:7–89 of the Revised Statutes is amended to read as follows:

18:7–89. No action to contest the validity of any election ordering the issue of bonds or election or district meeting held pursuant to section 18:7–94 of this Title shall be commenced after the expiration of *15* days from the date of such election or meeting.

4. This act shall take effect immediately.

Approved July 7, 1958.

CHAPTER 117, LAWS OF 1958

AN ACT to amend "An act concerning consolidated school districts, supplementing chapter 5 of Title 18 and repealing sections 18:5–14 to 18:5–17, both inclusive, of the Revised Statutes and 'An act relating to the public schools of this State, and supplementing chapter 5 of Title 18 of the Revised Statutes,' approved May 7, 1938 (P. L. 1938, c. 144)," approved April 28, 1947 (P. L. 1947, c. 86).

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

1. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. Whenever the boards of education of 2 or more school districts, *and the State Commissioner of Education, after study and investigation,* shall deem it to be advisable to unite in creating a consolidated school district, each of said boards shall call and conduct an election, on a day and at a time designated by the county superintendent or county superintendents of schools in the manner provided for the conduct of school elections by chapter

7 of Title 18 of the Revised Statutes and shall submit the question of consolidating said school districts into a consolidated school district to the voters of the districts.

2. This act shall take effect immediately.

Approved July 8, 1958.

CHAPTER 122, LAWS OF 1958

AN ACT concerning education, and amending section 18:7–74 of the Revised Statutes.

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

1. Section 18:7–74 of the Revised Statutes is amended to read as follows:

18:7–74. The board may from time to time acquire for school purposes, by purchase, condemnation, or otherwise lands or premises not exceeding 25 acres in extent, situated in any municipality or municipalities adjoining the school district. All proceedings to acquire such land or premises shall be in accordance with the provisions of this Title.

2. This act shall take effect immediately.

Approved June 10, 1958.

CHAPTER 126, LAWS OF 1958

AN ACT concerning the fund for the support of public schools, and amending section 18:10–15 and supplementing chapter 10, article 1, of Title 18, of the Revised Statutes.

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

1. Section 18:10–15 of the Revised Statutes is amended to read as follows:

18:10–15. The income of the school fund shall be used for the support of public schools, the payment of the salaries of the county superintendents of schools, the payment of accrued interest on bonds purchased by the board of trustees of the fund, *the payment of interest on, and the purchase of, bonds issued locally for school purposes to the extent and within the limits provided by law,* and for no other use or purpose whatsoever. The payment of premiums on bonds purchased shall be made out of the investment account.

In the event that a school district or a municipality anticipates that it will be unable to meet the payment of principal or interest on any of its bonds hereafter issued for school purposes, it shall certify such inability to the Commissioner of Education and the Director of the Division of Local Government at least 10 days prior to the date any such payment is due. If the said commissioner and director shall approve said certification, they shall immediately certify the same to the trustees of the fund for the support of public schools. Upon the receipt thereof, or in the event any such district or municipality fails to certify its anticipated inability to meet any such payments, upon notice and verification of such inability, the trustees shall, within the limits of moneys available in the fund, use said funds including the income therefrom to purchase any such bonds at a price equivalent to the

face amount thereof or pay to the holder of any such bond the interest due or to become due thereon, as the case may be, and such purchases and payments of interest may continue so long as the district or municipality remains unable to make such payments. Upon making any such payment *of interest*, the trustees of the fund shall be subrogated to all rights of the bondholder against the issuer in respect to the collection of such interest *and if such interest is represented by a coupon such coupon shall be delivered to the trustees of the fund. No such purchase or interest payment herein provided shall be made unless the sums available to said district as State building aid shall be insufficient for such purpose.*

The State Treasurer shall act as agent of the trustees of the fund in making any such payments or purchases, and he shall prescribe, in consultation with the Commissioner of Education, such rules and regulations as may be necessary and proper to effectuate the purposes of this act.

3. This act shall take effect when the proposed amendment to paragraph 2 of Section IV of Article VIII, of the Constitution of the State of New Jersey, initiated by the 182nd Legislature and as set forth in *Senate* Concurrent Resolution No. *16* of said Legislature, is adopted and becomes effective pursuant to Article *IX* of the said Constitution.

Approved July 17, 1958.

Chapter 127, Laws of 1958

An Act to amend "An act to authorize the payment of State grants-in-aid to certain school districts, for school building facilities, and requiring the State Treasurer to maintain capital reserve funds for the administration of such grants-in-aid and other moneys applicable thereto, supplementing Title 18 of the Revised Statutes," approved March 29, 1956 (P. L. 1956, c. 8).

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of the act of which this act is amendatory is amended to read as follows:

4. The capital foundation program shall be computed annually for each school district as the sum of the amount appropriated by or for the school district in each school budget or in a municipal budget for purposes of *(1) debt service, (2) capital outlay and (3)* net addition to its capital reserve fund, but not exceeding $30.00 per pupil in average daily enrollment.

2. Section 6 of the act of which this act is amendatory is amended to read as follows:

6. The State Treasurer shall establish a school building aid capital reserve fund for each school district. The State Treasurer, upon the certification of the Commissioner of Education and warrant of the Director of the Division of Budget and Accounting, shall:

(1) If the Commissioner of Education and the Director of the Division of Local Government have certified that any school district or municipality is unable to pay the principal or interest of any bonds hereafter issued for school purposes, apply the amount of the building aid allowance to the payment of interest and principal on such bonds as hereinafter set forth.

(2) pay to each school district the amount of its building aid allowance *less any amount thereof which may have been applied to the payment of bonds under subsection (1) hereof and* less its net appropriation to its capital reserve fund, at the times and in the manner hereinafter provided; and

(3) credit to the capital reserve fund of each district the remainder of the building aid allowance not so required to be paid together with an additional amount to be withheld from any State aid moneys otherwise due the district, sufficient to make the total capital reserve appropriated by the district.

The Director of the Division of Investment shall invest and reinvest such capital reserve funds in the same manner and subject to the same requirements as are prescribed for the investment of State funds generally. Income received upon the investment of the capital reserve funds shall be credited pro rata to the capital reserve funds of the respective school districts, semi-annually on November 1 and May 1.

In the event that a school district or municipality anticipates that it will be unable to meet the payment of principal or interest of any bonds hereafter issued for school purposes, it shall certify such inability to the Commissioner of Education and the Director of the Division of Local Government at least 10 days prior to the date such payment is due. The State Treasurer, upon certification of such inability by said commissioner and director or, in the event any such district or municipality fails to certify its anticipated inability to meet any such payments, upon notice and verification of such inability, shall withhold from the sums then or thereafter available to said district as State building aid a sum sufficient to pay the principal of and interest on such bonds. The State Treasurer shall pay ratably to the claimant holders of such bonds, or their agent, first the interest and then the principal due and owing to them by the school district or municipality, as the case may be, up to the amount of the building aid allowance then or thereafter available to such district or municipality.

3. Section 11 of the act of which this act is amendatory is amended to read as follows:

11. Each school district or municipality, as the case may be, may anticipate as a revenue separately stated in its budget, as applicable to the capital foundation program defined in section 4 hereof, the lesser of the following sums:

(a) The sum of debt service, capital outlay and net addition to its capital reserve fund, appropriated by or for the school district in its budget or in a municipal budget, as the case may be, for such year, less the local fair share as certified by the commissioner; and

(b) The maximum building aid allowance available to the district as certified by the commissioner, *less any amounts withheld by the State Treasurer pursuant to section 6 hereof.*

The sum so anticipated, subject to audit by the commissioner, shall be payable as school building aid pursuant to this act and required to be set aside and reserved by the State Treasurer pursuant hereto respectively, and shall be paid and reserved, as the case may be, in each school year, ½ on November 1 and ½ on May 1. Payments shall be made, by the State Treasurer to each board of education, and reserve funds set aside, upon certification of the Commissioner of Education and warrant of the Director of the Division of Budget and Accounting. In the case of school districts operating

under chapter 6 of Title 18 of the Revised Statutes any payment of building aid allowance or withdrawal from a reserve fund shall be remitted to the chief financial officer of the municipality in which such district is located.

All sums so received by or set aside for a board of education or municipality shall be applied as follows: first, to debt service on bonds issued by such board of education or municipality for school purposes; secondly, to capital outlay for school purposes; and lastly, to addition to the capital reserve fund of such school district.

4. This act shall take effect immediately.

Approved July 17, 1958.

SUPPLEMENT

CHAPTER 128, LAWS OF 1958

AN ACT concerning education prescribing certain offenses in connection with school elections and penalties for the commission thereof, and supplementing Title 18 of the Revised Statutes.

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

1. As used in this act the word "election" means any annual or special election held for the election of members of the board of education or upon the adoption or rejection of any public question in any school district in this State.

"Election officer" means any person lawfully designated to conduct or assist in conducting any election in any school district.

2. Any officer or employee of any board of education or any person designated as an election officer to hold any election who shall willfully fail to perform or enforce any provision of this act, or the Title hereby supplemented, or shall willfully destroy any record directed to be kept thereby, or any person who shall willfully or fraudulently register to vote in any election or elections more than once, or register under any but his true name, or attempts to vote in any election by impersonating another, who is registered, or, being registered in an election district in which he is not a resident at the time of registering, votes or attempts to vote in any election, or who violates any provision of this act or the Title hereby supplemented relating to elections, shall be guilty of a misdemeanor.

3. No person shall falsely make, falsely make oath to, or fraudulently deface or fraudulently destroy any nomination petition, or any part thereof, or file, or receive for filing, any nomination petition, for any office to be voted for at any election, knowing the same or any part thereof to be falsely made, or suppress any such nomination petition which has been duly filed, or any part thereof. A person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than 5 years.

4. If any printer employed to print official ballots, or any person engaged in printing the same, shall appropriate to himself or give or deliver or knowingly permit to be taken any of such ballots by any other person than a person duly authorized so to do, or shall print or cause to be printed any official ballot in any other form than that prescribed by the proper officer or officers, according to law, or with any other names thereon, or with the names spelled or the names or printing thereon arranged in any other way than that authorized and directed by this Title, the person so offending shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000.00 or imprisonment not exceeding 5 years.

If any person not authorized by the proper officers shall print or make any official or sample ballot provided for in this Title, or on or prior to election day shall willfully have in his possession an official ballot without being authorized by this Title to have charge or possession thereof, the person so offending shall be guilty of a misdemeanor.

If any person shall forge or falsely make any ballot or the official indorsement thereof, the person so offending shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than 5 years.

5. If a person convicted of a crime which disfranchises him shall vote at any election, unless he shall have been pardoned or restored by law to the right of suffrage, he shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding $200.00, or imprisonment at hard labor not exceeding 2 years, or both.

6. No person shall, during an election, with intent to hinder or delay same, or to hinder or delay any voter in the preparation of his ballot, remove or destroy any of the ballots or pencils placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot.

Any person willfully violating any of the provisions of this section shall be a disorderly person and shall be punished by a fine not exceeding $500.00 and imprisonment until such fine and the costs of the conviction are paid.

7. If a person shall on any day fixed for any election tamper, deface or interfere with any polling booth or obstruct the entrance to any polling place, or obstruct or interfere with any voter, or loiter, or do any electioneering within any polling place or within 100 feet thereof, he shall be a disorderly person and shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 1 year, or both.

8. No person shall within the polling room mark his ballot in a place other than in the polling booth or show his ballot, nor shall anyone request such person to show his ballot during the preparation thereof, nor shall any other person inspect such ballot during the preparation thereof or after it is prepared for voting in such a way as to reveal the contents, nor shall any person within the polling place or within 100 feet thereof, loiter, electioneer, or solicit any voter or prompt a voter in answering any questions required to be answered by such voter in connection with any election.

Any person violating any provisions of this section shall be a disorderly person and shall be punished by a fine not exceeding $500.00, or imprisonment not exceeding 1 year, or both.

9. No voter, at any election where official ballots are used, shall knowingly vote or offer to vote any ballot except an official ballot as by this Title required, and no person shall on any pretext carry any official ballot from the polling room on any election day except such persons as may by this Title be authorized to do so.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 1 year, or both.

10. No election officer shall knowingly accept from any voter and deposit in the ballot box any sample ballot.

11. If any person shall write, paste or otherwise place upon any official ballot any mark, sign or device of any kind as a distinguished mark whereby to indicate to any officer holding any election or any other person how any voter has voted at any election, or if any person shall induce or attempt to induce any voter to write, paste or otherwise place on his ballot any mark, sign or device of any kind, as a distinguishing mark by which to indicate to any such officer or other person how such voter has voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce voters or any voter to so place any distinguishing mark, sign or device on his ballot, whether or not such act be committed or attempted to be committed, such person so offending shall be a disorderly person and shall be punished by a fine not exceeding $500.00 or imprisonment not exceeding 1 year, or both.

12. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election; or knowingly hands in 2 or more ballots folded together; or changes any ballot after it has been deposited in the ballot box; or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating the election; or willfully detains, mutilates or destroys any election returns; or in any manner so interferes with the officers holding the election, or conducting the canvass, or with the voters lawfully exercising their rights of voting at the election, as to prevent the election or canvass from being fairly had and lawfully conducted, shall be guilty of a misdemeanor.

13. Every person not entitled to vote who fraudulently attempts to vote, or who being entitled to vote attempts to vote more than once at any election, or who personates or attempts to personate a person legally entitled to vote, shall be guilty of a disdemeanor.

14. Every election officer, who, previous to putting the ballot of an elector in the ballot box, at any election, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same in the ballot box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, shall be guilty of a misdemeanor.

15. If any election officer has knowledge how any person has voted at any election and shall reveal such knowledge to any other person, or shall fraudulently or curruptly disclose what other candidates were voted for on any ballot bearing a name not printed thereon at any election, or fraudulently or corruptly gives any information concerning the appearance of any ballot voted thereon, he shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $2,000.00 or imprisonment not exceeding 5 years.

16. If a person shall distribute or display any circular or printed matter or offer any suggestion or solicit any support for any candidate, party or public question, to be voted upon at any election, within the polling place or room or within a distance of 100 feet of the outside entrance to such polling place or room, he shall be a disorderly person.

17. A person who shall remove, destroy or mutilate any signature copy register or copy thereof, or who before an election closes shall remove, destroy or mutilate any poll list or book, used at any election, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than $1,000.00 or imprisonment for not more than 2 years.

18. If a person shall rob or plunder any ballot box, or unlawfully and by stealth or violence take the same or remove therefrom any ballot or other paper, or exchange, alter or destroy any ballot or other paper contained therein, or if any person shall willfully and corruptly suppress, withhold, mutilate, destroy, alter or change any return, statement or certificate or any copy thereof, which shall have been made in pursuance of law, and delivered to him to be filed, or which shall have been intrusted or delivered to him to be delivered or transmitted to any other person in pursuance of law, every such person, his aiders, procurers and abettors, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500.00, or by imprisonment at hard labor for a term not exceeding 2 years, or both.

This section shall not apply to the destruction of ballots or the performance of other acts by officials when such acts are performed as prescribed by law.

19. A person who shall willfully obstruct or interere with any election officer, while performing any duty prescribed by this act or the Title hereby supplemented, shall be a disorderly person and shall be punished by a fine not exceding $500.00, or by imprisonment at hard labor for a term not exceeding 1 year, or both.

20. No person shall display, sell, give or provide any political badge, button or other insignia to be worn at or within 100 feet of the polls or within the polling place or room, on any day upon which an election is held, except as provided by law.

A person violating any of the provisions of this section shall be a disorderly person and shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 1 year, or both.

21. Whoever, with respect to any election, shall

(1) Solicit the registering of his name to vote therein, or vote therein, knowing that he is not a qualified voter, or

(2) Vote or attempt to vote therein more than once in his own name, or in more than 1 election district, or upon any name other than his own, or

(3) Knowingly casts or attempts to cast therein more than 1 ballot at 1 time, or

(4) Counsels, procures, aids, advises, assists or abets any person to

a. Vote therein knowing that he is not a qualified voter, or to

b. Vote therein in more than 1 election district, or to

c. Vote or attempt to vote upon any name other than his own, or to

d. Cast or attempt to cast therein more than 1 ballot at 1 time of voting, or

(5) Maliciously mark or deface or willfully and maliciously counsel, procure, aid, advise, assist or abet any person in marking or defacing any ballot cast or to be cast therein, or

(6) Hinder or prevent, willfully, in any manner a voter to cast his legal vote therein knowing such person to have a right so to vote, or

(7) Tamper with, injure, mutilate, destroy or render unfit for use willfully any ballot box or voting machine used or intended to be used therein, or

(8) Counsel, procure, aid, advise, assist or abet, in any manner, any official or person to commit any act which is contrary to the provisions of this act or the Title hereby supplemented, so far as it relates to elections shall be guilty of a misdemeanor and punishable by a fine of $500.00 or imprisonment in the State Prison for a term of 3 years or both.

22. No person shall make, lay or deposit any bet, wager or stake, to be decided by the result of any election, by the election or defeat of 1 or more persons at any election, or by any contingency connected with or growing out of any election. All contracts for or on account of any money, property or thing in action so bet, wagered or staked shall be void. Any person who shall pay, deliver or deposit any money, property or thing in action upon the event of any bet, wager or stake prohibited by this section, may sue for and recover the same from the winner or person to whom the same, or any part thereof, shall have been paid or delivered, or with whom the same, or any part thereof, shall have been deposited, whether he shall have been a stakeholder, or other person, whether or not the same shall have been paid over by such stakeholder, or whether or not such bet, wager or stake shall have been lost.

No candidate for public office, before or during an election, shall make any bet or wager with a voter, or take a share or interest in, or in any manner become a party to such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager, upon any event or contingency whatever. No person, directly or indirectly, shall make a bet or wager with a voter, depending upon the result of any election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at the election.

Any person violating any provisions of this section shall be a disorderly person and shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 1 year, or both.

23. If a person shall, directly or indirectly, by himself or by any other person in his behalf, give, lend or agree to give or lend, or shall offer, promise or promise to procure, or endeavor to procure, any money or other valuable consideration or thing to or for any voter, or to or for any person, in order to induce any voter to vote in any manner or refrain from registering for any election, or shall corruptly do or commit any of the acts in this act forbidden because of any such voter having voted or refrained from voting at an election, or registered or refrained from registering for an election, he shall be guilty of a misdemeanor and shall be punished by a fine not to exceed $2,000.00 or imprisonment not to exceed 5 years, or both.

24. Whosoever shall, directly or indirectly, make or give any money or other thing of value to any election officer because of his holding of such office, or when it shall appear that such money or other thing of value is

made or given to such election officer because of his holding such office, except as hereinbefore provided as his legal compensation for service as such officer, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000.00 or imprisonment not exceeding 2 years, or both.

25. Any election officer who shall, by himself, or by any other person in his behalf, receive any money or other thing of value because of his holding said office, or when it shall appear that such money or other thing of value is accepted or received by such officer because of his holding said office, except as hereinbefore provided as his legal compensation for service, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000.00 or imprisonment not exceeding 2 years, or both.

26. A person who shall directly or indirectly, by himself or by any other person in his behalf, give or procure, or agree to give or procure or offer or promise to procure, or endeavor to procure any office, place or employment to or for any voter, or to or for any person on behalf of such voter, or to or for any other person, in order to induce such voter to vote in any manner or refrain from voting, or to register or refrain from registering for any election, or shall corruptly do any act as above because of any voter having voted or refrained from voting, or having registered or refrained from registering for any election, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $2,000.00, or imprisonment not exceeding 5 years.

27. Any voter who shall directly or indirectly, by himself or by any other person on his behalf, receive, agree or contract for any money, gift, loan, or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote, in any manner, or for refraining or agreeing to refrain from voting at any election, or for registering or agreeing to register, or for refraining or for agreeing to refrain from registering, for any election, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding $1,000.00, or imprisonment not exceeding 1 year.

28. Whoever shall, directly or indirectly, give, furnish, supply or promise, or cause to be given, furnished, supplied, offered or promised, to any person or persons, any money, service, preferment or valuable thing with the intent that such money or valuable thing or any other money, service, preferment or valuable thing shall be given, offered, promised or used, by any person or persons, by way of fee, reward, gift or gratuity, for giving or refusing to give any vote of any citizen, at any election, or by way of gift, gratuity or reward, for giving or withholding any such vote, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding $10,000.00, or imprisonment not exceeding 1 year, or both.

29. A person who shall, directly or indirectly, by himself or by any other person in his behalf, give, lend, or agree to give or lend, or procure, or agree to procure or offer or promise to procure, or endeavor to procure, any money or other valuable consideration or thing, or any office, place or employment to or for any voter, or to or for any person, in order to induce such voter to vote in any manner or refrain from registering for, or voting at any election, or shall corruptly do or commit any of the acts in this act forbidden,

because of any voter having voted or refrained from voting or having registered or refrained from registering for any election, shall be guilty of a misdemeanor, and shall be sentenced to disfranchisement for a period of 5 years, from the date of conviction.

30. A person who shall give, advance or pay, or cause to be given, advanced or paid, any money or other valuable thing to any person, or to the use of any person, with the intent that such money or other valuable thing, or any part thereof, shall be expended, or used for bribery of voters, or for any other unlawful purpose at any election, or who shall knowingly pay, or cause to be paid money to any person wholly or in part expended in bribery of a voter at any election, shall be guilty of a misdemeanor, and shall be sentenced to disfranchisement for 5 years from the date of conviction.

31. A person who shall, directly or indirectly, by himself, or by any other person on his behalf, receive, agree or contract for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote in any manner, or for refraining or agreeing to refrain from voting at any election, or for registering or agreeing to register, or for refraining of for agreeing to refrain from registering for any election, shall be guilty of a misdemeanor, and shall be sentenced to disfranchisement for a period of 5 years from the date of conviction.

32. No person shall give or agree to give, and no person shall accept or agree to accept, for the purpose of promoting or procuring or for the purpose of opposing or preventing the election of a candidate for public office, or the adoption or rejection of any public question, at any election, any money or any valuable thing to be used to provide for the payment for the insertion in any newspaper or magazine of any article tending to influence any person to give or refrain from giving his vote to any candidate or candidates at any election; or to provide for payment for the distribution of any newspaper or magazine wherein any such article is printed; or to provide for payment of the printing or of the distribution of any circular, handbill, card, pamphlet or statement tending to influence any person to give or refrain from giving his vote to any candidate; or to vote for the adoption or rejection of any public question to be voted for or upon at any election; but this prohibition shall not be construed to prohibit the printing and distribution of paid advertisements which advertisements shall be indicated by the words "This advertisement has been paid for by " (inserting the true name and address of the person or persons paying for the same); nor shall it be construed to prohibit the printing and distribution of circulars, handbills, cards, pamphlets or statements which shall have printed on the fact thereof the true name and address of the person or persons paying for the printing and distribution thereof, which fact shall be indicated by the words "The cost of the printing and distribution of this circular (or as the case may be) has been paid by " (inserting the true name and address of the person or persons paying for the same).

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and shall for the first offense be disfranchised for a period of 2 years from the date of conviction, and for any subsequent offense shall be perpetually disfranchised, and in addition thereto the court in which such conviction is obtained, may in case of a subsequent conviction,

impose upon the person so convicted the punishment now prescribed by law for a misdemeanor.

33. If a person shall be guilty of willful and corrupt false swearing or affirming, or by any means shall willfully and corruptly suborn or procure a person to swear or affirm falsely, in taking any oath, affirmation or deposition prescribed or authorized by this act, or the act hereby supplemented, he shall be deemed guilty of a high misdemeanor, and shall be punished by a fine not exceeding $800.00 or imprisonment at hard labor not exceeding 7 years, or both, and be deemed to be an incompetent witness thereafter for any purpose within this State, until such time as he shall have been pardoned.

34. An employer of any workman, or any agent, superintendent or overseer of any company or corporation employing workmen, or any person who shall directly or indirectly, by himself or by any other person in his behalf or by his direction, make use of or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict by himself or by any other person any injury, damage, harm or loss against any person in his employ, in order to induce or compel such employee to vote or refrain from voting for any particular candidate, or for the adoption or rejection of any public question at any election, or because of such employee having voted or refrained from voting for any particular candidate, or for the adoption or rejection of any public question at any election, or who shall, by any duress, constraint or improper influence or by any fraudulent or improper device, contrivance or scheme, impede, hinder or prevent the free exercise of the franchise of any voter at any election, or shall thereby compel, induce or prevail upon any voter to vote for or against any particular candidate, or for the adoption or rejection of any public question at any election, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding $2,000.00, or imprisonment not exceeding 5 years, or both.

35. No person shall, directly or indirectly, by himself or by any other person in his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict or threaten the infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons, or for the adoption or rejection of any public question at any election, or on account of such person having voted or refrained from voting at any election.

36. No person shall by abduction, duress or any forcible or fraudulent device or contrivance whatever, impede, prevent or otherwise interfere with the free exercise of the elective franchise by any voter at any election; or compel, induce or prevail upon any voter either to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election.

37. No employer, in paying his employees the salary or wages due them, shall enclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees in connection with any candi-

date or public question to be voted upon at any election. Nor shall an employer, within 90 days of an election, put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard containing any threat, notice or information that in case any particular ticket of a political party, or organization, or candidate shall be elected, or any public question shall be approved or rejected, work in his establishment will cease, in whole or in part, or his establishment be closed up, or the salaries or wages of his employees be reduced, or other threat, express or implied, intended or calculated to influence the political opinions or actions of his employees in connection with any candidate or public question to be voted upon at any election.

38. Sections 34 to 37 inclusive of this act shall apply to corporations as well as individuals, and any person or corporation violating the provisions thereof shall be guilty of a misdemeanor, and any corporation violating such provisions shall forfeit its charter.

39. No insurance corporation or association doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee, organization or corporation, or for or in aid of any candidate for political office, or in connection with the adoption or rejection of any public question at any election, or for any political purpose whatsoever, or for the reimbursement of indemnification of any person for money or property so used.

Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this Title, who participates in, aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this Title, shall be guilty of a misdemeanor.

40. This act shall take effect immediately.

Approved July 22, 1958.

SCHOOL LAWS, SESSION OF 1958

RELATED LAWS

CHAPTER 52, LAWS OF 1958

AN ACT concerning the "local bond law" and amending sections 40:1–20 and 40:1–43 of the Revised Statutes.

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

1. Section 40:1–20 of the Revised Statutes is amended to read as follows:

40:1–20. Publications required by this article, in the case of a municipality, shall be in a newspaper published and circulating in the municipality, if there be one, and if not, in a newspaper published in the county and circulating in the municipality, and in the case of a county, shall be in a newspaper published at the county seat, *if there be one, and if not, in a newspaper published in the county and having a substantial circulation therein.*

2. Section 40:1–43 of the Revised Statutes is amended to read as follows:

40:1–43. All bonds issued under this article, except bonds of authorized issues of $10,000.00 or less, shall be sold at public sale upon sealed proposals after at least 7 days' notice published at least once in a publication carrying municipal bond notices and devoted primarily to financial news or the subject of State and municipal bonds, published in New York City or New Jersey, and at least 7 days' notice published at least once in a newspaper published at the county seat, *if there be one, and if not, in a newspaper published in the county and having a substantial circulation therein,* in the case of county bonds, or in a newspaper published in the county and having a substantial circulation in the municipality in the case of municipal bonds. Bonds of authorized issues of $10,000.00 or less may be sold at private sale without previous public offering.

3. This act shall take effect immediately.

Approved June 10, 1958.

CHAPTER 58, LAWS OF 1958

AN ACT to amend the "Absentee Voting Law (1953)," approved July 1, 1953 (P. L. 1953, c. 211).

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

1. Section 3 of the act of which this act is amendatory is amended to read as follows:

3. The following persons shall be entitled to vote by absentee ballot in any election to be held in this State, in the manner hereinafter provided:

A military service voter who may be absent on the day on which such election is held from the election district in which he resides, whether such

person is within or without this State, or within or without the United States, provided he has resided in this State at least *6 months* and in the county in which he claims the right to vote at least *60 days* counting the time he has been in the military service or a patient in a veterans' hospital in said periods of residence;

A civilian absentee voter who expects to be or may be absent outside the State or the United States on the day on which an election is held or who may be within the State on the day of any election but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of his religion, will be unable to cast his ballot at the polling place in his election district on the day of the election, provided he is a registered voter, and is not otherwise disqualified by law from voting in such election.

This act shall be liberally construed to effectuate these purposes.

2. Section 5 of the act of which this act is amendatory is amended to read as follows:

5. The form of application to be used by a relative or friend of a person in the military service or in a veterans' hospital shall be substantially as follows:

APPLICATION BY RELATIVE OR FRIEND FOR A MILITARY SERVICE BALLOT

The undersigned, residing at .....
(street and number or R. D. route)

in ..... in the county of .....
(name of city or other municipality)

in the State of ....., does hereby make application for a military service ballot to be voted at the election to be held on .....
(date of election)

for .....
(name of person in military service or veterans' hospital)

whose serial number is ....., whose home address is at ..... in .....
(street and number or R. D. route) (name of city or other municipality)

in the county of ..... in the State of New Jersey and who is stationed or can be found at .....

.....

He is of the age of 21 years, has resided in the State of New Jersey at least *6 months* and in said county at least *60 days* counting the time that he has been in the military service or a patient in a veterans' hospital or both, and I verily believe that he is qualified to vote as a military service voter in said election.

.....

State of .....}
County of .....} ss.

The undersigned, being duly sworn on his oath according to law, says that the contents of the foregoing application are true.

Sworn and subscribed to before me this ..... day of ....., A. D. .....

.....
(name and title of officer taking affidavit)

Such affidavit shall be subscribed and sworn to before a person authorized to administer oaths.

3. Section 17 of the act of which this act is amendatory is amended to read as follows:

17. Upon the said margin of said flap on the envelopes to be sent to military service voters there shall be printed a certificate in the following form:

I hereby certify that

1. I am a citizen of the United States;
2. The date of my birth was .....;
3. On the date of the (Description of election in which ballot is used to be printed here.) election I will have resided in New Jersey for .....
(years *or* months)
..... and in ..... county
for .....;
(years, months *or days*)
4. My home address is at .....
(street and number, if any, or rural route)
in .....;
(city, borough, town, township or village)
5. My military service address or veterans' hospital address is .....
.....;
6. My serial number is .....
(write your usual signature above)

.....
(print your name clearly above)

Sworn and subscribed to before me this ..... day of ..... A. D. ..... at ..... in the State or country of .....

.....
(signature and rank of commanding officer)

Said certificate shall be sworn to before the military service voter's commanding officer or the superintendent of the veterans' hospital in which the military service voter is a patient.

Upon said margin of said flap on the inner envelopes to be sent to civilian absentee voters there shall be printed a certificate in the following form:

I, _____, do solemnly swear that I am a registered voter of the State of New Jersey, and that I have resided in the county of _____ continuously since _____
(month, date and year)

My address in said county is _____
(street and number, if any, or rural route)

where I have resided since _____
(month, date and year)

I will be a resident of the State of New Jersey at the above address on _____
(date of election)

FILL IN ONLY IF YOU HAVE MOVED OR INTEND TO MOVE YOUR RESIDENCE AFTER

_____
(county clerk insert date of fortieth day before election)

AND BEFORE THE ELECTION

I moved or will move to the above address from my previous home address at _____ in
(street and number, if any, or rural route)

the _____, county of _____
(city, borough, town, township or village)

State of _____ on _____
(give date)

Place a cross (×) in the box preceding the applicable statement below.

My reason for voting this absentee ballot is:

☐ I will be absent from the State on the date of the election.

☐ I am unable to leave my place of confinement at _____
(home address,

_____ because of
hospital address or other place of confinement)

_____ and will, therefore,
(name of sickness or physical disability)

be unable to cast my ballot at the polling place in my election district on the date of the election.

☐ I will be unable to attend at my polling place on the date of the election because of the observance of a religious holiday, pursuant to the tenets of my religion.

I marked the enclosed ballot in secret.

_____
(signature of absentee voter)

_____
(print your name clearly above)

State of .....
County of ..... } ss.
Country of .....

..... being duly sworn, deposes and says that the statements on the foregoing declaration are true.

.....
(signature of absentee voter)

Sworn to and subscribed before me this ..... day of ....., 19 ....., and I hereby certify that the affiant exhibited the enclosed ballot to me unmarked, and that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot and enclosed and sealed the same in this envelope without my seeing or knowing his vote, and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition.

.....
(signature of officer authorized by law, of the place where the oath is administered, to administer oaths)

.....
(title of officer)

4. This act shall take effect immediately.
Approved June 12, 1958.

SCHOOL LAWS, SESSION OF 1958

RESOLUTIONS

CHAPTER J. R. 7, LAWS OF 1958

A JOINT RESOLUTION reconstituting the commission to make a study of the laws of this State relating to child labor and make recommendations as to the adequacy of such laws and of proposed legislation to modernize and revise the same.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. The commission created pursuant to Joint Resolution No. 11 of the year 1955 hereby is reconstituted and the members thereof shall be appointed in the same manner as the original members of the commission were appointed and it shall organize in the manner prescribed by section 2 of said joint resolution.

2. The commission as reconstituted shall have the same powers and shall perform the same duties as heretofore and it shall report its findings and recommendations, including those for the adoption of any legislation which it deems necessary and advisable, to the Governor and to this or the next session of the Legislature.

3. This joint resolution shall take effect immediately.

Approved April 22, 1958.

SENATE CONCURRENT RESOLUTION No. 10

A CONCURRENT RESOLUTION reconstituting the commission created to study the problem of provision of additional office space for the several State departments and providing said commission with additional powers and duties.

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. The commission heretofore established pursuant to Senate Concurrent Resolution No. 16, filed June 29, 1956, is reconstituted with the same membership as heretofore and vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. The commission shall have the same powers and perform the same duties as are set forth in said Senate Concurrent Resolution No. 16, together with the additional powers and duties hereinafter set forth.

3. The commission shall report to the Governor and the Legislature not later than March 15, 1958, on the following specific matters and such other related matters as it shall determine:

a. The site or sites recommended to be acquired or used by the State in providing additional office space for State departments in both a short and long range program;

b. The organization recommended to be constituted or authorized to carry out such short and long range programs with responsibility for the formulation, perfection and execution of detailed plans for acquisition of land, site planning, including access highway and parking facilities, building construction, project financing and related items; and

c. The appropriations recommended to be made to the aforementioned organization for its uses in carrying out its studies, preparation of detailed plans and performance of its related duties.

4. The commission is authorized to select and employ technical and professional consultants and assistants to assist it in the study and report directed in section 3 of this resolution and to utilize and expend for said purposes funds heretofore appropriated to the commission hereby reconstituted.

Filed February 4, 1958.

Senate Concurrent Resolution No. 16

A Concurrent Resolution proposing to amend Article VIII, Section IV, paragraph 2 of the Constitution of the State of New Jersey.

Be it resolved *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. The following proposed amendment to the Constitution of the State of New Jersey is hereby agreed to:

Proposed Amendment

Amend Article VIII, Section IV, paragraph 2 of the Constitution to read as follows:

2. The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent, except as hereinafter provided, for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever. The bonds of any school district of this State, issued according to law, shall be proper and secure investments for the said fund and, in addition, said fund, including the income therefrom and any other moneys duly appropriated to the support of free public schools may be used in such manner as the Legislature may provide by law to secure the payment of the principal of or interest on bonds or notes issued for school purposes by counties, municipalities or school districts or for the payment or purchase of any such bonds or notes or any claims for interest thereon.

Filed June 16, 1958.

SCHOOL LAW DECISIONS

1957-1958

DECISION OF BOARD OF REVIEW, PURSUANT TO SECTION 18:5-1.6 OF THE REVISED STATUTES

DECISIONS OF STATE SUPREME COURT RENDERED ON DECISIONS OF THE COMMISSIONER AND STATE BOARD OF EDUCATION PRINTED IN 1956-1957 BULLETIN

SCHOOL LAW DECISIONS

1957-1958

I

IF OTHER FACILITIES ARE AVAILABLE, SENDING-RECEIVING RELATIONSHIP SHOULD BE TERMINATED WHEN OVERCROWDING IMPAIRS EDUCATIONAL PROGRAM

IN THE MATTER OF THE APPLICATION OF THE BOARD OF EDUCATION OF CALDWELL-WEST CALDWELL TO TERMINATE SENDING-RECEIVING RELATIONSHIP WITH THE BOARD OF EDUCATION OF THE TOWNSHIP OF MONTVILLE BEGINNING WITH THE NINTH GRADE FOR THE SCHOOL YEAR 1958-1959

DECISION OF THE COMMISSIONER OF EDUCATION

The Caldwell-West Caldwell Board of Education requested approval of the Commissioner of Education to terminate the sending-receiving relationship with the Board of Education of Montville.

On March 20, 1957, the Caldwell-West Caldwell Board of Education requested the Montville Board of Education to consent to the termination of the sending-receiving relationship between the two districts at the close of the school year 1957-1958, with the understanding that all pupils who had entered the high school could continue through graduation, but that the ninth grade pupils from Montville, beginning September 1958, would not enter Caldwell-West Caldwell High School. The Montville Board of Education objected to this and requested that the Commissioner of Education review the sending-receiving relationship between the two districts.

On June 11, 1957, a hearing was held in Trenton by the Assistant Commissioner of Education in Charge of Controversies and Disputes, at which the following facts were determined:

> The Caldwell-West Caldwell high school has a normal capacity of 750 students. The present enrollment is 1,335 pupils, 59 of whom are residents of Montville, and it is estimated that the enrollment will reach 1,700 by 1961. The Caldwell-West Caldwell Board of Education has devoted considerable time to the study of this problem, including the formation of a regional district or an enlarged consolidated district. These proposals were not accepted by the community and, furthermore, the community is not willing to increase the size of its high school in order to accommodate pupils from sending districts on a tuition basis.
>
> The Superintendent of Schools, speaking for the Board, stated that the proposed termination of the sending-receiving relationships is not directed solely to Montville and that similar requests will be filed to terminate the sending-receiving relationships with other sending districts. He also pointed out that it will be impossible for the district to provide, with present facilities, a high school program adequate for the anticipated enrollment and that, apparently, the community is not willing to expand its present facilities.

The Montville Board of Education invited the attention of the Commissioner to the fact that the Montville district sends only a small percentage of its pupils to Caldwell-West Caldwell High School, that it has been sending pupils from sections of Montville for a period of more than thirty years, and that it is more advantageous to continue to send these pupils to Caldwell-West Caldwell High School because the Township of Montville is an elongated tract of land containing about 18.3 square miles. The Montville Board of Education acknowledged, however, that it recognizes the situation facing the Caldwell-West Caldwell Board of Education and that the sending-receiving relationship must be terminated eventually.

At the close of the hearing, the Commissioner requested that the Montville Board of Education explore the possibility of finding, within a reasonable area, another district willing to accept pupils from that section of Montville Township which is affected by the present crisis at Caldwell-West Caldwell High School. The Commissioner also requested that the services of the County Superintendent of Schools of Morris County be utilized in this matter.

The following letter was received from the Montville Board of Education by the Assistant Commissioner of Education:

"July 24, 1957.

"Mr. Joseph Clayton,
"Assistant Commissioner of Education,
"Division of Controversies and Disputes,
"175 West State Street,
"Trenton 25, New Jersey.

"Dear Mr. Clayton:

"On June 11 at the hearing held in Trenton, upon the request of the Montville Township Board of Education, regarding the decision of the Caldwell-West Caldwell Board of Education to terminate the sending-receiving district relationship of the children originating from the geographical section of Montville Township known as Pine Brook, you directed me to officially survey high school districts in the immediate area of Montville Township. Your assignment has been completed and herewith I submit my report.

"Unfortunately, the task has proven to be a lengthy one due to the meeting dates of the various Boards contacted. I have letters in my files relative to the following which I shall summarize:

"Town of Boonton—will accept our pupils
"Borough of Netcong—will accept
"Hanover Park Regional High School—will accept
"Pequannock Twp. Board of Education—cannot accept
"Parsippany-Troy Hills—cannot accept
"Roxbury Township—cannot accept
"Morris Hills Regional Board of Education—have indicated that they will accept, but are holding it in abeyance until their referendum is voted on in the fall.
"Mountain Lakes—cannot accept
"Dover—cannot accept.

"I trust that the above will fill the requirements of your directive. The Board of Education of Montville Township now awaits your ruling on the matter referred to you so that a course of action will be indicated.

"Yours very truly,

/s/ V. J. W. CHRISTIE,
Superintendent"

"VJWC;mg

Section 18:14–7 of the Revised Statutes, in so far as here pertinent, provides:

"Any school district heretofore or hereafter created, which has not heretofore designated a high school or schools outside such district for the children thereof to attend, and which district lacks or shall lack high school facilities within the district for the children thereof to attend, may designate any high school or schools of this State as the school or schools which the children of such district are to attend. Whenever two or more schools are designated, the board of education of such school district shall make an allocation and apportionment of pupils to the designated high schools.

"No designation of a high school or schools heretofore or hereafter made by any district either under this section or under any prior law shall be changed unless good and sufficient reason exists for such change and unless an application therefor is made to and approved by the commissioner. Whenever two or more high schools have been designated, the commissioner shall make equitable determinations on applications for change of designation and allocation and apportionment by allocating and apportioning pupils of the sending district to the designated high schools."

It is the opinion of the Commissioner, after reviewing the facts in this case, that the Caldwell-West Caldwell High School is overcrowded, that to continue to increase this overcrowding would impair the educational program of the district and that the pupils from Montville could receive an adequate educational program in any one of four high schools within a reasonable distance from Montville. The Commissioner, therefore, approves the request of the Caldwell-West Caldwell Board of Education for the termination of the sending-receiving relationship between the Board of Education of Montville and the Board of Education of Caldwell-West Caldwell effective June 30, 1958, except that all Montville pupils enrolled now in Caldwell-West Caldwell High School will be permitted to continue until graduation and except that any future pupils of the classes of 1959, 1960 and 1961 living in that section of Montville from which pupils have ordinarily been sent to Caldwell-West Caldwell High School will be permitted to be enrolled in the Caldwell-West Caldwell High School and to continue until graduation.

December 11, 1957.

II

WHERE CONDUCT OF ELECTION OFFICIALS, ALTHOUGH IMPROPER, CANNOT BE SHOWN TO HAVE SUPPRESSED THE WILL OF THE PEOPLE, COMMISSIONER WILL NOT SET ASIDE THE ELECTION.

MARGARET H. HAINES AND
FRED SISBARRO, JR.,

Petitioners,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF LITTLE FALLS,
PASSAIC COUNTY,

Respondent.

For the Petitioners, Herbert W. Irwin.

For the Respondent, Robert W. Moncrief.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioners claim that at the special election held on June 20, 1957, at which a public question on school expansion was submitted to the voters of the school district of Little Falls, irregularities occurred at the polling places, and ask the Commissioner of Education for an investigation.

A recount of the ballots was conducted by the Assistant Commissioner of Education in Charge of Controveries and Disputes in the County Court House of Passaic County.

The announced results on June 20, 1957, were as follows:

	For the Proposal	*Against the Proposal*	*Void*	*Total*
Polling District No. 1	294	81	2	377
Polling District No. 2	101	386	2	489
Polling District No. 3	137	58	3	198
Absentee Votes	---	---	---	---
Polling District No. 1	2	1	---	3
Polling District No. 2	0	1	---	1
Polling District No. 3	0	0	---	0
	534	527	7	1068

The results of the recount were as follows:

				Referred to Comm.	
Polling District No. 1	288	76	9	4	377
Polling District No. 2	100	377	12	0	489
Polling District No. 3	135	54	8	1	198
Absentee Votes	2	2	0	0	4
	525	509	29	5	1068

Five ballots were referred to the Commissioner for final determination for the following reasons:

Four ballots contained additional markings which raised the question of whether or not they were distinguishable ballots;

One ballot was marked in red ink, while the instructions to voters stated black ink or black pencil.

Since the counting of these ballots cannot affect the results of the election, the Commissioner will not make any determination as to their validity.

On September 19, 1957, it was stipulated by the petitioners and the respondent that the parties waive further hearing and that the Commissioner be requested to decide the controversy on the basis of the affidavit of Robert R. Sterrett which reveals that:

1. Robert R. Sterrett served as chairman and judge of the election for Polling District No. 1 at the special election held on June 20, 1957.
2. He had never previously served in that capacity.
3. One of the tellers, whose duty it was to check the signature copy register to determine if persons desiring to vote were properly registered, leafed through the book, wrote on slips of paper the names of persons who had not voted, and gave these to various persons who came into the room, including the President of the Home and School Association, who came in at various times for these slips.
4. The same teller made remarks to these persons regarding other names in the signature copy register. This teller also failed to check the signature copy register for all voters, saying that she had checked certain voters' names before they entered the room.
5. Some voters later in the evening made remarks to the effect that they would have failed to vote if they had not been reminded and indicated appreciation for having been notified.
6. Mr. Sterrett, because of his inexperience, was not aware of his responsibility or authority as chairman and judge of the election.

The petitioners challenge the validity of the election on the grounds that in Polling District No. 1 a teller improperly and unlawfully solicited votes, and, contrary to her oath, influenced the outcome of the election by the solicitation of votes favorable to her position in the matter of the public question. The petitioners further claim that the teller in question so abused her position as an election official that the voting in her district did not represent the true will of the people. The petitioners do not claim that the teller permitted any unqualified persons to vote, but that she used her position to assure herself that as many voters as possible who favored the side which she endorsed would appear at the polls and cast their ballots. The petitioners cite R. S. 19:6–11 and 19:29–1 of the General Election Law and argue that the teller was unquestionably guilty of malconduct and official misconduct.

The petitioners further claim that it is impossible to determine the number of votes affected by the teller's misconduct and that, although the vote in the entire district favored the proposal by only 523 to 507, the ratio of the affirmative vote to the negative vote in Polling District No. 1 was approximately 4 to 1. The petitioners argue that where malconduct is shown to have affected the election, and where it is impossible to distinguish the tainted votes from the others, a new election should be ordered, citing *Burkett* vs.

Francesconi, 127 N. J. L. J. 541 (Sup. 1942). Therefore, the petitioners argue that this election should be declared invalid and that a new election should be held to determine the true will of the electorate.

The respondent Board of Education does not defend or condone the actions of the members of the election board, and points out that R. S. 18:7–35 imposed upon Robert R. Sterrett, as chairman and judge of the election in Polling District No. 1, the duty of prohibiting improper conduct. The respondent also asserts that, if the conduct of members of the election board had prevented or hindered a free expression of the popular will, it would join in an application to set aside the election, but that, because the conduct of members of the election board did not prevent a free expression of will of the people of the district, it is the obligation of the Board of Education to see that the will of the majority is carried out, regardless of the plurality. The respondent points out that there is no charge that votes were cast by people who were not legally entitled to vote, and, further, that there is no charge that voters were pursuaded to vote in any way other than the way they wanted to vote, or, for that matter, that they even voted in favor of the proposition. The respondent therefore claims that the activities of the teller did not constitute malconduct.

Respondent continues by pointing out that R. S. 18:7–36 defines the duties of school election officers and provides the penalty for violation thereof, that the giving out of information is not among the activities prohibited in this section, and that efforts to induce people to vote without attempting to influence the way they vote is not a violation of R. S. 19:34–15, although it is pointed out that Title 19 is used only as a reference since it does not apply to school elections.

The respondent further argues that even where malconduct exists, an election will not be set aside unless it is of a nature serious enough to challenge the results of the election, and cites the following case in support of his contention:

> In *Burrough* vs. *Branning*, *9 N. J. L. J. 110*, the Court said:
>
> "It is a principle of universal application that an irregularity which does not deprive a legal voter of his vote (not accompanied with fraud by the party seeking the benefit thereof) will not vitiate the election. The omission by election officers to discharge some duty merely directory will not set aside the return. *** There are cases where the judges of election have been guilty of acts which render them liable to indictment, and yet (in the absence of fraud by the party who claimed the benefit from the result) the election was held valid. If this is so, surely the will of the people is to be given effect in the absence of fraud, if only irregularly expressed. Negligence or mistake in the performance of duty by election officers will not be allowed to stand in the way so as to defeat the expression of the popular will."

The respondent further argues that the teller did nothing to place any obstacle in the way of the free expression of the popular will, that the act complained of did not constitute electioneering, and that, furthermore, the statute merely makes electioneering a misdemeanor; it does not declare that an election must be nullified if electioneering occurs, citing *In re Donahay's Contested Election, 21 N. J. Misc. 360, 34 A2d 299.*

In *Sharrock* vs. *Borough of Keansburg (Super. Ct. App. Div. 1951) 15 N. J. Super. 11, 83 A2d 11,* Judge Jayne said:

> "The following quotation has a familiar cadence:
>
> 'The right of suffrage is too sacred to be defeated by an act for which the voter is in no way responsible, unless by the direct mandate of a valid statute no other construction can be given.' "

The Commissioner agrees with the position of the respondent Board of Education that improper actions on the part of election officials should neither be defended nor condoned. The question to be decided is whether or not the results of this election represented the will of the legal voters of the district who took advantage of their rights to cast a vote at this time. Although there are indications that the actions of one of the tellers were instrumental in causing additional votes to be cast in favor of the proposal, the evidence falls short of the proof needed to establish that these actions changed the result of the election.

It is the opinion of the Commissioner, after reviewing the facts, arguments and the result of the findings during the recount by the Assistant Commissioner, that members of the election boards were not aware of their responsibilities and that, as a result thereof, there was improper conduct on the part of some election officials. The facts, however, do not disclose that any person voted illegally or that the actions of any member of the election board influenced the election so as to have repressed a full and free expression of the popular will.

The Court said in the case of *Application of Wene, 26 N. J. Super. 363, 97A 748,* affirmed, *13 N. J. 185:*

> "The rule in our State is firmly established that if any irregularity or any other deviation from the election law by the election officials is to be adjudged to have the effect of invalidating the vote or an election, where the statute does not so expressly provide, there must be a connection between such irregularities and the result of the election; that is the irregularity must be the producing cause of *illegal* votes which would not have been cast or of defeating votes which would have been counted, had the irregularity not taken place, and to an extent to *challenge or change the result of the election;* or it must be shown that the irregularity in some other way influenced the election so as to have repressed a full and free expression of the popular will." (Emphasis added.)

The Commissioner, therefore, finds and determines that the proposal submitted to the voters of the School District of the Township of Little Falls at a special election held on June 20, 1957, was legally adopted, and, accordingly the petition is dismissed.

December 18, 1957.

III

ONLY A BOARD OF EDUCATION MAY DESIGNATE HIGH SCHOOL OR HIGH SCHOOLS WHERE RESIDENTS MAY ATTEND, AND NO CHANGE OF DESIGNATION MAY BE MADE WITHOUT APPROVAL OF COMMISSIONER.

HARRY BOORSTEIN,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF FORT LEE, BERGEN COUNTY,

Respondent.

For the Petitioner, Per Se.
For the Respondent, Joseph T. Skelly.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks the Commissioner to issue an order directing that the Board of Education of the Borough of Fort Lee approve a change in designation of high school facilities for his daughter to the Dwight Morrow High School in Englewood and that the Englewood Cliffs Board of Education be authorized to reimburse him for tuition paid to the School District of Englewood on the grounds that the Fort Lee High School did not offer third-year French which his daughter is alleged to have needed to complete college entrance requirements.

The Commissioner finds the facts in this case to be as follows:

1. In September, 1953, the petitioner moved from Weehawken to the Borough of Englewood Cliffs; high school pupils from the Borough of Englewood Cliffs attend high school in the Borough of Fort Lee.
2. The Fort Lee High School did not offer in its course of study a third year of French, which Phyllis Boorstein, daughter of the petitioner, is alleged to have desired and needed for college entrance, whereupon she entered the Dwight Morrow High School in Englewood.
3. The petitioner paid the Board of Education of Englewood tuition in the amount of $395.00.
4. Application was made by the petitioner to the Board of Education of Englewood Cliffs for approval for the School District of Englewood Cliffs to send Phyllis Boorstein to the Dwight Morrow High School in Englewood, and for reimbursement of tuition petitioner had paid to the Englewood Board of Education, which request was denied by the Board of Education of Englewood Cliffs and by the Board of Education of Fort Lee.

The Fort Lee Board of Education submitted with its answer to the petition of appeal a copy of a letter from the Director of Admissions of the New Jersey College for Women, now Douglass College, where the petitioner's daughter was admitted as a freshman, that two years of a foreign language are and for "several years" have been required for admission. The respondent board states that it has been approved since 1919 by the New Jersey Department of Education as an approved high school and since 1931 by the Middle

States Association of Secondary Schools and Colleges and that, furthermore, its graduates have been admitted to leading colleges throughout the country.

The petitioner relies upon section 18:14–6 of the Revised Statutes which provides:

> "Any child who shall be a resident of a district which does not furnish a full high school course of study or course including the subjects such child may desire to pursue and who shall have completed the elementary course of study provided therein may be admitted to a school in another district."

It is the opinion of the Commissioner that this section of the statute must be read in conjunction with section 18:14–7 of the Revised Statutes which provides:

> "Any school district heretofore or hereafter created, which has not heretofore designated a high school or schools outside such district for the children thereof to attend, and which district lacks or shall lack high school facilities within the district for the children thereof to attend, may designate any high school or schools of this State as the school or schools which the children of such district are to attend. Whenever two or more schools are designated, the board of education of such school district shall make an allocation and apportionment of pupils to the designated high schools.
>
> "If no such allocation or apportionment of pupils has been made by resolution of the board of education of such district prior to the academic year 1943-1944, the actual allocation and apportionment of pupils to the designated high schools in effect in the academic year 1943-1944 shall be deemed to be the allocation and apportionment of pupils for the purpose of this section. In the event that any district, which is not now sending pupils to a high school or schools outside such district shall hereafter decide to designate two or more high schools which the pupils of the district shall attend, and in the event that such district shall fail to make an allocation and apportionment by resolution of the board of education, then the actual allocation and apportionment of pupils in effect in the first academic year of the designation shall be deemed to be the allocation and apportionment of pupils for the purpose of this section.
>
> "No designation of a high school or schools heretofore or hereafter made by any district either under this section or under any prior law shall be changed unless good and sufficient reason exists for such change and unless an application therefor is made to and approved by the commissioner. Whenever two or more high schools have been designated, the commissioner shall make equitable determinations on applications for change of designation and allocation and apportionment by allocating and apportioning pupils of the sending district to the designated high schools.
>
> "In the event the said commissioner shall refuse to approve the application of a district to make a change of designation or allocation and apportionment, the district may appeal from the determination of the commissioner to the State board, and in its discretion that body may affirm such determination or may approve the change of designation or allocation and apportionment sought. In the event the commissioner

approves the application of a district to change a designation or allocation and apportionment, the board of education of the school district having a high school which was theretofore designated as the school to be attended by children of the district making such application may appeal from such determination of the commissioner to the State board, and in its discretion that body may affirm such determination or may deny the change of designation sought.

"The boards of education of the districts containing high schools so designated shall determine the tuition rate to be paid by the boards of education of the districts sending pupils thereto, but in no case shall the tuition rate succeed the actual cost per pupil. The board of education of each district sending pupils to another district shall issue an order for the amount of such tuition, signed by the president and district clerk or secretary of the board of education, in favor of the custodian of the school moneys of the district having the high school being attended by such pupils, which order shall be paid by the custodian of the school moneys of the district sending the pupils, out of any moneys in his hands available for the current expenses of such district."

The Commissioner has not received any request from the Board of Education of Englewood Cliffs for a change of designation for any of its pupils from the Fort Lee High School to the Dwight Morrow High School in Englewood, pursuant to the provisions of section 18:7–14 *supra.*

It is the opinion of the Commissioner, only a board of education may designate the high school or schools where residents of the district shall attend, and no change of such designation may be made without the approval of the Commissioner of Education. The local board of education, in refusing to grant the request of the petitioner, did not abuse its discretionary powers under the statute or act with bias or prejudice, and, in the absence of bias, prejudice or the abuse of discretionary powers, the Commissioner will not interfere with the decisions of local boards of education. *Christopher C. Fiell et al.* vs. *Union Township Board of Education, 1938 S. L. D. 751.* Since the Fort Lee high school is fully accredited by the New Jersey State Department of Education, the Fort Lee Board of Education was clearly justified in refusing to accede to the petitioner's request that his daughter be sent to another high school at the expense of the Board of Education of Englewood Cliffs.

The petition is therefore dismissed.

December 23, 1957.

IV

MEETINGS OF BOARD OF EDUCATION MUST BEGIN NOT LATER THAN 8 P. M.; ANY ACTION TAKEN AT AN ILLEGAL MEETING NULL AND VOID.

ELURIA MILLIKEN,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CAMDEN, AND JOHN MCCLOSKEY,

Respondents.

For the Petitioner, Carroll, Taylor & Bischoff (Wm. G. Bischoff, of Counsel).
For the Respondent Board of Education, Alexander Feinberg.
For the Respondent, John McCloskey, Charles A. Cohen.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner, a member of the Board of Education of the City of Camden, asked the Commissioner to declare illegal a special meeting of the Board of Education of the City of Camden held on August 29, 1957, and the purported appointment of John McCloskey to fill a vacancy in the membership of the board made at said meeting to be null and void, on the grounds that the meeting was called to order after 8:00 P. M., in violation of the requirements of section 18:5–47 of the Revised Statutes.

The respondents admit in answers to the petition that the meeting was called to order after 8:00 P. M., and set forth in separate defenses that:

1. The appointment was legal and valid.
2. The meeting was commenced in substantial compliance with the law, and delay of fifteen minutes did no harm, the statute is directory and not mandatory, delay was not unreasonable, failure to comply strictly with the terms of the statute did not invalidate the meeting or appointment.
3. Since members of the board, including petitioner, assembled for conference prior to 8:00 P. M., on the evening in question, all members, except the petitioner, desired that the conference be continued until the subject of the vacancy had been discussed, and in deference to the petitioner's request, the board continued in conference and discussed said vacancy; wherefore the petitioner is estopped to question or deny the validity of the meeting and the validity of the appointment.

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes on October 30, 1957.

Counsel for the petitioner, on October 2, 1957, filed with the Commissioner the following Notice of Motion:

> "PLEASE TAKE NOTICE that the following persons join Eluria Milliken as appellants in prosecuting the Appeal in the above entitled case. They join as interested parties, taxpayers, and residents of the City of Camden:

"Mr. Harry J. Janice, 531 York Street
"Mrs. Harold C. Hudson, 719 Bailey Street
"Mrs. E. A. Conlin, 1431 Crestmont Avenue
"Mrs. Seymour Codish, P. O. Box 404, 1422 Belleview Avenue
"Mrs. Charlotte Yates, 594 Auburn Street
"Mrs. Robert C. Halsey, 41 North 36th Street
"Mrs. Harry Slattery, 928 North 4th Street
"Mrs. Robert Hawk, 1337 Argus Road"

The respondents objected to the granting of the Motion on the grounds that the intervenors were not within the time limitation, that the Motion did not comply with the requirement of section 4:37–4 of the rules of the Supreme Court for prerogative writs, that the same rule should apply in administrative hearings, and that the parties proposed as intervenors had by no personal act of their own indicated a desire to intervene. It was stipulated at the hearing that these nine individuals were taxpayers and residents of the City of Camden and were duly represented by William G. Bischoff, attorney.

It is the opinion of the Commissioner that the Motion should be granted. These individuals could have filed separate and distinct appeals if they so desired; the filing of the Motion that these persons wished to join the petitioner in this appeal was filed within a reasonable time and did not violate any administrative rule or cause any prejudice to the respondents. The nine individuals so named in the Motion are hereby made parties in this case.

The respondent moved to dismiss the appeal upon jurisdictional grounds, contending that this is not a dispute or controversy under the School Law; the petitioner claims it is a controversy or dispute under the School Law and cites the following cases in support of the contention:

Cullum vs. *Board of Education of the Township of North Bergen, 12 N. J. 285 (1954)*

Schwarzrock vs. *Board of Education of the City of Bayonne, 9 N. J. L. 370 (Sup. Ct. 1917)*

Jefferson vs. *Board of Education, 64 N. J. L. 59 (Sup. Ct. 1899)*

Petitioner further argues:

"The rule that administrative remedies must ordinarily be exhausted before resort is had to the court has long found recognition in our State." See Jefferson v. Board of Education, *supra; Cf. Stata, Young v. Parker, 34 N. J. L. 49 (Sup. Ct. 1869); State, Hall v. Snedeker, 42 N. J. L. 76 (Sup. Ct. 1880).*

It is the opinion of the Commissioner that the issues to be decided in this case are controversies or disputes under the School Law and come well within the meaning of R. S. 18:3–14. *Frank H. O'Brien* vs. *Board of Education of the Town of West New York, 1938 S. L. D. 31.* The Motion to Dismiss is denied.

We come now to the facts which the Commissioner finds in this case as a result of the hearing.

On August 27, 1957, the following notice was sent to all members of the Board of Education of the City of Camden:

"There will be a special meeting of the Board of Education held on Thursday, August 29, 1957, at 8:00 P. M., in Room 503, City Hall, Camden, New Jersey.

"The purpose of the meeting is as follows:

"1. Appointment of Board Member to fill existing vacancy on the Board of Education.
"2. Matters pertaining to the Pyne Point Junior High School.
"3. Matters pertaining to the Superintendent's Office.

"Very truly yours,

"JOSEPH C. RAGONE,
"Secretary.

"JCR:tda

"Please be present for Executive Session at 7:00 P. M."

Shortly after 7:00 P. M. on the evening of August 29, 1957, the members of the board of education met in the office of the secretary of the board for an executive session. Matters pertaining to the Pyne Point Junior High School and to the Superintendent's office were discussed. Shortly before 8:00 P. M. the question of filling the existing vacancy on the board was brought up for discussion, and this discussion was continued until about ten minutes after 8 o'clock. Shortly before 8 o'clock it was called to the attention of the members present that the public meeting must be called to order not later than 8:00 P. M. The public meeting was called to order in the public meeting room at 8:15 o'clock. At the request of the petitioner, the solicitor for the board of education was asked to give a ruling on the legality of the meeting starting after 8 o'clock. The solicitor then read into the record of the board section 18:5–47 of the Revised Statutes, which provides that

"The meetings of every board of education in the state shall be public and shall commence not later than eight o'clock in the evening."

He further advised the members of the board in caucus that any meeting of a board of education shall start not later than 8 o'clock, that any meeting started after 8 o'clock is an illegal meeting, that the board had no authority to begin a meeting after 8 o'clock and that the meeting in question was illegal. Furthermore, the regulations of the local board in Article I state that the meetings of the board shall be public and shall commence not later than 8 o'clock in the evening.

The petitioner then left the board room in protest against holding an illegal meeting.

The board continued to discuss the filling of the vacancy, because it had existed 64 days, and the board could not fill a vacancy which had existed for more than 65 days (R. S. 18:7–55). The remaining members of the board went into caucus at 9:29 P. M. Some time later they returned to the meeting room, continued the meeting by having a roll call which showed all members present except John J. Horan and Mrs. Eluria Milliken, and transacted the business for which the meeting was called. Mr. John J. McCloskey was then unanimously elected by the members present to fill the vacancy of the board of education.

The respondent argues that the statute which directs that board meetings shall commence not later than 8 o'clock in the evening does not prescribe any consequence for failure to observe the limitation, nor does it prescribe that a meeting commenced at a later hour and all business transacted there shall be a legal nullity. He further argues that no harm or injury resulted by the delay, because no one, either board or public, left before the meeting commenced. He cites, in support of his contention that the statute is directory and not mandatory, American Jurispredence, Sections 20, 23 and 26. The petitioner points out that the statute is clear and explicit.

The Superior Court, Appellate Division, has recently stated with respect to the duty of courts in interpretation of statutes:

> "The court's duty is to construe and not to write into it conditions or qualifications. That is a legislative function. *Department of Labor and Industry v. Rosen, 44 N. J. Super. 42 (App. Div. 1957).* We are not unmindful of the fact that the beneficent object of this statute is to minimize loss to workers by unemployment compensation benefits. However, we may not accomplish that desired result by extending the application of the statute to factual situations not covered by its provisions. *Texas Co. v. Unemployment Compensation Commission, 132 N. J. L. 362 (Sup. Ct. 1945), Harcourt v. Board of Review (Appellate Div. 1957) 46 N. J. Sup. 418.*"

In the case of *Frank H. O'Brien* vs. *Board of Education of West New York, 1938 S. L. D. 31,* the decision of the State Board of Education reads as follows:

> "At four o'clock in the afternoon of the 30th the Board met and adjourned to 8:15 P. M. It was at this adjourned meeting that the Board resolved that Mr. O'Brien had forfeited his membership. No question has been raised as to the legality of this meeting, which commenced after 8 P. M., contrary to law, and in view of the conclusion which we have reached, it is not necessary for us to rule on it. Needless to say, if a board can convene at four and then lawfully take a recess to 8:15, there would seem to be no reason why it could not do so until 9:15, 10:15, 11:15, or even midnight, and the spirit, if not the letter, of the law would be just as clearly broken if a meeting was called for any such hours. The law is very clear. Meetings of the Board of Education shall be public, and shall commence not later than 8 P. M. The object of the law, viz., full publicity, can be defeated almost as well by holding meetings when the great majority of the public is asleep as by a star chamber proceeding."

The State Board went on to comment, however, that the adjournment in this case was caused by inadvertence and, accordingly, based its decision wholly on other matters.

In the present case, the Commissioner finds that there was no inadvertence on the part of the respondent board of education in commencing the meeting after 8 o'clock, because its attorney had, on the evening of the meeting and prior to 8 o'clock, called the requirement of the statute to the attention of the members of the board. Furthermore, petitioner left the meeting in legitimate reliance upon the advice of the board's counsel. Assuming, without deciding, that the statutory provision in question is directory rather than mandatory, a directory statute cannot be violated with impunity where prejudice or harm from such violation results. Here the petitioner would obviously be injured

by her absence from the remainder of the attempted meeting, if the directory provision were to be ignored. The statute must be enforced in order to obviate such injury.

The respondents claim in their third separate defense that the petitioner, Eluria Milliken, is estopped to question or deny the validity of this meeting and the validity of the appointment of John McCloskey because she desired to discuss the vacancy further in the executive session prior to the board meeting, thus preventing the start of the meeting at the proper time.

The petitioners argue that the president and remaining members of the board of education could have gone to the meeting room without the petitioner and conducted the meeting on time with a quorum present and that, furthermore, she is acting in the public interest. Estoppel, under these circumstances, is not applicable to one asserting a public right. *Block* vs. *Cutter Laboratories, 278 Pac. 2d 905 at 916; Scott Paper Co.* vs. *Marcolus, 326 U. S. 249, 90 L. Ed. 47.*

The Commissioner is of the opinion that the testimony does not support the respondent's contention that the petitioner was responsible for the delay in starting the meeting or that the petitioner had intentionally, by her action, caused the meeting to be delayed beyond the required starting time. In any event, the Commissioner having granted the motion to permit nine other citizens to intervene in this action, the question of estoppel is academic.

The Supreme Court in an opinion delivered by Justice Jacobs in the case of *John E. Cullum* vs. *Board of Education of North Bergen, 15 N. J. 285, said:*

> "(2) The members of the respondent board of education hold positions of public trust and must at all times faithfully discharge their functions with the public interest as their polestar. See *Driscoll v. Burlington Bristol Bridge Co., 8 N. J. 433, 474 (1952)* certiorari denied *344 U. S. Ct. 181, 97 L. Ed. 652 (1952)* rehearing denied *344 U. S. 888, 73 S. Ct. 181, 97 L. Ed. 687 (1952).* Amongst their most vital and responsible duties is the proper selection of personnel, particularly the school superintendent. . . ."

In this instance, the respondent board of education had an equally vital responsibility in the selection of a citizen of the community to fill a vacancy in the membership of the board of education.

The decision in the Cullum case, *supra,* stated at another point:

> "The legislature has unmistakably and wisely provided that meetings of boards of education shall be public. (18:5–47). If a public meeting is to have any meaning or value, final decision must be reserved until fair opportunity to be heard thereat has been afforded."

After considering all the facts, testimony and briefs presented, the Commissioner finds and determines that the special meeting of the Board of Education of the City of Camden, held on August 29, 1957, did not comply with the requirements of section 18:5–47 of the Revised Statutes, *supra,* or with the rules of the local board of education and was, therefore, an illegal meeting. All actions taken by the Board of Education of the City of Camden at this meeting are hereby declared null and void, including the appointment of John McCloskey as a member of the board to fill a vacancy.

The petition is granted.

December 23, 1957.

V

WHERE BOARD OF EDUCATION DISMISSED A JANITOR UNDER TENURE AND ENTERED INTO A CONTRACT WITH A JANITORIAL SERVICE COMPANY FOR SIMILAR SERVICES, ACTION DID NOT CONSTITUTE A REDUCTION OF THE NUMBER OF JANITORS.

AMOS SMITH,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF MATAWAN, MONMOUTH COUNTY,

Respondent.

For the Petitioner, Vincent C. DeMaio.
For the Respondent, William C. Lloyd.

DECISION OF THE COMMISSIONER OF EDUCATION

In this case, the petitioner, who was employed as a janitor in the respondent school district, was dismissed, and his duties were transferred to the New Brunswick Window Cleaning Company as a result of a contract entered into between the company and the respondent for janitorial service.

The petitioner asks the Commissioner to order his reinstatement to his former position together with back pay from the time of his purported discharge.

The Commissioner finds the facts in this case to be as follows:

(a) The petitioner was employed from November, 1953, to June, 1954, as a janitor.

(b) In June, 1954, the respondent entered into a contract with the New Brunswick Window Cleaning Company for janitorial service; the petitioner was not re-employed by the respondent board of education.

(c) The petitioner was employed by the New Brunswick Window Cleaning Company to do the same or substantially the same work as he was doing from November, 1953, to June, 1954.

(d) It is stipulated by the respondent that on June 20, 1955, a resolution was adopted by the respondent board of education to employ the petitioner as a janitor.

(e) On July 1, 1955, the petitioner was employed again by the respondent board of education as a janitor to perform janitorial service in the respondent's school system at a salary of $234 a month or $2,808 a year.

(f) On or about the 29th of June, 1956, the board entered into a contract with the New Brunswick Window Cleaning Company to perform janitorial services, including those which had been performed by the petitioner from July 1, 1955, to June 30, 1956.

(g) The respondent board of education on June 24, 1957, decided that the contract with the New Brunswick Window Cleaning Company for janitorial service would not be renewed and reinstated the petitioner to his former position.

The respondent concedes that the petitioner has janitorial tenure within the meaning and intention of R. S. 18:5–66 and, therefore, the remaining issue before the Commissioner is whether the petitioner is entitled to back pay; the decision on this issue depends, in turn, upon whether, under the Janitors' Tenure Act, a tenured employee may be dismissed and his services be performed by a company under a contract with the board of education.

Section 18:5–66.1 of the Revised Statutes provides:

> "The board of education of any school district may reduce the number of janitors, janitor-engineers, custodians or janitorial employees, in any such district, subject to the following restrictions and conditions. No such reduction shall be made by reason of residence, age, sex, race, religion or political affiliation; but when any such janitor, janitor-engineer, custodian or janitorial employee under tenure is dismissed, the janitor, janitor-engineer, custodian or janitorial employee, having the least number of years of service to his credit shall be dismissed in preference to those having longer terms of service; had any janitor, janitor-engineer, custodian or janitorial employee so dismissed shall be and remain upon a preferred eligible list in the order of years of service for re-employment whenever vacancies occur, and shall be re-employed by the board of education causing such dismissal in such order, and upon re-employment shall be given full recognition for previous years of service in his respective positions and employments."

The respondent contends it had the legal right under section 18:5–66.1 *supra* to dismiss the petitioner and, in support of its contention cites section 11:22–10.1 of the Revised Statutes and the case of *Greco* vs. *Smith, 40 N. J. Super. 182, 122 A2d 513.* (App. Div. 1956).

The petitioner argues that the specific statutory power conferred by R. S. 18:5–66.1 is to reduce the number of janitors, and that the respondent did not reduce the number of janitors, but dismissed an employee under tenure and then replaced him with the services of a janitorial service company, which completely nullifies the intent of the Janitors' Tenure Act.

The sections of the statutes and the case cited by the respondent refer to the abolishment of positions for reasons of economy. There are no facts in this case to support the contention of the respondent that the petitioner's position was abolished for reasons of economy or otherwise.

In the case of *Ireland* vs. *Monroe Township (Gloucester County) Board of Education, 1938 S. L. D. 512,* the State Board of Education said:

> "It is the undoubted right of a local board of education to adjust, within the limitations prescribed by law, the compensation of its employees to its ability to pay, and, where such action is taken in good faith for the purpose of economy, to reduce the number of its employees by abolishing positions. However, the employing board is also bound to maintain public education in its district and to that end engage a sufficient staff of teachers and furnish the necessary facilities and that duty cannot be evaded or its non-performance excused on the plea of economy. In attempting to effect economy there must be no transgression of the school law, which would make such attempt illegal and nugatory. . . ."

In *Viemeister* vs. *Board of Education of Prospect Park, 5 N. J. Super. 215, 218,* the court said at page 218:

> "Some provisions of our school laws were designed to aid in the establishment of a competent and efficient system by affording to principals and teachers a measure of security in the rank they hold after years of service. They represent important expressions of legislative policy which should be given liberal support, consistent, however, with legitimate demands for governmental economy."

A board of education is authorized to make rules and regulations regarding the employment of janitors which are not inconsistent with the school laws. Section 18:5–66 provides:

> "The board of education of every school district shall make such rules and regulations, not inconsistent with this title, as may be necessary for the employment, discharge, management and control of the public school janitors employed by it."

After reviewing all the facts and memoranda submitted in this case, the Commissioner finds and determines that the respondent board of education, by the adoption of the resolution of June 20, 1955, employing the petitioner as janitor, without term, granted tenure to the petitioner in his employment and that the respondent board of education did not, by any action of the board, reduce the number of janitors servicing its schools, in accordance with section 18:5–66.1 *supra,* but simply did not continue to employ the petitioner who, as admitted by the respondent, was protected by the Janitors' Tenure Act. Furthermore, the respondent, by entering into a contract with the New Brunswick Window Cleaning Company for janitorial service, merely transferred to the company the duties previously performed by the petitioner.

It is the opinion of the Commissioner that the respondent, in terminating the employment of the petitioner in June of 1956, did not comply with the provisions of the statutes in the matter of dismissal of a janitor under tenure and that the action of transferring by contract the janitorial duties of the petitioner to a private company was inconsistent with the statutory rights of the petitioner. The petitioner is, therefore, entitled to receive the salary due him for the period from July 1, 1956, to June 30, 1957, and the respondent board of education is hereby directed to make such payment to the petitioner.

January 8, 1958.

VI

WHERE A BOARD OF EDUCATION HAS ACTED WITHIN ITS AUTHORITY UNDER THE STATUTES, THE COMMISSIONER WILL NOT SET ASIDE AN ACTION OF A BOARD AGAINST AN EMPLOYEE UNLESS THAT ACTION WAS THE RESULT OF BIAS OR PREJUDICE.

JOSEPH J. FLIMLIN,

Appellant,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF NORTH ARLINGTON, BERGEN COUNTY,

Respondent.

For the Appellant, Mr. James J. Breslin.
For the Respondent, Mr. Saul R. Alexander.

DECISION OF THE COMMISSIONER OF EDUCATION

The appellant, who was protected in his position as principal of the high school in the School District of the Borough of North Arlington by the Teachers' Tenure Act (R. S. 18:13–16 to 20), appeals from his dismissal by the Board of Education, effective July 1, 1957. He was charged by the Superintendent of Schools of North Arlington with inefficiency, incapacity and conduct unbecoming a teacher and principal, within the meaning of R. S. 18:13–17. There were thirteen specific charges submitted and the Board of Education, after hearing, found the appellant guilty of the following charges and not guilty of the others:

> "1. He has evidenced an unprofessional attitude and lack of administrative responsibility by his handling and course of conduct in the following incidents:
>
> "A. On or about January 13, 1954, as the result of an accident in the chemistry laboratory which necessitated medical treatment of the boys involved, Mr. Flimlin exercised force upon one of the pupils; he used improper and offensive language towards the pupil in commenting on his action, and he unjustifiably invoked interference by the police, which stringent action by him was unnecessary. . . .
>
> "C. On or about April 30, 1954, 8 students of the high school were left stranded in Little Ferry without adequate supervision, which resulted from a visit by the students to the General Motors Corporation plant at Tarrytown, New York, on a field trip arranged by the Rotary Club which was supervised and under the direction of Mr. Flimlin.
>
> "D. On or about October 1, 1954, Mr. Flimlin departed from the high school suddenly and surreptitiously without notifying any of his assistants or making arrangements for the conduct of the school and without obtaining permission from any of his superiors to be absent, thus leaving the school in a turmoil until his return on October 5, 1954.

"2. On numerous occasions he has evidenced disrespect and has challenged the authority of the Superintendent and the Board of Education by the use of disparaging and insulting language, both verbal and written; he has indulged in constant bickering with the Superintendent and has evinced a lack of willingness to cooperate with him.

Because the charge is in general terms, we make the following specific findings on the individual incidents and events under this category:

"(a) Despite specific instructions from the Superintendent, he has failed and neglected to furnish the attendance officer, who was on limited employment, with the names and addresses of questionable students or he delegated the authority to one of his clerks. . . .

"(c) He countermanded an order from the Superintendent that his proposed plan of instructing the pupils that their report cards would not be distributed to those pupils who had failed to pay fines assessed against them by issuing a mimeographed sheet dated June 21, 1957, directing that the cards be withheld from the students and sent to Mrs. McManus and by further issuing a bulletin dated June 2, 1957, reciting that report cards are to be withheld if there are any outstanding obligations and withholding the report card of a pupil (L. C.) for failure to pay a $10.00 fine at the close of school.

"(d) In May, 1956, the Superintendent requested that he furnish him with a breakdown of the teachers' class assignments for the junior and senior high school not later than May 28, 1956, so that the Superintendent could discuss prospective appointments with the Board at a meeting scheduled for that day. As a result of the principal's failure to comply the Superintendent directed a letter to the principal on May 29, 1956, admonishing him. This resulted in a letter from the principal to the Superintendent in which he charged that the Superintendent was responsible for the problems involved. . . .

"(f) Despite repeated requests that the principal submit a written recommendation giving reasons for dismissing or failure to continue the employment of Howard Richer as a Guidance Counsel during 1955-1956 so that the Superintendent would have the data for a scheduled board meeting in January, 1956, and despite the fact that the principal was in agreement with the Superintendent in this matter, he failed and neglected to comply, with the result that the Superintendent was unable to effectuate his elimination from the school system for the remainder of the year because of a 90 day clause in his employment contract.

"(g) On or about May 11, 1956, as a result of an altercation between a Peter Tobias, a teacher in the Industrial Art Shop, and a pupil (J. L.) which resulted in the preferment of

charges against the pupil in the Juvenile Court, the principal failed and neglected to furnish the Superintendent with a written report to be available for the court proceedings despite written request therefor. . . .

"(j) On February 21, 1957, the principal telephoned the office of the Superintendent and spoke to Mrs. Alice Stalb, his secretary. In this conversation the principal stated that he resented certain memorandums which were sent to him by the Superintendent and used the following language, which was unwarranted, insulting and unprofessional: 'If Dr. Thomas wants a fight, he will get a fight.'

"3. On numerous occasions he has by-passed the Superintendent and forwarded administrative matters directly to the Board of Education even though no policy of decision was involved, which resulted in the breakdown and disregard of the customary chain of command in the administration of the school system, as evidenced by the following, amongst other things:

"A. He addressed a letter to the Superintendent on the scheduling of the high school graduation this year which contains invective, unfair argument and unwillingness to abide by the decision. . . .

"D. On or about March 5, 1957, he addressed a letter to the Superintendent on the subject of missing tools from the work shop and sent a copy to the President of the Board, even though he had been admonished to refrain from this practice shortly prior thereto.

"E. He persisted in promoting a May Day Program in March, 1957, by using facilities outside of the school system contrary to the prevailing practice and the expressed opposition of the Superintendent; he informed the Board's secretary that he had cancelled the plans for this program prior to the meeting of the Board of Education and he directly contacted the Board of Education and the State Board of Education without consulting or obtaining the permission of the Superintendent. . . .

"G. On January 7, 1957, without first consulting or obtaining the permission or approval of the Superintendent, he contacted the President of the Board and appeared at a meeting of the Board to present a class assignment problem, which was a purely administrative matter involving a Miss Smialkowski, a Commercial Teacher, who had threatened to resign because of her objection to her assignment.

"H. On or about February 19, 1957, he called and contacted the President of the Board when he received two memoranda from the Superintendent which he resented prior to the Superintendent's departure for a conference of American School Administrator's Association in Atlantic City.

"I. On or about May 6, 1957, he appeared before the Board of Education on behalf of a Mrs. Angela Mosher, a Commercial Teacher, in an attempt to influence the said Board to re-

engage her for the ensuing year, which would result in her acquisition of tenure, even though and in spite of the fact that he had been apprised of the fact that the Superintendent had determined against a re-employment and without first notifying or obtaining the permission of the Superintendent for this action.

"5. He has violated and refused to abide by other provisions of the aforesaid policy of the Board in diverse and numerous other respects.

"6. In October, 1956, the said Mr. Flimlin went directly to the Board of Education to protest changing of guidance facilities and in so doing by-passed the Superintendent. . . .

"8. He issued, permitted or was instrumental in the issuance and wide circulation of incorrect and critical memoranda concerning the operation of the cafeteria and the recommendations of the Superintendent in relation thereto.

"9. He blamed the Superintendent for problems which are alleged to have occurred on or about November 16, 1956, when the students were X-rayed for tuberculosis. In so doing, he stated or implied that the program was carried out in spite of the bungling or inept handling by the Superintendent. . . .

"12. He has been generally derelict in his duties and has proven his unfitness for the position he holds by reason of the following:

"A. He has failed to supply the Superintendent with background on May Day Programs despite a directive from the Superintendent by letter dated March 8, 1957, to furnish said information and in which he was advised of the incompetent handling of this program. . . .

"C. He has improperly and illegally delegated administrative duties to clerks and subordinates.

"D. He has been guilty of unusual and unexplained absences and tardiness from school without making adequate arrangements by way of substitution.

"E. . . . Neglecting to prepare and follow through on the third polio innoculation program.

"F. He has failed to properly and adequately supervise assignments of teachers and he has exhibited a lack of adequate follow up in tardiness cases. . . .

"H. He has failed to properly supervise the cafeteria and to exercise adequate discipline there and in the high school.

"I. He has failed to report suspension of students to the Superintendent.

"J. He has failed and neglected to supply the Superintendent with a copy of his report card principles, despite a request for the same by memorandum dated October 30, 1956, entitled 'Evaluation of students for report card purposes.'

"K. He has failed to furnish a report on a directive of the Superintendent issued in February, 1957, to report on pupils entering the class late and to obtain the reactions of staff

members on the need for extending the passing time between classes, and he has neglected to take effective measures to eliminate or improve this condition.

"13. He has evinced a callous disregard of the ethics of his profession by the following incident:

"On May 11, 1957, he prepared a lengthy letter which he mailed to the parents of each member of the high school senior class and other citizens and residents of the community in which he exhorted them to attend a meeting of the Board on May 13, 1957, for the purpose of inducing the Board to reverse its position in which it has refused to grant him a salary increment for the current year. The said letter was prepared on a non-school day by his clerk. Despite the fact that this letter was not on official school business and it involved him personally, he nevertheless used school facilities, equipment and supplies. The said letter was couched in intemperate language; it impugned the motives of the Superintendent and the Board and it was libelous per se. The said conduct in involving the students of the school and their parents in his personal differences with his supervisors has and will reflect harmfully to the operation of the system."

A complete record of the proceedings before the respondent Board of Education and briefs of counsel were filed with the Commissioner and have been carefully reviewed and studied in the preparation of this decision.

Section 18:13–17 of the New Jersey School Law provides:

"No teacher, principal, superintendent or assistant superintendent under the tenure referred to in section 18:13–16 of this Title shall be dismissed or subjected to a reduction of salary in the school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes has been preferred against him, signed by the person or persons making the same, and filed with the secretary or clerk of the board of education having control of the school in which the service is being rendered, and after the charge has been examined into and found true in fact by the board of education upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of the school board or not."

The Supreme Court in the case of *Redcay* vs. *State Board of Education*, 130 N. J. L. at 371, cited in *Palmer* vs. *Board of Education of the Borough of Audubon*, 1939-1949 S. L. D. 183, at 186, said:

"An inefficient and incapable principal may do great injury to both pupils and teachers. When the charges of such conduct have been clearly proved, the removal should be easy and prompt. *Devault v. Mayor of Camden*, 48 N. J. L. 433. Nor are we concerned in searching for more than to find that there was a rational basis for such determination, if the proceedings were regular. *Alcutt v. Police Commissioners*, 66 Id. 173. . . . Unfitness to hold a post might be shown by one incident, if sufficiently flagrant, but it might also be shown by many incidents. Fitness may be shown either way."

The appellant argues that the members of the Board of Education should have disqualified themselves to hear the matter for the reason that they had pre-judged the alleged charges, due to the fact that at a conference between the appellant and the Board prior to the time charges were preferred by the Superintendent of Schools, the appellant was told by the board: "You have a choice—you either tender your resignation or be brought up on charges."

In *Mackler* vs. *Board of Education of Camden*, 16 NJR 362, at page 363, the Supreme Court in sustaining a decision of the State Board of Education held:

> "That two members of city board of education, who were also members of committee appointed to investigate business manager's office, signed formal complaint charging business manager of board with inefficiency, neglect of office, insubordination, etc., did not disqualify them to participate as members of board in hearing on such charges, in absence of showing of any malice or ill-will toward business manager or any private interest in outcome of cause." R. S. 18:5–51, N. J. S. A.

In *Groome* vs. *Board of Education of Gloucester City*, 1938 S. L. D. p. 341 at page 344:

> "Where a school board constitutes the only tribunal authorized to try charges against a teacher, there is no ground of objection to a trial before them that they are accusers rather than judges and because of their prejudice; . . .
>
> "The fact that an individual member was prejudiced against an employee on trial before the Board would not affect the Board's decision. Moreover, the prejudice of a majority of the members would not be grounds for setting aside the decision, unless it resulted in the exclusion of admissible testimony adversely affecting the rights of the employee, or unless the evidence before the Board did not afford a rational basis for its judgment."

In the opinion of the Commissioner the statute does not permit a board of education to disqualify itself from carrying into effect the School Laws, since the hearing of charges against an employee is a statutory mandate. R. S. 18:13–17 *supra.*

The next question for determination by the Commissioner is whether the charges, if proved, are sufficient to warrant dismissal.

It is the opinion of the Commissioner that the charges upon which the respondent Board of Education found the appellant guilty are sufficient, according to *Redcay* vs. *State Board of Education, supra.* Some of the charges involve failure to cooperate with the Superintendent of Schools and infraction of the rules and regulations of the Board of Education.

In the case of *Cook* vs. *Plainfield*, 1939-1949 S. L. D. 177, the Commissioner said, at page 179:

> "The success of a school depends in large measure upon good organization and hearty cooperation. When a teacher finds it impossible to work harmoniously with his immediate superior officer and cannot convince the superintendent of schools and other administrative or supervisory officers that he, rather than his immediate superior, is right, then such person should either change his attitude or seek a position elsewhere.

If he does neither, there appears only one course left to the board of education which is to conduct a full hearing and determine the action which in its opinion is best for the welfare of the school."

The appellant contends that the judgment of the Respondent Board of Education is against the weight of evidence.

In the opinion of the Commissioner the evidence clearly shows: that there was a lack of cooperation on the part of the appellant with the Superintendent of Schools, that the appellant failed on several occasions to carry out oral and written directions of the Superintendent of Schools, that there was a lack of direction in the administration of the high school under the appellant's leadership, that there was inadequate discipline and general control of the pupils in the high school.

In *Laba* vs. *Board of Education of the City of Newark*, 23 N. J. 364, at 386, decided February 4, 1957, involving the dismissal of teachers because of their refusal to answer questions before Congressional Committees, the Supreme Court thus commented upon the responsibilities of a teacher toward administrative superiors:

". . . Frankness and cooperation with an administrative superior bear directly upon a teacher's competency. They are as essential in one occupying a post of public trust and civic responsibility as academic qualifications.

". . . The rights and duties of a Superintendent have grown with custom and with professional usage. Many of his duties are imposed on him by tradition. It is one of his duties under the School Code to make sure that the teaching staff is competent, and therefore to weed out professionally unfit teachers. This is a continuing process that the Superintendent carries on. The Superintendent has the power and the duty, whenever the facts indicate the need, to inquire into and reevaluate the fitness of a teacher. Unquestionably there is a reciprocal duty on the part of the teacher to fully and frankly cooperate.

". . . While the tenure provisions of the School Code protect teachers in their positions from political or other arbitrary interferences, they were not intended to insulate them from proper inquiry as to their superiors in authority to the detriment of the efficient administration of the public school system. The School Code expressly provides that incompetence shall be a cause for dismissal and under the broad meaning properly ascribed to that term, appellee rendered himself incompetent as a member of the school organization."

The same principles apply to the relationship between a school principal and his superiors. The appellant contends that the judgment of the respondent resulted from prejudice and bias on the part of members of the Board.

There was compliance with the law requiring a hearing, the hearing extended over a period of several days, the record included over 850 pages of testimony and 151 pages of exhibits. In the opinion of the Commissioner, the rulings of the Board with regard to the questions of evidence were fair to the appellant, and he was given every opportunity to fairly and completely present his case. The Board of Education made available to him without cost a complete copy of the transcript of the hearing. All members of the Board attended each hearing.

The Commissioner cannot find any evidence which supports the contention that the appellant was in any way denied a fair and proper hearing, or that judgment of the Board was due to prejudice or bias against him.

The following excerpt from the case of *Reimer* vs. *Board of Chosen Freeholders of the County of Essex, 96 N. J. L. 371*, seems to be in point:

> "The opinion expressed in their report was based on facts ascertained by them which might be changed by the evidence to be taken on a formal hearing, and, as they had no interest but the public welfare, we must assume that such considerations would influence them on final hearing. Most, if not all, of our cases holding voidable any action by a public body because not impartially constituted rests upon the fact that the participating judge had an interest in the result. It is not an uncommon proceeding for a public body to refer charges of this character to a committee to ascertain the facts and report, on the coming in of which the whole body may take action, but such a report is not a judicial finding and has no finality. To disqualify every member of a committee serving to ascertain facts for the Board which appoints it would seriously interfere with the administration of its public duties. That a superior officer who has expressed dissatisfaction with the conduct of an inferior may sit as his judge on the trial of charges against him, there being no statutory prohibition, was held in *Crane v. Jersey City*, 90 N. J. L. 109; affirmed by the Court of Errors and Appeals, 92 Id. 242, and the reasons there given are applicable to this case."

The appellant further contends that the judgment of the Board is invalid because of hearsay testimony. After reviewing the testimony, the Commissioner is of the opinion that, although hearsay evidence was admitted over the objection of counsel on both sides, this was done in a bona fide effort to get all the facts possible regarding the numerous charges. The Commissioner can find nothing to indicate that this hearsay evidence materially influenced the finding of the Board.

In *Boots'N Saddle* vs. *Newark*, 80 N. J. L. J. 107, an opinion by Judge Clapp in examining an administrative decision of the Newark Alcoholic Beverage Control Board said:

> "There has been no denial of substantial justice. It appears, after the adequate opportunity afforded before the Division for adduction of proofs, that the Newark Board afforded counsel a sufficient opportunity for argument. Accordingly, if there was error in the action of the Newark Board, it was harmless.
>
> "The concept of due process cannot be used to reverse a case where substantial justice has plainly been rendered. Due process deals with matters of substance and not with formal objections that have no substantial bearing on the ultimate rights of parties."

The Commissioner, guided by the principles set forth above, is of the opinion that the record contains sufficient evidence to justify the action of the Board of Education, and that the dismissal was not the result of bias or prejudice. Therefore, the Commissioner affirms the Board of Education of the Borough of North Arlington in dismissing the appellant.

The appeal is dismissed.

April 21, 1958.

VII

EMPLOYMENT OF DAY-TO-DAY SUBSTITUTE TEACHER SOLELY WITHIN THE DISCRETION OF THE BOARD.

RUTH E. SMITH,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWN OF BLOOMFIELD, ESSEX COUNTY,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION ON MOTION TO DISMISS THE PETITION

The petitioner in this case complained that the President of the Board of Education of the Town of Bloomfield in a letter dated January 9, 1957, attacked her age, her ability to discipline, and her standing with former co-workers because she thinks the criticism is not true enough to interfere with substituting work in the Bloomfield Schools.

A conference was held at which the respondent moved for a dismissal of the petition on the grounds that the petition is not predicated upon any decision or action of the respondent Board of Education which would be subject-matter for review, that the petition of appeal does not set forth any violation of any rights the petitioner may claim to have, that the only apparent fact taken from the petition and upon which the petitioner feels aggrieved is that she has not been given employment as a substitute teacher by the board, that the employment of substitute teachers is solely within the discretion of the board of education and that the board's action thereon is not subject to appeal or review.

The statutes clearly provide that the employment of teachers is the responsibility of the local board of education, and there must be an affirmative vote by the majority of the whole number of members of the board for a person to be employed in any local school district.

The Commissioner finds and determines that the contentions of the respondent in the above Motion are correct and, for the reasons stated above, the Motion to Dismiss the Petition is granted.

June 26, 1958.

VIII

IN THE MATTER OF THE REQUEST OF THE BOARD OF EDUCATION OF THE BOROUGH OF PRINCETON TO TERMINATE THE SENDING-RECEIVING RELATIONSHIPS WITH THE BOARD OF EDUCATION OF THE TOWNSHIP OF LAWRENCE, MERCER COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

The Board of Education of the Township of Lawrence, after receiving notice from the Board of Education of the Borough of Princeton that it would not be able to receive any new pupils from Lawrence Township after June 30,

1959, asked the Commissioner of Education for an opportunity to be heard prior to his considering the request for approval of the termination of the designated sending-receiving relationships in accordance with section 18:14–7 of the Revised Statutes, which provides in part that "No designation of a high school or schools heretofore or hereafter made by any district either under this section or under any prior law shall be changed unless good and sufficient reason exists for such change and unless an application therefor is made to and approved by the commissioner. . . ."

A hearing was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on May 27, 1958, in the Conference Room of the State Department of Education in Trenton. The facts as determined at the hearing are as follows:

> Approximately 30% of the pupils of Lawrence Township, living in the area immediately adjacent to the Borough of Princeton, have been attending the Princeton High School for many years.
>
> The Board of Education of the Borough of Princeton, after studying the anticipated enrollment in the high school, found it necessary to advise the Board of Education of Lawrence Township that it would not be able to provide facilities for Lawrence Township pupils in the future, and, as a result of this determination by the Board of Education of the Borough of Princeton, that Board, on September 24, 1957, adopted a resolution notifying Lawrence Township that after June 30, 1959, it could not accept any additional pupils from the township.
>
> Surveys of the high school capacity and enrollment clearly indicate that the capacity of the Princeton High School is not sufficient to continue current receiving practices in the future without overcrowding the school to the end that the educational program will be impaired.

It is the contention of the Lawrence Township Board of Education, supported by a petition to the Board signed by more than 70 parents, that Princeton is the social and economic center for the area from which these pupils attend Princeton High School, that parents do their shopping in Princeton and consider it a part of their normal community. It was requested by the Lawrence Township Board of Education that the termination date be extended for a period of five years in order to give the township an opportunity to determine its future course for its educational program and to determine whether or not the community should construct its own high school.

After reviewing all of the testimony, exhibits and arguments presented by both boards of education, it is the opinion of the Commissioner that the termination of the sending-receiving relationships between these two districts must be made.

The only question remaining in the Commissioner's approval of such termination is the date when it shall be made effective. The facts support the contention of the Board of Education of the Borough of Princeton that the termination should be made as of June, 1959. However, since the Lawrence Township Board of Education is considering the question of constructing its own high school, it is the opinion of the Commissioner that one year would not be adequate for the Lawrence Township Board of Education to complete such a program and the construction of a high school. If the Lawrence Township Board of Education decides to submit such a proposal to the

voters, the Commissioner will consider on or before December 1, 1958, a request of the Lawrence Township Board of Education for an extension of the termination date. If the Board of Education of Lawrence Township does not propose to submit the question of the new high school to the voters, it is directed to approach other high schools within the area to determine whether or not they will be able to accept the pupils living in the district who normally would attend the Princeton High School and to notify the Commissioner of the results of its findings on or before December 1, 1958.

Decision is reserved until December 1, 1958, pending receipt of the requested information from the Board of Education of the Township of Lawrence.

June 30, 1958.

IX

IN THE MATTER OF THE REQUEST OF THE BOARD OF EDUCATION OF THE CITY OF BURLINGTON TO TERMINATE THE SENDING-RECEIVING RELATIONSHIPS WITH THE BOARD OF EDUCATION OF THE TOWNSHIP OF WILLINGBORO, BURLINGTON COUNTY.

For the Burlington City Board of Education, Mr. John Queenan.
For Burlington City, Mr. Herman Belopolsky.
For the Township of Willingboro Board of Education,
Mr. Sidney W. Bookbinder.

Decision of the Commissioner of Education

The Board of Education of the City of Burlington, pursuant to section 18:14–7 of the Revised Statutes, requested the approval of the Commissioner of Education for the termination of the designated sending-receiving relationships with the Board of Education of the Township of Willingboro, effective June 30, 1958. The resolution of the Burlington City Board of Education provided that no new pupils would be accepted from the Township of Willingboro after June 30, 1958.

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes on June 9, 1958. The testimony shows that in the Township of Willingboro a housing development is now under construction which will considerably increase the number of high school pupils during the next few years. After reviewing the testimony, the Commissioner is of the opinion that the termination of the sending-receiving relationships between the City of Burlington and the Township of Willingboro must be made.

At a conference of attorneys for the boards of education and the city of Burlington, the following agreement was reached in determining the effective dates of termination: Burlington City will accept all pupils from the Township of Willingboro in grades 9 to 12 for the school year 1958-1959; for the school year 1959-1960 the City of Burlington will accept those pupils from the Township of Willingboro in grades 9 and 12; the Board of Education of the Township of Willingboro will be responsible for making other arrange-

ments to provide educational facilities for the pupils in grades 10 and 11, and, beginning with the school year 1960-1961, the Willingboro Board of Education will provide facilities for all grades. This agreement was accepted unanimously by all of the individual members of the respective boards of education upon questioning by the Assistant Commissioner of Education.

The Commissioner finds and determines that the above agreement is fair and equitable for both districts. The arrangement is therefore approved as the official method of terminating the sending-receiving relationships between the Township of Willingboro and the City of Burlington.

June 30, 1958.

X

In Re Recount of Ballots Cast at the Annual School Election in the Borough of Wanaque, a Constituent District of the Lakeland Regional High School District, Passaic County.

Decision of the Commissioner of Education

The following are the announced results of the annual district school meeting of the legal voters of the Borough of Wanaque, as a constituent district of Lakeland Regional High School, held on February 4, 1958:

Alfred Villa	741 votes
Charles F. Dunay	201 votes
Thomas (Tony) Jordan	536 votes
August Shutte	546 votes

Thomas A. Jordan, a candidate for election to the Board of Education of the Lakeland Regional High School District to represent the Borough of Wanaque for the full three-year term, petitioned the Commissioner for a recount of the ballots for the reason that ballots marked with check marks behind candidates' names were counted in each of the polling districts.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Passaic County on February 28, 1958.

Following are the results of the recount of uncontested ballots, including three absentee ballots certified by the Deputy Superintendent of Elections of Passaic County:

Alfred Villa	723 votes
Charles F. Dunay	197 votes
Thomas (Tony) Jordan	527 votes
August Shutte	536 votes

At the recount 24 ballots, including those ballots referred to by the petitioner as being marked with a cross (×), plus (+) or check (√) marks to the right of candidates' names instead of in the boxes to the left of the candidates' names, as provided by law, were voided by agreement, and 18 ballots were referred to the Commissioner of Education for determination.

The ballots referred to the Commissioner were divided into the following four categories:

EXHIBIT A—8 ballots with erasures,

EXHIBIT B—8 ballots marked with cross (×), plus (+) or check (√) marks in squares to the left of the names of candidates with blue ink,

EXHIBIT C—1 ballot with a line drawn under the name of a candidate, and

EXHIBIT D—1 ballot marked with cross (×) marks in squares to the left of names of candidates with red ink.

Section 18:7–31 of the Revised Statutes provides that the following instructions shall appear on the ballot form:

> "To vote for any person whose name appears on this ballot mark a cross (×) or plus (+) or check (√) mark with black ink or black pencil in the place or square at the left of the name of such person.
>
> "To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space and mark a cross (×) or plus (+) or check (√) mark with black ink or black lead pencil in the space or square at the left of the name of such person. Do not vote for more candidates than are to be elected."

The Commissioner has held that, in the absence of any provisions of the School Law regarding other marks or erasures on ballots, a ballot should not be counted if properly marked in the squares provided, even if other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. The referred ballots have been examined by the Commissioner in the light of this consistent position. Furthermore, although the General Election Law is not binding at any school election, the Commissioner of Education, in counting and voiding ballots in school election controversies, has looked to this law for guidance. Section 19:16–4 of the Revised Statutes states in part that:

> ". . . No ballot which shall have, either on its face or back, any mark, sign, erasure, designation or device whatsoever, other than is permitted by this title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots, or the county board, justice of the supreme court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot. . . ."

It is the opinion of the Commissioner that the ballots in Exhibit A must be counted because the erasures do not constitute identifying markings. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Union Beach, Monmouth County*, decided by the Commissioner of Education March 27, 1956.

In the matter of the ballots in Exhibit B, the Commissioner finds and determines that these ballots must be counted. In the opinion of the Commissioner, the instructions on ballots in school elections, as provided by section 18:7–31 of the Revised Statutes, are directory and not mandatory;

furthermore, the ballots in question were marked with blue-black ink, a commonly used color and not a color that, in itself, would tend to identify or distinguish ballots. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County*, decided by the Commissioner April 26, 1956.

The ballots in Exhibits C and D cannot be counted because, respectively, the underlining of a candidate's name and the use of red ink could serve to identify the ballots. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Jamesburg, Middlesex County*, decided by the Commissioner March 28, 1956.

Following is a tabulation of the uncontested and referred ballots:

	Uncontested Ballots	*Exhibits* *A*	*B*	*Totals*
Alfred Villa	723	6	8	737
Charles F. Dunay	197	4	----	201
Thomas (Tony) Jordan	527	2	3	532
August Shutte	536	2	5	543
Howard Conklin	----	1	----	1
A. Petregal	----	1	----	1

The Commissioner finds and determines that Alfred Villa and August Shutte were elected from the Borough of Wanaque to membership on the Board of Education of the Lakeland Regional High School District, Passaic County, for terms of three years.

March 28, 1958.

XI

In Re Recount of Ballots Cast at the Annual School Election in Warren Township, Somerset County, a Constituent District of the Watchung Hills Regional High School District, Somerset and Morris Counties.

Decision of the Commissioner of Education

The following are the announced results of the annual school district meeting of the legal voters of Warren Township, a constituent district of Watchung Hills Regional High School, held on February 4, 1958:

Frank W. Salvato	347 votes
Field H. Winslow	345 votes
Emil Yannuzzi	1 vote
Albin Ehrhardt	1 vote

Field H. Winslow, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast because "the count was so close and because part of one ballot was discarded. . . ."

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Somerset County on March 11, 1958.

At the recount, six ballots were voided by agreement because no cross (×), plus (+) or check (√) mark was made in the square to the left of any candidate's name. The Commissioner agrees that these ballots should be voided and has so held in a number of cases. One ballot was referred to the Commissioner.

Following is a tabulation of the uncontested ballots:

Frank W. Salvato	347 votes
Field H. Winslow	343 votes
Emil Yannuzzi	1 vote
Albin Ehrhardt	1 vote

It is not necessary for the Commissioner to determine whether the one ballot referred for determination should be counted because, if it were added to the above tabulation, it would not have any effect upon the result of the election.

The Commissioner finds and determines that Frank W. Salvato was elected from the Township of Warren, Somerset County, to membership on the Board of Education of the Watchung Hills Regional High School, Somerset and Morris Counties, for a term of three years.

April 2, 1958.

XII

In Re Recount of Ballots Cast at the Annual School Election in the Township of South Brunswick, Middlesex County.

For the Petitioner, Ernest Gross.
For Melvin R. McDowell, Albert C. Barclay.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 11, 1958, for the election of members for the three-year term on the Board of Education of the Township of South Brunswick, Middlesex County:

	Polling Dist. 1	*Polling Dist. 2*	*Polling Dist. 3*	*Polling Dist. 4*	*Absentee*	*Totals*
Melvin R. McDowell	204	184	179	162	8	737
Carol Tempel	171	145	177	155	7	655
Robert C. Narosanick	172	143	214	259	6	794
Matthew Chibbaro	148	126	203	252	4	733
Rudolph J. Priepke	190	147	164	154	9	664
George E. Turner	164	153	231	261	5	814

Matthew Chibbaro, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast on the grounds that:

1. A disproportionate number of ballots were rejected at polling district number four,

2. The same standards for rejecting ballots may not have been used at all polling places, and

3. Confusion and excitement reigned at polling district number four during both the voting and the counting of votes.

The last contention is supported by an affidavit of one Virginia Terhune, Chairman and Judge of Elections in Polling District Number Four.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Middlesex County on March 6, 1958.

Following are the results of the recount of the uncontested ballots:

Melvin R. McDowell	718 votes
Carol Tempel	637 votes
Robert C. Narosanick	776 votes
Matthew Chibbaro	717 votes
Rudolph J. Priepke	645 votes
George E. Turner	795 votes

The following table shows a breakdown of ballots voided by agreement at the recount by reasons and by polling districts:

	Voted for 4	*Voted for 5*	*Voted for 6*	*No markings in squares to left of candidates' names*	*Totals*
District No. 1	1	1	1	5	8
District No. 2				2	2
District No. 3		1	2	11	14
District No. 4				14	14

The Commissioner agrees with counsel for both parties that none of these ballots should be counted. Obviously, if a voter votes for more candidates than are to be elected, his ballot cannot be counted, and the Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×), plus (+) or check (√) mark appears before a candidate's name, because this is explicitly required by statute. See *In re Annual School Election in Tabernacle Township, Burlington County, 1938 S. L. D. at p. 190*, and *In re Annual School Election in the Township of South Hackensack, Bergen County*, decided by the Commissioner of Education March 27, 1956.

At the recount twenty-eight ballots were referred to the Commissioner for determination; these ballots were divided into the following three categories:

EXHIBIT A—23 ballots marked with cross (×), plus (+) or check (√) marks in squares to the left of the names of candidates with blue ink,

EXHIBIT B—4 ballots with irregular markings,

EXHIBIT C—1 ballot with the word *yes* written in the squares to the left of three candidates' names.

In the matter of the ballots in Exhibit A. the Commissioner finds and determines that these ballots must be counted. In the opinion of the Commissioner, the instructions on ballots in school elections, as provided by section 18:7–31 of the Revised Statutes, are directory and not mandatory; furthermore, the ballots in question were marked with blue-black ink, a commonly used color and not a color that, in itself, would tend to identify or distinguish ballots. See *In re Recount of Ballots Cast at the Annual School Election in*

the Borough of Stratford, Camden County, decided by the Commissioner of Education, April 2, 1956.

In the matter of the ballots in Exhibit B, the Commissioner has consistently held that, in the absence of any provisions of the School Law regarding other marks or erasures, a ballot should be counted if properly marked in the squares, even if other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. While the General Election Law is not binding at any school election, the Commissioner of Education has looked to this law for guidance. Section 19:6–4 of the Revised Statutes supports the Commissioner in this stand. The ballots in Exhibit B have been examined and tallied in the light of the foregoing.

The ballot in Exhibit C is not marked with a cross (×) plus (+) or check (√) mark in the square to the left of any candidate's name and, therefore, is not properly marked according to the instructions on the ballot. Furthermore, the writing of the word *yes* in the squares to the left of candidates' names could serve to identify the ballot.

Following is a tabulation of the uncontested, referred and absentee ballots:

		Exhibits			
	Uncontested	*A*	*B*	*Absentee*	*Totals*
Melvin R. McDowell	718	11	1	8	738
Carol Tempel	637	9	3	7	656
Robert C. Narosanick	776	12	1	6	795
Matthew Chibbaro	717	13	1	4	735
Rudolph J. Priepke	645	10	1	9	665
George E. Turner	795	14	1	5	815

The Commissioner finds and determines that Melvin R. McDowell, Robert C. Narosanick and George E. Turner were elected to membership on the Board of Education of the School District of the Township of South Brunswick, Middlesex County, for terms of three years.

April 2, 1958.

XIII

In Re Recount of Ballots Cast at the Annual School Election in the Township of Ocean, Ocean County.

For Albert E. Tart, Jr., and Henry Gerken, Mr. Herman M. Gerber.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters, held on February 11, 1958, for the three-year term on the Board of Education of the School District of the Township of Ocean, Ocean County:

Albert E. Tart, Jr.	121 votes
Myrtle Couch	103 votes
Frank Clineman, Jr.	111 votes
Henry Gerken	115 votes

Myrtle Couch, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast on the grounds that some ballots were marked with blue ink. Mr. Frank Clineman, Jr., another candidate, also requested, through the County Superintendent of Schools, that a recount be conducted, but did not give a stated reason. A third request was made by Mr. Rudolph Camburn, Chairman and Judge of Elections, on the grounds that some of the ballots were marked with blue ink and that there were alleged irregularities and confusion during the tallying. Presumably in support of the latter contention, a statement alleging but not specifying an irregularity at the election was sent to the Commissioner. This statement is signed by about 150 persons who assert that they are legal voters of the township.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Ocean County on March 4, 1958.

Following are the results of the recount of the uncontested ballots:

Albert Tart, Jr.	113 votes
Myrtle Couch	103 votes
Frank Clineman, Jr.	111 votes
Henry Gerken	107 votes

At the recount, five ballots were referred to the Commissioner for determination. On all of these ballots, voters had placed cross (×) marks in blue ink in the squares to the left of candidates' names.

The instructions on ballots in school elections, as provided by section 18:7–31 of the Revised Statutes, are:

> "To vote for any person whose name appears on this ballot mark a cross (×) or plus (+) or check (√) mark with black ink or black pencil in the place or square at the left of the name of such person.
>
> "To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space and mark a cross (×) or plus (+) or check (√) mark with black ink or black lead pencil in the space or square at the left of the name of such person. Do not vote for more candidates than are to be elected."

In the opinion of the Commissioner, these instructions are directory and not mandatory. Although the General Election Law is not binding in any school election, the Commissioner of Education, in counting and voiding ballots in school election controversies, has looked to that law for guidance. Section 19:16–4 of the Revised Statutes states in part that:

> "No ballot which shall have, either on its face or back, any mark, sign, erasure, designation or device whatsoever, other than is permitted by this Title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots, or the county board, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot.
>
> "No ballot shall be declared invalid by reason of the fact that the mark made with ink or the mark made with lead pencil appears other than black."

The Commissioner has consistenly held that ballots marked with cross (×), plus (+) or check (√) marks in the squares provided to the left of the names of candidates should not be voided solely because of the use of blue or blue-black ink. *See In Re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County*, decided by the Commissioner of Education April 2, 1956, and *In Re Recount of Ballots Cast at the Annual School Election in the Borough of Wanaque, a Constituent District of the Lakeland Regional High School District, Passaic County*, decided by the Commissioner of Education April 2, 1958.

The cross (×) marks on the ballots referred for determination in this case do not appear to distinguish the ballots or to make any particular ballot other than a secret ballot by reason of the color of the crosses or otherwise. The chairman of the election has made a point of the fact that all five ballots were cast for the same two candidates. In the absence of any evidence to the contrary, the Commissioner must assume that this was the result of more chance.

The following is a tabulation of the uncontested, absentee and referred ballots:

	Uncontested	*Absentee*	*Referred*	*Totals*
Albert E. Tart, Jr.	113	3	5	121
Myrtle Couch	103	----	----	103
Frank Clineman, Jr.	111	----	----	111
Henry Gerken	107	3	5	115

The Commissioner finds and determines that Albert E. Tart, Jr., and Henry Gerken were elected to membership on the Board of Education of the School District of the Township of Ocean, Ocean County, for terms of three years.

April 10, 1958.

XIV

COMMISSIONER WILL NOT RULE UPON A CANVASS OF ABSENTEE BALLOTS.

In Re Recount of Ballots Cast at the Annual School Election in the Township of Monroe, Gloucester County.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 11, 1958, for the election of members for the three-year term on the Board of Education of the School District of the Township of Monroe, Gloucester County:

Albert J. Carino	409 votes
Ralph S. Wood	408 votes
George C. Turner	130 votes
John S. Bell	528 votes
Morton Houck	113 votes
Melvin E. Sickler	428 votes
Michael Kostic	251 votes

Ralph S. Wood, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast on the grounds that:

1. Twenty ballots had been rejected by the election officers,
2. There was "general confusion in Polling District No. 1, resulting in numerous interruptions and errors," and
3. Three absentee ballots were not accounted for.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Gloucester County on February 25, 1958.

It is not within the authority of the Commissioner of Education to rule upon the canvass of the absentee ballots. Section 18:3–14 of the Revised Statutes states in part that:

> "The commissioner shall decide without cost to the parties all controversies and disputes arising under the school laws, or under the rules and regulations of the state board of education or of the commissioner. . . ."

The procedures for the canvass, for announcement of results of the canvass, and for contesting of military service and civilian absentee ballots are provided for in sections 19:57–24 and 19:57–31 of the Revised Statutes. Specifically, section 19:57–24 provides that:

> "Disputes as to the qualifications of military service or civilian absentee voters to vote or as to whether or not or how any such military or civilian absentee ballots shall be counted in such election shall be referred to the County Court of the county for determination."

The results of the canvass of the absentee ballots do not, therefore constitute a controversy under the School Law, and the Commissioner must accept the certification of the Gloucester County Board of Elections.

The following, hereinafter referred to as Table I, are the results of the recount of uncontested ballots and the results of the canvass of the absentee ballots:

	Uncontested			
	Polling Dist. No. 1	*Polling Dist. No. 2*	*Absentee*	*Totals*
Albert J. Carino	231	166	----	397
Ralph S. Wood	159	234	6	399
George C. Turner	86	41	----	127
John S. Bell	240	273	3	516
Morton Houck	54	58	----	112
Melvin E. Sickler	194	216	3	413
Michael Kostic	129	119	----	248

At the recount 41 ballots were referred to the Commissioner for determination; no ballots were voided by agreement. The referred ballots have been divided into the following categories:

EXHIBIT A—one ballot, properly marked with cross (X) marks in squares to the left of candidates' names, but with one of the crosses extended to the left of the square in such a manner that it also somewhat resembles a check (√) mark,

EXHIBIT B—twenty ballots with heavy or very course cross (×), plus (+) or check (√) marks in squares to the left of candidates' names,

EXHIBIT C—seven ballots on which voters had voted for more than three candidates,

EXHIBIT D—five ballots with no cross (×), plus (+) or check (√) marks in squares to the left of candidates' names,

EXHIBIT E—one ballot with no cross (×), plus (+) or check (√) mark in the square to the left of any candidate's name, but with a diagonal or slant line in the box to the left of the name of each of the candidates,

EXHIBIT F—two ballots, properly marked with check (√) marks to the left of candidates' names, but also marked with check (√) marks to the right of candidates' names,

EXHIBIT G—five ballots marked with cross (×), plus (+) or check (√) marks in squares to the left of the names of candidates with blue ink.

The Commissioner has held in a number of cases that, in the absence of any provisions of the school law regarding other marks or erasures on a ballot, a ballot should be counted if properly marked in the squares provided, even if other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. Furthermore, although the General Election Law is not binding at any school election, the Commissioner of Education, in counting and voiding ballots in school election controversies, has looked to this law for guidance. Section 19:16–4 of the Revised Statutes states in part that:

> "No ballot which shall have, either on its face, or back any mark, sign, erasure, designation or device whatsoever other than is permitted by this Title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots or the county board, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot. . . ."

The referred ballots have been examined in the light of the foregoing.

The Commissioner finds that the ballots in Exhibits A, B and F should be counted, for those candidates opposite whose names a cross (×), plus (+) or check (√) mark appears, because the excess markings do not appear to constitute marks which would identify the ballots.

In the opinion of the Commissioner, the ballots in Exhibit C cannot be counted. It seems obvious that, if a voter votes for four or more candidates when only three are to be elected, it is impossible to determine which three candidates should be credited with votes, and any attempt to do so would be discriminatory and open to challenge.

The ballots in Exhibit D and E cannot be counted because the placing of a cross (×), plus (+) or check (√) mark in the squares provided is a statutory requirement. The Commissioner has held in many cases that a

ballot cannot be counted unless a cross (×), plus (+) or check (√) mark appears before a candidate's name. See *In re Annual School Election in Tabernacle Township, Burlington County*, 1938 S. L. D. on p. 190, and *In re Recount of Ballots in the Annual School Election in the Township of South Hackensack, Bergen County*, decided by the Commissioner of Education March 27, 1956.

In the matter of the ballots in Exhibit G, the Commissioner is of the opinion that these ballots must be counted. The Commissioner has previously held that the instructions on ballots in school elections, as provided by section 18:7–31 of the Revised Statutes, are directory and not mandatory; furthermore, the ballots are marked with blue-black ink, a commonly used color which could not reasonably be held to tend to identify any of the ballots. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County*, decided by the Commissioner of Education April 2, 1956.

Following is a tabulation of the uncontested, absentee and referred ballots:

	*Absentee and Uncontested**	*Exhibit A*	*B*	*F*	*G*	*Totals*
Albert J. Carino	397	----	8	----	3	408
Ralph S. Wood	399	1	10	----	----	410
George C. Turner	127	----	2	1	1	131
John S. Bell	516	1	8	----	4	529
Morton Houck	112	----	----	1	1	114
Melvin E. Sickler	413	1	10	----	3	427
Michael Kostic	248	----	4	2	1	255

* From Table I.

The Commissioner finds and determines that John S. Bell, Melvin E. Sickler and Ralph S. Wood were duly elected to membership on the Board of Education of the Township of Monroe, Gloucester County, for the three-year term.

April 9, 1958.

XV

In Re Recount of Ballots Cast at the Annual School Election in the Borough of Glassboro, Gloucester County.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 11, 1958, for election of members for the three-year term on the Board of Education of the School District of the Borough of Glassboro, Gloucester County:

Leroy Bright	421 votes
Meredith H. Staulcup	446 votes
A. Harvey Condiff	253 votes
Robert B. Smith	357 votes
Thomas C. Cattrall, Jr.	386 votes
E. Winslow Waters	418 votes
Chester Camiolo	629 votes
William C. Meddings	270 votes

E. Winslow Waters, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast on the grounds that:

1. Many erasures were made on the tally sheet during the tallying of votes,
2. There were irregularities in keeping the poll lists, and
3. Twenty-seven ballots were voided by the election officials.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Gloucester County, on March 14, 1958. The following are the results of the recount of the uncontested ballots:

Leroy Bright	412 votes
Meredith H. Staulcup	437 votes
A. Harvey Condiff	249 votes
Robert B. Smith	347 votes
Thomas C. Cattrall, Jr.	378 votes
E. Winslow Waters	404 votes
Chester Camiolo	617 votes
William C. Heddings	268 votes

At the recount, forty-six ballots were voided by agreement; twenty-three of these were voided because voters had voted for more candidates than were to be elected, twenty-two because no cross (×), plus (+) or check (√) marks had been placed in the squares to the left of candidates' names, and one because of writing on the ballot. The Commissioner agrees that these ballots should be voided. See *In Re Recount of Ballots Cast at the Annual School Election in the Township of Monroe, Gloucester County*, decided by the Commissioner of Education, April 9, 1958.

Twenty-four ballots were referred to the Commissioner for determination. These have been divided into the following categories:

Exhibit A—nine ballots with irregular markings,

Exhibit B—seven ballots with erasures,

Exhibit C—eight ballots marked with cross (×), plus (+) or check (√) marks in squares to the left of candidates' names with blue ink.

In a number of earlier cases, the Commissioner has held that, in the absence of any provisions of the school law regarding other marks or erasures on a ballot, a ballot should be counted if properly marked in the squares to the left of candidates' names, even if other marks, irregular cross (×), plus (+) or check (√) marks, or erasures appear on the ballot, unless the markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. See *In re Recount of Ballots Cast at the Annual School Election in the Township of South Brunswick, Middlesex County*, decided by the Commissioner of Education April 12, 1958. Furthermore, although the General Election Law is not binding at any school election, the Commissioner of Education, in counting and voiding ballots in school election controversies, has looked to that law for guidance. Section 19:16–4 of the Revised Statutes states in part that:

> "No ballot which shall have, either on its face, or back any mark, sign, erasure, designation or device whatsoever other than is permitted by this Title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots or the county board, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot. . . ."

The ballots in Exhibits A and B have been examined in the light of the foregoing, and the Commissioner finds that those ballots should be counted for those candidates opposite whose names cross (×), plus (+) or check (√) marks appear. The erasures, irregular markings or excess markings, as the case may be, do not in any instance appear to identify the ballot.

In the matter of the ballots in Exhibit C, the Commissioner has consistently held that the instructions on ballots in school elections, as provided by section 18:7–31 of the Revised Statutes, are directory and not mandatory. The ballots in Exhibit C are marked with commonly used shades of blue or blue-black ink which could not reasonably be held to identify any of the ballots. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County*, decided by the Commissioner of Education, April 2, 1956, and *In re Recount of Ballots Cast at the Annual School Election in the Borough of Wanaque, a Constituent District of the Lakeland Regional High School District, Passaic County*, decided by the Commissioner of Education, March 28, 1958.

Following is a tabulation of the uncontested and referred ballots:

	Uncontested	*Exhibits* A	B	C	*Totals*
Leroy Bright	412	5	1	2	420
Meredith H. Staulcup	437	2	3	3	445
A. Harvey Condiff	249	1	3	----	253
Robert B. Smith	347	3	4	2	356
Thomas C. Cattrall, Jr.	378	3	2	1	384
E. Winslow Waters	404	4	1	5	414
Chester Camiolo	617	2	3	6	628
William C. Heddings	268	1	2	1	272
P. G. Abbott	----	1	----	----	1

The Commissioner finds and determines that Chester Camiolo, Meredith H. Staulcup, and Leroy Bright were elected to membership on the Board of Education of the School District of the Borough of Glassboro, Gloucester County, for the three-year term.

April 15, 1958.

XVI

RESULTS OF A SCHOOL ELECTION WILL NOT BE DISTURBED BECAUSE OF ILLEGAL VOTES UNLESS THE AGGREGATE OF SUCH VOTES COULD CHANGE THE RESULTS.

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE CITY OF LAMBERTVILLE, A CONSTITUENT DISTRICT OF THE SOUTH HUNTERDON REGIONAL HIGH SCHOOL DISTRICT, HUNTERDON COUNTY.

For Margaret Heath, Messrs. Katzenbach & Salvatore
(Frank S. Katzenbach III, of Counsel)

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual district school meeting of the legal voters of the City of Lamberville, as a constituent district of South Hunterdon Regional High School District, held on February 4, 1958:

Margaret Heath	370 votes
George H. Pedrick	362 votes
John F. Curtin, Jr.	375 votes
Marie D. Warford	424 votes

Margaret Heath, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots, for an investigation of the qualifications of voters permitted to vote at the election and for the issuance of an order to stay issuance of election certificates to the two candidates whose election had been announced.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes at the Court House of Hunterdon County on March 7, 1958.

The routine procedure used by the Commissioner's representatives in conducting recounts includes an inspection of the poll list books. Section 18:7–36 of the Revised Statutes provides that:

> "In all school districts after the election officers shall have ascertained that a voter is properly registered and qualified to vote, the election officers shall furnish to the voter one official ballot numbered to correspond with the poll number of the voter, allowing for spoiled ballots, if any.
>
> "No ballot shall be handed to a voter until there is a booth ready for occupancy and until the voter shall have signed the poll list. The election officers shall not allow a voter to mark his ballot outside of an election booth unless the voter is unable to enter the booth by reason of his physical disability."

In this election there were two polling places in this constituent district, and examination of the poll list books immediately revealed that no voter had been required to sign the poll list as required by R. S. 18:7–36, *supra*. In one of the polling districts the names and addresses of the voters apparently had been written in the poll book by one person; in the other district three or possibly four people followed the same procedure in turns. The Commissioner cannot condone this disregard for the provisions of the law, but, as was said by the court in the case of *Sharrock* vs. *Borough of Keansburg*, 15 Super. 11, 83 A. 2d 11, the right of suffrage is too sacred to be defeated by an act for which the voters are in no way responsible, unless, by direct mandate of a valid statute, no other construction can be given.

The following is quoted from *Hacket* vs. *Mayhew*, 62 N. J. L. 481, 41A.668, and is similarly quoted in *In Re Canvasser's Returns*, 125 N. J. L. 115:

> "It was never the legislative intent, nor is it proper statutory construction, to defeat the vote of a citizen by an act for which he was neither directly or indirectly responsible, nor for a negligent or willful act of a municipal official, nor for the misconception of any legal duty. . . ."

The Commissioner must assume that the voters would have signed the poll lists if they had been requested to do so, and, therefore, the voters were not responsible for the omission. Furthermore, there is no direct mandate of law to warrant voiding the election on the basis of this lack of compliance with the statutes. There is no evidence of fraud in this particular matter, and there has been no claim that anyone who was properly registered and wished to vote was denied the right to vote. The Commissioner will not, therefore, declare the election void on this account.

At the recount, twenty-eight ballots were voided by agreement, and seven ballots were referred to the Commissioner. These ballots have been divided into the following categories:

Exhibit A—six ballots marked with cross (×), plus (+) or check (√) marks in the squares to the left of candidates' names with blue ink.

Exhibited B—one ballot on which the voter has apparently voted for three candidates.

In the opinion of the Commissioner, the ballots in Exhibit A must be counted. Section 18:7–31 of the Revised Statutes provides that the following instruction shall appear on the ballot form:

> "To vote for any person whose name appears on this ballot mark a cross (×) or plus (+) or check (√) mark with black ink or black pencil in the place or square at the left of the name of such person.
>
> "To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space and mark a cross (×) or plus (+) or check (√) mark with black ink or black lead pencil in the space or square at the left of the name of such person. Do not vote for more candidates than are to be elected."

The Commissioner has consistently held that these instructions are directory and not mandatory. See *In Re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County*, decided by the Commissioner of Education, April 2, 1956, *In Re Recount of Ballots Cast at the Annual School Election in the Borough of Wanaque, A Constituent District of the Lakeland Regional High School District, Passaic County*, decided by the Commissioner of Education, March 28, 1958, and *In Re Recount of Ballots Cast at the Annual School Election in the Borough of Glassboro, Gloucester County*, decided by the Commissioner of Education, April 15, 1958.

In the matter of the one ballot in Exhibit B, the Commissioner cannot determine whether the voter erroneously voted for three candidates, when only two were to be elected, or whether he meant to vote for the third one. In any event, it is not necessary for the Commissioner to determine this, for, if the ballot were counted, it could not have any affect on the results of the election.

Following is a tabulation of the uncontested, absentee and referred ballots:

	Uncontested	*Absentee*	*Exhibit A*	*Totals*
Margaret Heath	367	---	3	370
George H. Pedrick	358	1	3	362
John F. Curtin, Jr.	372	1	2	375
Marie D. Warford	418	---	4	422

In conjunction with the recount and pursuant to the petitioner's second request, the poll lists were compared with the county voter registration records to determine whether persons who were not entitled to vote were permitted to vote. The qualifications of voters at annual and special school elections are set forth in Section 18:7–27 of the Revised Statutes:

> "Every citizen of the United States of the age of twenty-one years, who shall have been a resident of the State one year and of the county in which he claims his vote five months next before the election, and whose name appears on the signature copy register shall be entitled to vote at any annual or special school election.
>
> "No person shall be permitted to vote at any school election unless his name appears on the signature copy register mentioned in section 18:7–28 of this Title, as having been registered to vote, and for the purpose of said school election no person shall be entitled to vote unless he shall be registered at least forty days prior to the date of said school election."

To qualify to vote in an annual school election in a regional district in the year 1958, a voter should have been registered on or before December 26, 1957.

Following is a list of the persons whose names are on the poll lists, but who appear, according to the records in the county office, to have been not properly registered to vote in the annual school election held on February 4, 1958:

Georgina Keeler, 252 N. Union Street—registration expired November, 1956
Genieve Fox, 49 Perry Street, who signed an affidavit pursuant to R. S. 18:7–29.1—registered January 23, 1958
Mary Hutton, 195 George Street—not registered
Alice Malloy, 1 S. Main Street—registered January 2, 1958
Michel Sanitelli, 20 Main Street—not registered or, at least, not distinguishably registered
Margaret Masterson, 14 Union Street—registered January 13, 1958
Helen McKelvey, 34 George Street—registered January 2, 1958
Madeline Barbaratta, 44 Bridge Street—registered January 21, 1958
Helen Moonan, 9 N. Union Street—registered January 24, 1958
James Cicchino, 42 N. Main Street—not registered
Charollette Emmons, 60 Bridge Street—registered January 2, 1958
Carmen Iatesta, 50 South Franklin Street—not registered
Ethel Fisher, 161 Swan Street—registration voided November, 1957
Peter Wipple or Whipple, 49 S. Main Street—not registered
Mary Walsh, 1½ N. Union Street—registered January 2, 1958
Irene Sanantoni, 60 Bridge Street—registered January 2, 1958

We now come to the charges and requests of the petitioner, who says that, ". . . at said election there was illegal and fraudulent voting. . . .", and that, ". . . malconduct, fraud or corruption took place in the conduct of said election . . ." Petitioner then requests that an ". . . investigation be made as to whether a legal and proper election was conducted . . ." and that an investigation be conducted in the matter of ". . . qualifications of voters permitted to vote at said election to ascertain whether fraud was committed, and if so, that said election be declared void. . . ."

Certainly it has already been shown that this election was not properly conducted. The question of invalidating the election because of the failure to have voters sign the poll lists has been covered. We must now consider the petitioner's request that the election be void if fraud was committed.

Although the General Election Law is not binding in school elections, the Commissioner has relied on that law and cases arising under it for guidance in making determinations in controversies resulting from school elections. Section 19:29–1 of the Revised Statutes states in part that:

> "The nomination or election of any person to any public office or party position, or the approval or disapproval of any public proposition, may be contested by the voters of this State or of any of its political subdivisions affected thereby upon 1 or more of the following grounds:
>
> a. Malconduct, fraud or corruption on the part of the members of any district board, or of any members of the board of county canvassers, sufficient to challenge the result;

b. When the incumbent was not eligible to the office at the time of the election;

c. When the incumbent had been duly convicted before such election of any crime which would render him incompetent to exercise the right of suffrage, and the incumbent had not been pardoned at the time of the election;

d. When the incumbent had given or offered to any elector or any member of any district board, clerk or canvasser, any bribe or reward, in money, property or thing of value for the purpose of procuring his election;

e. When illegal votes had been received, or legal votes rejected at the polls sufficient to change the result;

f. For any error by any board of canvassers in counting the votes or declaring the result of the election, if such error would change the result;

g. For any other cause which shows that another was the person legally elected. . . ."

In the decision of the Supreme Court *In Re Clee*, 119 N. J. L. 310, at page 323 it was said that fraud is a conclusion of law which is based upon facts and may not be charged in general terms with any power to produce effect. The Court went on to say that "The petition . . . must show that the irregularities or fraud complained of produced a result so different from that which would have been declared in their absence, as to lead the court to conclude, *prima facie,* that on account of these irregularities the result is legitimately challenged."

In the present case, although the laxity of the election officials is distressing, there is no direct evidence of a specific fraud or any evidence from which to conclude that, if the sixteen persons not properly registered had not voted, the whole result of the election would have been changed. Indeed, there is no way of determining how these sixteen persons voted, and this particular point will be hereinafter discussed in another facet of this case.

In the case of *Burrough* vs. *Branning*, 9 N. J. L. J. 110 at page 115, it is said that "There are cases where the judges of election have been guilty of acts which render them liable to indictment, and yet, in the absence of fraud by the party who claimed the benefit from the result, the election was held valid. If this be so, surely the will of the people is to be given effect, in the absence of fraud, if only irregularly expressed. Negligence or mistake in the performance of duty by election officers will not be allowed to stand in the way so as to defeat the expression of the popular will."

In accordance with the weight of authority, this election should not be held invalid because sixteen persons, not authorized to vote, voted for some candidate or candidates. To hold otherwise would be unfair to the candidates and to the citizens who voted for them.

The petitioner's third request is that the issuance of certificates of election to the announced winners be stayed. As far as the Commissioner has been able to determine, no certificates of election are given by the district. This question is therefore moot.

Being satisfied that the election should not be invalidated, the Commissioner must now determine its results.

The result of an election will not be disturbed because of illegal votes received, unless the aggregate of such votes would change the result. 29 C. J. S.

pages 322 and 323. Since we do not know for whom the sixteen previously mentioned unqualified voters voted, let us first assume that they all voted for Warford, the candidate receiving the most votes according to the recount; their votes do not now count and, therefore, Warford receives 406 votes, a comfortable margin. We must stop assumptions, however, at this point, because only five votes separate Curtin, number two, and Heath, number three, and because only thirteen votes separate Curtin, number two, from Pedrick, number four. Any further assumption could not withstand the light of logic, since it is impossible to segregate the legal voters from those which were illegal, and since the number of illegal votes is sufficient to change the result in respect to the second person to have been elected. See *Richardson* vs. *Radics* 21 N. J. Misc. 466 at 471, reversed on other grounds, 131 N. J. L. 406; *In re Donahay*, 21 N. J. Misc. 360 at 370.

The Commissioner finds and determines that Marie D. Warford was elected from the City of Lambertville to membership on the Board of Education of the South Hunterdon Regional High School District, and that the constituent district has failed to elect a second member. Accordingly, the County Superintendent of Schools of Hunterdon County is authorized, pursuant to Section 18:4–7d of the Revised Statutes, to appoint from the City of Lambertville a member to serve on the Board of Education of the South Hunterdon Regional High School District until the organization meeting following the next annual school election.

April 22, 1958.

XVII

In the Matter of the Recount of Ballots Cast at the Annual School Election in the City of Estell Manor, Atlantic County

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 11, 1958, for the election of members on the Board of Education of the School District of the City of Estell Manor, Atlantic County:

Three-Year Term
(Two to be elected)

Charles F. H. MacLean	82 votes
Agnes E. Farrell	54 votes
Louise M. Tyler	74 votes
Elia Clemenson	79 votes

Two-Year Term
(Two to be elected)

Sarah L. Furst	49 votes
Agnes Andersen	70 votes
Walter H. Betts	99 votes
Flora Olsen	65 votes

One-Year Term
(One to be elected)

Harry Marks	67 votes
Arthur Whitney	58 votes

Louise M. Tyler, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast on the grounds that there was great confusion during the tallying, especially during a second tallying, when a large number of ballots were rejected.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Atlantic County on May 9, 1958.

At the recount, five ballots were voided by agreement, and one ballot was referred to the Commissioner for determination. On the one referred ballot, the names of four candidates printed on the ballot have been crossed out, one name has been written on the ballot, and cross (×) marks have been placed in the squares to the left of the remaining candidates' names. It is the opinion of the Commissioner that the excess markings are sufficient to identify the ballot, and therefore this ballot will not be counted.

In the process of recounting, seven write-in votes for the one-year term were found to have been cast for "Whitney", with no designation of first name or intitials; fifty-eight votes were cast for Arthur Whitney, and one vote was cast for A. Whitney. The Commissioner cannot assume that the seven votes cast for "Whitney" were intended for Arthur Whitney, especially in view of the fact that one vote was cast for Harry Whitney. See *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Hainesport, Burlington County, decided by the Commissioner of Education, March 10, 1952.* Therefore, the seven votes cast for "Whitney" will not be counted.

It is not necessary for the Commissioner to determine whether the one vote cast for A. Whitney should be counted for Arthur Whitney, since it would not change the result of the election if it were.

Several persons received one vote each for the two-year term, but, since their votes do not affect the results of the election, they are not included in the following tabulation, which represents the results of the recount, including absentee ballots:

Three-Year Term

Charles F. H. McLean	81 votes
Agnes E. Farrell	54 votes
Louise M. Tyler	78 votes
Elia Clemenson	85 votes
Ed. Clemenson	1 vote

Two-Year Term

Sarah L. Furst	49 votes
Agnes Andersen	75 votes
Walter H. Betts	102 votes
Flora Olsen	64 votes

One-Year Term

Harry Marks	68 votes
Arthur Whitney	60 votes
Stanley Geircyk	2 votes
A. Whitney	1 vote
John Wager	1 vote
Harry Whitney	1 vote

The Commissioner finds and determines that Charles F. H. MacLean and Elia Clemenson were elected to membership on the Board of Education of the City of Estell Manor for the three-year term, that Agnes Andersen and Walter H. Betts were elected for the two-year term, and that Harry Marks was elected for the one-year term.

May 16, 1958.

XVIII

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF DELAWARE, CAMDEN COUNTY.

For Herbert O. Barraclough, Carlton W. Rowand.
For Robert W. Worth, Alfred R. Pierce.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 11, 1958, for the election of members to the Board of Education of the Township of Delaware, Camden County:

Harold G. Test	965 votes
Raymond P. Bintliff	933 votes
Robert B. Bigler	1158 votes
Robert W. Worth	1075 votes
Theodore Laux	515 votes
Herbert O. Barraclough	1067 votes
Joanna S. Burris	1131 votes

Herbert O. Barraclough, a candidate in the election, petitioned the Commissioner of Education for a recount of the ballots cast, claiming that, since 25 ballots were voided it would be reasonable to assume that ". . . should the said void ballots be reviewed, there would be sufficient ballots in his favor to obtain a plurality of said votes. . . ." The petitioner also claimed that many ballots passed upon by the election board ". . . were tabulated in a manner . . . which might alter . . . the votes received by the petitioner as well as (by) the said Robert W. Worth. . . ."

A recount of the ballots was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Camden on March 12 and 13, 1958.

At the recount, 22 ballots were voided by agreement, and 88 ballots were referred to the Commissioner for determination. The referred ballots have been divided into the following categories:

EXHIBIT A—68 ballots marked with cross (×), plus (+) or check (√) marks in squares to the left of the candidates' names in blue ink,

EXHIBIT B—1 ballot properly marked in the squares provided, but with (√) marks also placed to the right of candidates' names,

EXHIBIT C—4 ballots with comments written or printed on them,

EXHIBIT D—3 ballots with erasures,

EXHIBIT E—4 ballots with irregular markings,

EXHIBIT F—1 ballot upon which the voter has voted for four candidates,

EXHIBIT G—1 ballot on which no cross (×), plus (+) or check (√) marks were placed in the squares to the left of the candidates' names, but on which cross (×) marks were placed to the right of candidates' names,

EXHIBIT H—1 ballot on which the choice of candidates was indicated in green ink,

EXHIBIT I—2 ballots on which the choice of candidates was indicated in red ink,

EXHIBIT J—1 ballot on which no cross (×), plus (+) or check (√) marks were placed in the squares to the left of candidates' names, but on which the choice of candidates was indicated by diagonal lines,

EXHIBIT K—1 ballot on which apparent preference of candidates has been indicated by the numbers *1, 2, and 3,*

EXHIBIT L—1 ballot on which the voter apparently started to indicate his choice with red pencil and then covered his markings with black pencil.

Section 18:7–31 of the Revised Statutes provides that the following instructions shall appear on the ballot form:

> "To vote for any person whose name appears on this ballot mark a cross (×), plus (+) or check (√) mark with black ink or black pencil in the place or square to the left of the name of such person.
>
> "To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space and mark a cross (×), or plus (+) or check (√) mark with black ink or black lead pencil in the space or square at the left of the name of such person. Do not vote for more candidates than are to be elected."

The Commissioner had held in a large number of cases that, in the absence of any specific provisions of the School Law regarding marks or erasures on a ballot, a ballot should be counted if properly marked in the squares provided, even if the other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. In counting and voiding ballots in school election controversies, the Commissioner has also looked to the General Election Law for guidance, although that law is not binding in school elections. Section 19:16–4 of the Revised Statutes states in part that:

". . . No ballot which shall have, either on its face or back, any mark, sign, erasure, designation or device whatsoever, other than is permitted by this Title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots, or the county board, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot.

"No ballot shall be declared illegal by reason of the fact that the mark made with ink or the mark made with lead pencil appears other than black."

The referred ballots have been examined in the light of the foregoing.

The Commissioner finds that the ballots in EXHIBIT A should be counted; in several previous cases he has been of the opinion that the instructions on ballots are directory and not mandatory, and, when ballots have been marked with proper cross (×), plus (+) or check (√) marks in squares to the left of the candidates' names in commonly used shades of blue or blue-black ink, they have been counted. See *In re Recount of Ballots Cast at the Annual School Election in the Borough of Stratford, Camden County,* decided by the Commissioner of Education April 2, 1956.

In the matter of the ballots in EXHIBITS B, D, and E, the Commissioner determines that the erasures and irregular markings do not constitute irregularities sufficient to identify the ballots or to make them other than secret ballots; these ballots will therefore be counted.

The ballots in EXHIBITS C and K could reasonably be considered identifiable because of the written comments or numbering opposite candidates' names, or because of the comments after the questions to be voted upon; these ballots will not be counted.

The Commissioner finds that the ballot in EXHIBIT L should be counted because the small amount of red showing does not tend to identify the ballot; the voter in this instance has apparently made an honest effort to correct his original error and to cover up the original red cross (×) mark with black pencil.

In the matter of EXHIBIT F, it seems obvious that a ballot should not be counted if the voter has voted for four candidates when only three are to be elected, since it would be impossible to tell which three candidates should be credited with votes; this ballot will therefore not be counted.

The ballots in EXHIBITS G and J cannot be counted because the placing of a cross (×), plus (+) or check (√) mark in the squares provided is a statutory requirement, and the Commissioner has consistently held that ballots cannot be counted unless so marked. See *In re Annual School Election in Tabernacle Township, Burlington County, 1938 S. L. D. at page 190,* and *In re Recount of Ballots Cast at the Annual School Election in the Township of South Hackensack, Bergen County,* decided by the Commissioner of Education March 7, 1956.

It is the Commissioner's opinion that the ballots in EXHIBITS H and I are identifiable; for this reason these ballots will not be counted.

Following is a tabulation of the uncontested, referred and absentee ballots:

	Uncontested	*A*	*B*	*D*	*E*	*L*	*Absentee*	*Total*
Harold G. Test	926	36	----	3	----	----	2	967
Raymond P. Bintliff	899	25	----	----	2	1	4	931
Robert B. Bigler	1123	28	1	----	2	1	4	1159
Theodore Laux	502	12	----	----	1	----	----	515
Robert W. Worth	1042	27	1	----	2	1	4	1077
Herbert O. Barraclough	1022	39	1	3	1	----	2	1068
Joanna S. Burris	1092	37	----	2	1	----	2	1134

The routine procedure used by the Commissioner's representative in conducting recounts includes an inspection of poll list books, tally sheets and other records of the election for compliance with the statutes in the conduct of school elections.

At this recount the following irregularities were discovered:

1. The poll list books were not signed by the voters in polling districts number 3, 5 and 6;
2. No addresses of voters appeared after their signatures in polling district number 2;
3. Two of the poll list books in polling district number 1 were not signed by the Secretary and Judge of the Election, and the signatures of the voters were not consecutively numbered;
4. The tally sheet in polling district number 5 was not signed by the chairman and tellers as required by R. S. 18:7–38;
5. The provisions of R. S. 18:7–45 were not fully carried out; this section states in part that:

> "At an annual or special election of the legal voters of the district held at two or more polling places, the tally sheets, poll list, and ballots shall be placed by the secretary of each election in a sealed package indorsed with the address of the polling place and the date on which the election was held, and the chairman shall deliver the same immediately to the secretary of the board, together with a statement of the result of the election, signed by the chairman and the secretary. . . ."

In a brief supplementing his original petition for a recount, the petitioner requests that the election "be declared illegal and void" because of the irregularities which have been hereinbefore noted.

Although the Commissioner cannot condone such negligence and disregard for the provisions of the law, and although the laxity of the election officials is most disturbing, the weight of authority indicates that this election should not be declared void. In the case of *Sharrock* vs. *Borough of Keansburg, 15 N. J. Super. 11, 83 A. 2d 11,* the court said:

> "The right of suffrage is too sacred to be defeated by an act for which the voters are in no way responsible, unless by direct mandate of a valid statute, no other construction can be given."

Similarly, the court held in *Hackett* vs. *Mayhew, 62 N. J. L. 481, 41 A. 688,* that

> "It was never the legislative intent, nor is it proper statutory construction, to defeat the vote of a citizen by an act for which he was neither directly nor indirectly responsible, nor for a negligent or willful act of a municipal official. . . ."

In the case of *Burrough* vs. *Branning, 9 N. J. L. J. 110 at p. 115,* it is said that

> "There are cases where the judges of election have been guilty of acts which render them liable to indictment, and yet, in the absence of fraud by the party who claimed the benefit from the result, the election was held valid. If this be so, surely the will of the people is to be given effect, in the absence of fraud, if only irregularly expressed. Negligence or mistake in the performance of duty by election officers will not be allowed to stand in the way so as to defeat the expression of the popular will."

The Commissioner finds and determines that Robert B. Bigler, Joanna S. Burris and Robert W. Worth were elected to membership on the Board of Education of the School District of the Township of Delaware, Camden County, for terms of three years.

June 2, 1958.

XIX

IN THE MATTER OF THE PETITION OF THE BOROUGH OF NEW SHREWSBURY, MONMOUTH COUNTY, TO BE CONSTITUTED AS A SEPARATE SCHOOL DISTRICT.

For the Borough of New Shrewsbury, Messrs. Applegate, Reusille, Cornwell & Harman.
For the Board of Education of the Township of Shrewsbury, Mr. Alston Beekman, Jr.
For the Township of Shrewsbury, Mr. Harry Evans.

Decision of the Board of Review, Pursuant to Section 18:5–1.6 of the Revised Statutes

The Borough Council of New Shrewsbury filed with the Commissioner of Education the following resolution:

> "Whereas the Borough of New Shrewsbury has heretofore adopted a resolution on November 7, 1957, requesting the Monmouth County Superintendent of Schools to make a study and investigation as to the possibility of constituting the Borough of New Shrewsbury as a separate school district, pursuant to the provisions of New Jersey Revised Statutes 18:5–1.3, the said municipality now being a part of the school district of the Township of Shrewsbury, and
>
> "Whereas Earl B. Garrison, County Superintendent, has filed his report of such study and investigation with the governing body of the Borough of New Shrewsbury, Now Therefore,

"BE IT RESOLVED by the Mayor and Council of the Borough of New Shrewsbury that petition be and the same is hereby made to the Commissioner of Education for permission to submit to the legal voters of the Borough of New Shrewsbury the question whether the Borough of New Shrewsbury shall be constituted a separate school district,

"BE IT FURTHER RESOLVED that the Borough Clerk serve a copy of this petition upon the Township of Shrewsbury and upon the Board of Education of the School District of the Township of Shrewsbury and upon the Monmouth County Superintendent of Schools and shall forward proof of such service, together with a copy of this petition to the Commissioner of Education.

"I, WALTER L. CANFIELD, Borough Clerk of the Borough of New Shrewsbury, do hereby certify that the foregoing resolution was unanimously adopted by the Mayor and Council of the Borough of New Shrewsbury on December 30, 1957, a quorum being present.

/s/ WALTER L. CANFIELD
Borough Clerk."

The Township of New Shrewsbury filed the following answer, a resolution adopted by the Borough of New Shrewsbury:

"WHEREAS The Township of Shrewsbury was heretofore divided into the Borough of New Shrewsbury and the Township of Shrewsbury, but which municipalities remained and constituted one school district known as the School District of the Township of Shrewsbury, and

"WHEREAS the School District of the Township of Shrewsbury consists of the aforesaid two municipalities within the meaning of New Jersey Revised Statutes 18:5–1.2, and

"WHEREAS pursuant to the provisions of New Jersey Revised Statutes 18:3–1.3 the Borough of New Shrewsbury did by resolution make a petition to the Commissioner of Education for permission to submit to the legal voters of the Borough of New Shrewsbury the question whether the Borough of New Shrewsbury shall be constituted a separate school district, and

"WHEREAS, a copy of said resolution was duly served upon the Township of Shrewsbury on or about December 31, 1957, and

"WHEREAS pursuant to the provisions of New Jersey Revised Statutes 18:5–1.5 the Township of Shrewsbury shall file an answer to the petition as to its position; and

"WHEREAS the Township of Shrewsbury is opposed to the Borough of New Shrewsbury being constituted a separate School District,

"NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Shrewsbury that the answer to the petition of the Borough of New Shrewsbury is as follows:

"1. The Township of Shrewsbury challenges the jurisdiction of the Commissioner of Education to act in this matter in that the statutes under which the Borough of New Shrewsbury are acting are unconstitutional as to the Township of Shrewsbury.

"2. The Township of Shrewsbury challenges the jurisdiction of the Commissioner of Education to act in the matter in that the Township of Shrewsbury never consented to be bound by the terms of the statutes aforesaid.

"3. The Township of Shrewsbury opposes the constitution of the Borough of New Shrewsbury as a separate school district in that

(a) An excessive debt burden may be imposed upon the Township of Shrewsbury.

(b) An efficient school system cannot be maintained in the Township of Shrewsbury without excessive cost.

(c) There will be insufficient pupils in the Township of Shrewsbury to maintain a properly graded school system.

(d) For such other causes as may become apparent after further analysis has been made.

"4. That the Township of Shrewsbury reserves the right to file a supplemental answer, if necessary.

"BE IT FURTHER RESOLVED that the Township Clerk serve a copy of this answer upon the Borough of New Shrewsbury and upon the Board of Education of the School District of the Township of Shrewsbury and upon the Monmouth County Superintendent of Schools and shall forward proof of service, together with a copy of this answer to the Commissioner of Education.

/s/ ANNE C. SWITEK
Clerk

"I, Anne C. Switek, Township Clerk of the Township of Shrewsbury do hereby certify that the foregoing resolution was adopted by the Council of the Township of Shrewsbury, January 7th, 1958, a quorum being present.

"Anne C. Switek
"Clerk"

Pursuant to section 18:5–1.2 of the Revised Statutes, the County Superintendent of Schools made a study of the financial conditions of the Borough of New Shrewsbury and the Township of Shrewsbury and the effect such a division would have upon the school districts if the Borough of New Shrewsbury were to be constituted as a separate and distinct school district.

Section 18:5–1.6 of the Revised Statutes provides as follows:

"Within fifteen days of the filing of the answers to the petition, the Commissioner of Education shall submit the petitions and answers to a board of review to consist of the Commissioner of Education as chairman, the Commissioner of the Department of Conservation and Economic Development, and the Director of the Division of Local Government in the Department of the Treasury. Any interested parties shall be entitled to a hearing before the board of review. The board of review shall consider the effect of the proposed separation upon the educational and financial situations of both the new and remaining districts in the light of the considerations referred to in section five of this act. Within sixty days of the receipt of petitions and answers, the board of review shall, by a

majority vote of its members, grant or deny the petitions, and, if the petitions are granted, the board's determination shall include the amount of indebtedness, if any, to be assumed by the remaining and the new district, respectively."

A hearing was held on March 6, 1958, before the Board of Review in Trenton. The Board of Review finds and determines the following to be the facts in this case:

Prior to 1950, the Borough of New Shrewsbury and the Township of Shrewsbury were one municipality; namely, the Township of Shrewsbury. In 1950 legislation was passed creating the Borough of New Shrewsbury, leaving the Township of Shrewsbury with an area of only 64 acres, and constituting the Borough of New Shrewsbury with an area of approximately 16 square miles, 11 of which are taxable property. In 1957 the United States Government sold its holdings in the Township of Shrewsbury—those holdings constituting practically all of the real estate in the township. The Vail Homes and its real estate were sold to a cooperative formed by the residents of the homes at a price in excess of $700,000. The apartments located in the township were sold to the township for a consideration of $2,500.00. The total equalized valuation of the Borough of New Shrewsbury is $250,042,194.00, and the total equalized valuation of the Township of Shrewsbury, according to the assessment records in the County Tax Office of Monmouth County, is $3,100.00. Prior to the sale by the Government of the property to a private cooperative, the Board of Education of the Township of Shrewsbury has received continuously both aid for current operating expense and for building facilities from the Federal Government for the pupils living in the Shrewsbury Township area, known as Vail Homes. In its application for building aid, the Board of Education certified to the following as a part of its application to the Federal Government:

"ASSURANCES

"THE APPLICANT HEREBY GIVES ASSURANCE TO THE COMMISSIONER OF EDUCATION THAT:

"1. The Applicant has or will have title to the site, or the right to construct upon such site the school facilities specified in this Part II of the application and to maintain such school facilities on such site for a period of not less than 20 years after the completion of the construction;

"2. The Applicant has legal authority to undertake the construction of the project and to finance the proposed non-Federal share of the cost thereof;

"3. The Applicant will from time to time prior to the completion of the project submit such reports relating to the project as the Commissioner of Education may reasonably require;

"4. The Applicant's school facilities will be available to the children for whose education contributions are provided in Title III of Public Law 815, as amended, on the same terms, in accordance with the laws of the State in which Applicant is situated, as they are available to other children in the Applicant's school district;

"5. The Applicant will cause work on the project to be commenced within a reasonable time after receipt of notification from the Commissioner of Education that funds have been allotted, and to be prosecuted to completion with reasonable diligence; and

"6. The rates of pay for laborers and mechanics engaged in the construction will not be less than the prevailing local wage rates for similar work as determined in accordance with Public Law Numbered 403 of the 74 Congress, approved August 30, 1935, as amended, under standards, regulations and procedures prescribed by the Secretary of Labor.

/s/ LOUIS H. STEINMULLER
Applicant's Authorized Representative

"CERTIFICATION OF STATE EDUCATIONAL AGENCY

"I have examined this PART II of the application and I find: (1) that the project is not inconsistent with over-all State plans for the construction of school facilities; (2) that all information submitted herein, which is verifiable from records on file in the State Educational Agency, is consistent with such records; and (3) that all information submitted herein, which is not verifiable, is, to the best of my knowledge, correct and complete.

"Comments and recommendations:

STATE EDUCATIONAL AGENCY
By KENNETH F. WOODBURY
TITLE Assistant Commissioner of Education
STATE New Jersey"

"Date: June 29, 1956

The petitioner contends that the above assurance did not mean that the township had agreed to educate these children for a period of twenty years, and this should have no bearing upon this decision. The Board of Review does not agree with the contention of the petitioner that the board of education does not have the responsibility of providing facilities for these children for a certain period. The petitioner further argues that denial of separation imposes a financial inequity upon the Borough of New Shrewsbury, pointing out in his argument that the State aid for the township's pupils and taxes collected from the township do not cover the cost of educating the township's pupils. However, when the Federal aid for current expense for these pupils received by the board of education was taken into consideration, the cost was considerably reduced. The petitioner further contends that the separation of the district would not impose an excessive debt upon the township, and that the Borough of New Shrewsbury would continue to provide education on a tuition basis for the children residing in the township. The Board of Review can find no statutory authority whereby the petitioner may bind any future board of education in the Borough of New Shrewsbury to receive pupils from Shrewsbury Township on a tuition basis.

The County Superintendent of Schools states in his report, pursuant to section 18:5–1.2, regarding the ability of the township to provide an educational program for the pupils of the township, at page 5:

> "The present ratables without State or Federal help could not support an equal educational program, much less the construction of comparable facilities."

The Borough of New Shrewsbury would retain title to all the school property now in the township valued at over $1,000,000.00 and would be liable for the present debt of $580,000.00. All other assets of the Board of Education would go to the Borough of New Shrewsbury, with the exception of .0135% which would go to the township.

The County Superintendent's report shows that for the school year 1958-1959 the Board of Education will receive $173,462.00 in current expense aid from the State of New Jersey and $28,496.00 in State building aid. If the district of New Shrewsbury were constituted, New Shrewsbury Borough would receive in current expense aid $128,509.00 and New Shrewsbury Township would receive $44,953.00. In building aid New Shrewsbury Borough would receive $22,498.00 and New Shrewsbury Township would receive $5,998.00.

It is the opinion of the Board of Review, after reviewing all the facts, testimony and exhibits, that

(1) If the Borough of New Shrewsbury is permitted to be constituted as a separate school district, it would leave Shrewsbury Township School District with an area of only 64 acres, which would not be of sufficient size or of sufficient resources to provide a thorough and efficient school system as required by the Constitution of this State. The present trend in the development of the educational system of this country is to create larger units of administration with the belief that better educational results are obtained;

(2) That the Shrewsbury Township Board of Education on two occasions has given assurance to the Federal Government that the school facilities of the township would be available to the children of the township area for whom the Federal Government made substantial grants for purposes of school construction, and, therefore, the children of the township area should be entitled to use these facilities;

(3) The petitioner cannot under present law provide any assurance that the pupils of the township district could be continued as tuition pupils, if the Borough of New Shrewsbury were to be constituted as a separate school district; and, furthermore, in the event they were not so permitted to attend, the township district does not have sufficient area and resources to provide adequate school facilities as required by law;

(4) There would not be a substantial financial gain to the Borough of New Shrewsbury if it were to be constituted as a separate school district. The additional State aid which would be paid to the township would reduce the per pupil aid to the Borough of New Shrewsbury, and Federal aid for Federally connected children living in the township would be payable to the township and not to the borough.

For the foregoing reasons, the Board or Review unanimously denies the request of the petitioner.

April 16, 1958.

F. M. RAUBINGER
Commissioner of Education

JOSEPH E. McLEAN
Commissioner, Department of Conservation & Economic Development

G. C. SKILLMAN
Director, Division of Local Government in the Department of the Treasury

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XX

SUPREME COURT OF NEW JERSEY

No. A-124, September Term, 1957

BOARD OF EDUCATION OF THE CENTRAL REGIONAL HIGH SCHOOL DISTRICT OF OCEAN COUNTY,
Plaintiff-Appellant,

vs.

STATE BOARD OF EDUCATION OF NEW JERSEY,
Defendant-Respondent,

WILLIAM PATRICK TUNNEY,
Intervener-Appellant.

Argued April 22, 1958; decided May 19, 1958.

Mr. John J. Rafferty argued the cause for the intervener-appellant.

Mr. David D. Furman, Acting Attorney General, argued the cause for the respondent.

The opinion of the Court was delivered by JACOBS, J.

This is an appeal from the State Board of Education's decision affirming the Commissioner of Education's action which advised the Board of Education of the Central Regional High School District of Ocean County to discontinue the transportation of elementary parochial school children who attend grades below the junior-senior high school grades of 7 through 12 for which the regional district was established. *R. S.* 18:8–1 *et seq.* We certified the matter on our own motion. *R. R.* 1:10-1(a).

The parties have submitted an agreed statement of facts which sets forth the following: Prior to the school year 1956-57 the school children in grades 9 through 12 from the school districts of Seaside Park, Seaside Heights, Island Heights, Ocean Gate, Berkeley and Lacey attended the Toms River Consolidated Schools system on a tuition basis. Each of the school districts furnished transportation to the consolidated school and at the same time

furnished transportation along established routes to children within the districts who attended grades kindergarten through 8 at St. Joseph's Parochial School in Toms River and grades 9 through 12 at St. Rose's School in Belmar. In September 1956 the newly created Central Regional High School District of Ocean County assumed the responsibility of educating children from grades 7 through 12 who reside in the regional district composed of Seaside Park, Seaside Heights, Ocean Gate, Berkeley and Lacey. At the same time the regional district assumed the responsibility of transporting its students to the junior-senior high school in Berkeley. Public school bus routes were established employing the most direct routes to the junior-senior high school and transportation was also furnished along the established public school bus routes to school children residing within the regional district and attending St. Joseph's Parochial School, a nonprofit private school. Transportation was afforded to the parochial school children without regard to whether they were in grades within or below the grades of 7 through 12 for which the regional district was established.

After receiving a complaint from a resident of the district the Commissioner of Education advised the Regional Board under date of February 4, 1957 that it was not authorized to provide transportation for pupils of lower grade than those for which the regional district was organized. On April 8, 1957 the Commissioner wrote a letter to the Regional Board which noted that the Board had continued to provide transportation for the lower grade pupils and pointed out that if it did not discontinue its practice the County Superintendent would be obliged to disapprove its transportation and that State aid could not be paid on disapproved transportation. On May 7, 1957 the Board appealed to the State Board of Education which affirmed the Commissioner's action. Thereafter the Board appealed to the Appellate Division but its appeal was withdrawn after William Patrick Tunney, a resident and taxpayer of Seaside Heights and father of fifth and second grade pupils attending St. Joseph's Parochial School, was permitted by the Appellate Division to intervene as a party appellant.

R. S. 18:14–8 provides, in pertinent part, as follows:

> "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part.
>
> "When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part."

No issue has been raised here by the parties as to the constitutional validity of *R. S.* 18:14–8. The intervening appellant's brief states that the constitutionality of the statute was not questioned in the proceedings below and assumes that the matter has been settled. The Attorney General's brief states that "the constitutionality of public expenditure for the transportation

of parochial school children was sustained in *Everson* vs. *Board of Education of Ewing Twp.*, 330 U. S. 1 (1947), *affirming* 133 N. J. L. 350 (E. & A. 1945), and is not challenged on this appeal." And it also points out that "*R. S.* 18:14–8 was approved in the landmark *Everson* decision because of the benefit to school children, a legitimate objective, independent of any incidental benefit to a particular religion." Shortly after *Everson* was determined the people of New Jersey adopted the Constitution of 1947 which provides in Article 8, Section 4, Paragraph 3 that "the Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years inclusive to and from any school."

The single issue thus presented to us is whether the language of *R. S.* 18:14–8, construed in the light of its legislative history and judicial interpretation in *Everson,* grants statutory power to a regional district to transport resident parochial school children along the established public bus routes even though some of the children are in grades below those for which the regional district was established. In 1900 the Legislature, following *L.* 1894, c. 335, sec. 22, provided that whenever in any school district there are children living remote from the schoolhouse the board of education may make rules and contracts for the transportation of said school children to and from school. See *L.* 1900, c. 95, sec. 118. This provision was carried forth in later enactments (*L.* 1902, c. 36, sec. 111; *L.* 1903, Spec. Sess. c. 1, sec. 117; *L.* 1918, c. 32, sec. 1) and in the 1937 Revised Statutes. See *R. S.* 18:14–8. In 1931 the Legislature authorized the establishment of regional boards of education (*L.* 1931, c. 275) and in 1938 it enlarged its earlier enactment to provide for regional districts and regional boards. *L.* 1938, c. 155; *R. S.* 18:8–1.

In 1941 Senator Driscoll introduced a bill to amend *R. S.* 18:14–8; the statement attached to the bill set forth that its object was "to provide for transportation to and from school of children attending other than public schools except such schools as those which are operated for profit in whole or in part." The bill was altered in the course of its passage but its original purpose was fairly effectuated by the ultimate enactment (*L.* 1941, c. 191) which amended *R. S.* 18:14–8 and became effective on July 1, 1941. In its first paragraph it provided that whenever in any district there are children living remote from any schoolhouse the board may make rules and contracts for the transportation of the children to and from school "including the transportation of school children to and from schools other than a public school" except schools operated for profit. And in its second paragraph it directed that when any school district provides transportation for public school children to and from school, transportation along the established school route "shall be supplied to school children residing in such school district in going to and from school other than a public school," except schools operated for profit.

The statute as amended relates to transportation rules and contracts by a board of education in any district including a regional board in a regional district; and it does not recognize any distinction based on the grades being attended by the school children who are resident within the district and seek transportation along the established school route. In *Everson* the Board of Education of the Township of Ewing maintained classes through grade 8 and transported public school students beyond that grade to the public high

school in Trenton. The Board also made arrangements for the transportation of resident parochial school children to Trenton. The decision of the Court of Errors and Appeals upheld the arrangements as being within the authority of *R. S.* 18:14–8 even though they included pupils in the elementary grades of the parochial school as well as pupils in the high school grades. No legislative action was taken after *Everson* to limit the language of *R. S.* 18:14–8 so as to exclude the transportation of elementary grade parochial pupils by a local or regional board of education which was providing transportation for high school or junior high school pupils.

In the light of the foregoing we have concluded that the Central Regional High School District did not exceed its statutory authority under *R. S.* 18:14–8 in furnishing transportation along its established bus routes to school children residing within the regional district and attending St. Joseph's Parochial School, even though some of the children were in grades below grade 7. We reject the respondent's contention that this result and the statutory interpretation upon which it rests "would have equal force as applied to the other functions and responsibilities set forth in *R. S.* 18:11–1 and *R. S.* 18:14–1." Unlike *R. S.* 18:14–8, the cited provisions do not deal with the transportation of children to schools other than public schools. *Compare Board of Education* vs. *Atwood*, 73 N. J. L. 315 (Sup. Ct. 1906), *aff'd*, 74 N. J. L. 638 (E. & A. 1907) *with Bd. Ed., &c., West Amwell* vs. *State Bd. Ed. of N. J.*, 5 N. J. Misc. 152 (Sup. Ct. 1927). *R. S.* 18:14–8 alone deals with such transportation and our present judicial function is to carry out the particular legislative purpose there evinced without affecting other provisions of the school laws which are not before us for determination. The various general rules of statutory interpretation which are relied upon by the respondent are not in dispute but they shed no additional light as to the meaning of *R. S.* 18:14–8.

The respondent closes its brief with the assertion that the transportation of elementary parochial school children along regional junior-senior high school bus routes will entail large public expenditures and that disapproval of the Commissioner's restrictive interpretation of *R. S.* 18:14–8 will discourage the establishment of such regional schools. But it presents no supporting data and, in any event, these are statutory policy matters for legislative rather than judicial consideration. See *Ablondi* vs. *Board of Review*, 8 N. J. Super. 71, 75 (App. Div. 1950).

Reversed.

XXI

SUPREME COURT OF NEW JERSEY

A-34 September Term 1957

IN THE MATTER OF JOSEPH J. MASIELLO, JR., APPLICANT FOR LIMITED SCHOOL ADMINISTRATOR'S CERTIFICATE.

JOSEPH J. MASIELLO, JR.,

Petitioner-Appellant,

vs.

THE STATE BOARD OF EXAMINERS,

Respondent-Respondent.

Argued November 18, 1957. Decided January 20, 1958.

On appeal from Decision of State Board of Education to the Superior Court, Appellate Division; certified by the Supreme Court on its own motion prior to hearing in the Appellate Division.

Mr. Leo Yanoff argued the cause for petitioner-appellant.

(Mr. H. Kermit Green, of counsel.)

Mr. Thomas P. Cook, Deputy Attorney General, argued the cause for respondent-respondent.

(Mr. Grover C. Richman, Jr., Attorney General, attorney.)

The opinion of the court was delivered by FRANCIS, J.

In November 1955 appellant Joseph J. Masiello, Jr., applied to the State Board of Examiners for a school administrator's certificate. The application was denied on the ground that he did not have the necessary qualifications. Subsequent appeals to the Commissioner of Education and the State Board of Education resulted in affirmances of the denial. Review was then sought in the Appellate Division of the Superior Court but we certified under *R. R.* 1:10–1 (*a*).

N. J. S. A. 18:2–4 (*e*) authorizes the State Board of Education to:

> "Make and enforce rules and regulations for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education, for each of which certificates a fee of not less than $5.00 shall be charged."

Rules and regulations adopted pursuant to this statute are administered by the State Board of Examiners, the agency to which the task of issuing the certificates is assigned. *N. J. S. A.* 18:13–1.

Possession of the school administrator's certificate sought by Masiello is essential for the position of supervising principal or superintendent of schools. To obtain it, certain qualifications established by the State Board of Education must be satisfied. One of them is at the heart of this controversy. It provides that the applicant must have

> "*Three years* of experience *as a vice principal, when so designated by a board of education and properly certificated as a principal,* spending more than half time in the fields of administration or supervision, * * * ." (Emphasis supplied.)

Masiello asserted compliance with this standard but the Board of Examiners declared to the contrary, basing its decision on the undisputed facts.

In order to understand the positions of the parties, some reference to the circumstances is necessary.

Masiello was employed as a teacher in the public school system in Madison, New Jersey, on September 1, 1935. On March 25, 1942, the local board of education created three new offices designated Dean of Boys, Dean of Girls and Director of Guidance in the Madison High School, where he was then teaching. The organizational chart before us illustrates the nature and stature of these positions by paralleling them on a horizontal line immediately below the office of Principal. They were designed to relieve the principal of certain duties, some of them supervisory and administrative. The title "Dean" was selected instead of "Assistant Principal" because the board felt that it sounded more authoritative. Masiello was appointed Dean of Boys and was given an increase in salary. Thereafter, his teaching burden was lessened and he spent about four-sevenths of each school day in supervisory or administrative work. However, he was never specifically designated "vice principal."

On *April 20, 1944*, during his tenure as Dean of Boys, the Board of Examiners issued to him a letter of eligibility for a supervisor's certificate. The record indicates that under the then current rules, such a certificate would qualify the holder to serve as "principal of any school." However, Masiello never paid the requisite $5.00 fee or obtained the certificate. He resigned from the high school on *September 11, 1946* to become Field Representative of the New Jersey Education Association.

On *April 7, 1948* he was advised by the State Board that he was eligible for a high school principal's certificate. Some correspondence followed, apparently in furtherance of an effort on his part to demonstrate that his previous work as Dean of Boys met the test for a supervising principal's certificate. The Board declined to accept that experience as sufficient for the purpose, but did issue to him a statement of eligibility as high school principal on September 20, 1948. His status then remained at rest until he requested the school administrator's certificate in November 1955.

Masiello maintains that his service as Dean of Boys should be considered the equivalent of the required experience as vice principal. The State Board of Education counters by pointing to the organizational chart showing three of the high school officers, Dean of Boys, Dean of Girls and Director of Guidance, on the same level of authority, with no person designated as Vice Principal. And it urges that designation as such is demanded by the rule in order to avoid any question as to occupancy of the status necessary to qualify for a school administrator's post. Moreover, said the Board, appellant was never "properly certificated" as a principal while functioning as Dean of Boys, and possession of the certificate cannot be brushed aside as a mere formality by one who has received a statement of eligibility to acquire it. Our attention is called also to the fact that under Rule 23, which was then controlling, the statement operated to extend the right to obtain the certificate on payment of the fee for a period of four years after issuance. And we note that the document sent to Masiello and dated April 20, 1944, says:

"This statement of eligibility is valid until April 20, 1948."

However, we have concluded that it is not necessary to pass upon these two issues because in our judgment another ground exists which is clearly dispositive of the case.

If we were to adopt the view that service as Dean of Boys was the same as that of Vice Principal and that failure to procure the supervisor's certificate was a mere formal irregularity, Masiello would still come face to face with the mandate that an applicant must have *three years* of experience as vice principal while "properly certificated as a principal" in order to qualify as administrator. As has been shown, the statement of eligibility for the supervisor's certificate was issued on April 20, 1944, and he resigned as Dean of Boys on September 11, 1946, two years, four months and 23 days later.

To meet this insurmountable barrier, reference is made to the fact that Masiello commenced to function as Dean of Boys on March 25, 1942, more than two years prior to his notification of eligibility as supervisor. And it is argued that a portion of the period prior to April 20, 1944 should be tacked to his service after that date to make up the required three years. The Board of Examiners held that the time element of the rule could not be satisfied in that manner.

Masiello charges that this holding illegally discriminates against him because in previous situations similar to his, the rules have been liberally interpreted in order to accomplish the end he is seeking here. In support of his position, he refers to seven cases of alleged relaxation or waiver.

In the field of administrative law generally the doctrine of stare decisis has not had the same forceful impact as it has had in the common law. *Davis, Administrative Law* (1951) p. 550. The attribute of flexibility which is a salutary incident of the administrative process, as well as the acute understanding that similarity of problem is not identity, have made for an unusually gradual development of a doctrine of customary administrative law. However, subject to the basic notion that experience is a teacher and not a jailer, *Shawmut Ass'n* vs. *Securities and Exchange Com'n,* 146 F. 2d 791, 796-797 (1st Cir. 1945), a realization has grown over the years that constancy of decision is desirable. So interpretative and adjudicative determinations have been acquiring more decided precedential force both within the agencies and in the courts. *Parker, Administrative Law* (1952) p. 250-253; *Davis, supra,* p. 561. In the important area of public education during these days of urgent need of qualified teachers, the agency charged with administration of the school laws ought to be and undoubtedly is sensitive to the significance of precedent. We assume that an awareness exists of the desirability of equal treatment of like circumstanced applicants for the various qualifying certificates, and that change of, or departure from, previous rulings will not take place unless they are brought about by general policy considerations or unless the need therefor becomes manifest through experience. Consequently, when a serious, as opposed to a frivolous, allegation of discrimination is made, just disposition of the claim would seem to require some specific distinguishment of the case by an informed agent of one of the boards at some time during the operation of the "comprehensive system of internal appeals" spoken of in *Laba* vs. *Newark Board of Education,* 23 N. J. 364, 382 (1957). The records of the cases being in the agency, such treatment is an important, if not an essential, aid to ultimate judicial review.

One who charges discrimination in the application of allegedly precedential decisions must bear the burden of establishing it, and on the record

presented here, we cannot say that the onus has been sustained. The Commissioner of Education in his written opinion on appeal from the Board of Examiners did not discuss and distinguish each earlier instance relied upon by Masiello. However, he recorded the fact that he had reviewed the cases and had found that they did not warrant a conclusion of discrimination. Abstracts of them agreed upon by counsel have been furnished to us. Our study does not persuade us that they demonstrate the establishment of a custom or practice of relaxing the rule requiring service of a specific period of time after the granting of one certificate as a condition to qualification for another in a higher echelon of school administration. Nor are we satisfied that the few instances cited in support of the alleged practice of tacking periods of service are so identical or analogous to the present controversy as to warrant a determination adverse to that of the Commissioner.

Masiello asserts that in the course of these proceedings he did not have a full and fair hearing and therefore was denied due process. He points out that the Board of Examiners disposed of the matter on an informal basis; that on the first appeal, although full opportunity was given for the examination and cross examination of witnesses and for the introduction of documentary proof, the Commissioner did not grant a de novo hearing and made no independent findings, but limited his review to a decision as to whether there had been illegal, unreasonable or arbitrary action by the Board of Examiners or whether its action showed bias or prejudice; and that in the final appeal the State Board of Education, without written opinion, simply affirmed the Commissioner's findings.

It has long been the law of this State that the requirements of due process are satisfied in situations of this kind if at any time before the order becomes effective, a fair hearing is granted by administrative or judicial action. *N. J. Zinc Co.* vs. *Board of Review*, 25 N. J. 235, 239 (1957); *Adams Theatre Co.* vs. *Keenan*, 12 N. J. 267, 278 (1953); *Metropolitan Motors* vs. *State*, 39 N. J. Super. 208 (App. Div. 1956). "Hearing" in this context means a hearing of evidence and argument, and judgment thereon. *Handlon* vs. *Town of Belleville*, 4 N. J. 99 (1950); *N. J. State Bd. of Optometrists* vs. *Nemitz*, 21 N. J. Super. 18, 28 (App. Div. 1952).

Assuming that there was an infirmity in the type of proceeding before the Commissioner because of his failure to afford an independent review of the original agency action, it cannot be said that prejudicial error resulted. This is so because the facts are undisputed as to Masiello's lack of three years of experience as a vice principal while certificated as a principal, and therefore the dispositive issue to be resolved by the Commissioner was one of law and not of fact. *Cf. Nordco, Inc.* vs. *State*, 43 N. J. Super, 277, 283-286 (App. Div. 1957).

However, in view of the statement by the Commissioner that the scope of review before him is restricted to consideration of the problem of arbitrary action or abuse of discretion by the Board of Examiners, it seems advisable to discuss the administrative hierarchy within the Department of Education and the nature of the internal appeals afforded by the relevant statutes. We do this with a consciousness that within the legislative grants of authority the various tribunals "may mould their own procedures so long as they operate fairly and conform with due process principles." *Laba* vs. *Newark Board of Education, supra* at 382.

The State Department of Education is the highest echelon of the structure. It is composed of the State Board of Education and the Commissioner of Education. The Board consists of 12 members appointed by the Governor, and is invested with general supervision and control of public instruction in the State. *N. J. S. A.* 18:2–1. The Commissioner of Education is likewise appointed by the Governor. He is the chief executive and administrative officer of the department. Also, he is the secretary of the Board, as well as its official agent for all purposes. *N. J. S. A.* 18:3–1, 7 and 7.2. Subject to the approval of the Board he is empowered to enforce all of its rules and regulations and to supervise all schools of the State receiving any part of the State appropriation. *N. J. S. A.* 18:3–7 and 7.2. He may appoint up to six assistant commissioners of education subject to the approval of the Board and civil service regulations where applicable, *N. J. S. A.* 18:3–2; 18:3–7.1, and he may assign to one of them the duty of "hearing and determination of controversies which may arise under the school laws, or the rules and regulations of the State Board * * * ." *N. J. S. A.* 18:3–2e.

Provision is then made for the establishment of a State Board of Examiners. The Commissioner of Education is its chairman and subject to the approval of the State Board of Education he appoints its members. The Board of Examiners is the original level of the administrative framework and is authorized to "grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education * * * under rules and regulations prescribed by the State Board of Education." *N. J. S. A.* 18:13–1. Thus it is apparent that the authority of the Commissioner extends into each of the three planes of the department's structure.

As has already been said, the demands of due process necessitate a fair hearing for an applicant like Masiello by administrative or judicial action. From the standpoint of practical and efficient operation of the various statutes denoting the legislative intent, where should such a hearing be given? At some level of the tripartite department, or within the court system?

Previous to the 1947 Constitution generally the final action of an administrative agency was reviewed in the courts by means of the prerogative writs. In most instances, after the writ, or rule to show cause why such a writ should not be granted, was allowed, testimony was taken through reference to a Supreme Court Commissioner. This testimony sometimes augmented an inadequate record of the agency; frequently it constituted the entire record submitted for consideration by the court. In many cases therefore the judicial determination was reached in part on the basis of matters not advanced below or not as fully developed below. This was not a wholly satisfactory or efficient method of review. In some sense it diluted or rendered less effective the expertise of the agency.

Under our present judicial system, appeal from a final administrative tribunal order is to the Appellate Division of the Superior Court. *R. R.* 4:88–8. Leave to take additional material testimony may be granted on such appeal on a showing "that there were good reasons for failure to present it in the proceedings before the agency." The Division may order that it be taken before the agency or "in exceptional instances, before a judge in the trial division." And when the additional proof is introduced before the agency, it must be made part of the appeal record "together with * * * findings of fact thereon by the agency." *R. R.* 4:88–9. So the new rules of practice have

at the least a two-fold purpose. One is to accord the fullest possible recognition and effect to the legislative intention in establishing the agency to administer the law governing the particular subject. The second is to enable the judicial branch of the government to have the benefit of the expert and experienced judgment of the administrator on the full facts before attempting to engage in a review of its action. Thus a motivating factor in the adoption of *R. R.* 4:88–8 and 9 was the obvious desirability, as a matter of practical and convenient administration, of having a hearing in the agency in the first instance which would meet the demands of due process. In this way the functions of the agency and the court may be exercised under conditions which give the broadest possible sweep to the jurisdiction of each. We do not impose such a practice; we propose it in the interest of expedience, efficient operation within our respective jurisdictions, and last, but not least, as a sound approach to the achievement of ultimate justice. As Justice Jacobs said for this court in *N. J. Zinc Co.* vs. *Board of Review, supra* at 240:

> "* * * [d]ecent regard for the legislative policies and the interests of the parties directs that the underlying factual findings and the determination thereon be made first within the agency."

These observations bring us to the consideration of the present matter. The record indicates that the proceeding before the Board of Examiners was an informal one. A hearing in the constitutional sense was not accorded there. Although the Commissioner is chairman of the board, he did not—and, we assume, usually does not—participate in its decision. The statute does not in express terms direct that appeal from such decision be taken to the Commissioner. However, *N. J. S. A.* 18:3–14 says that he

> "shall decide without cost to the parties all controversies and disputes arising under the school laws, or under the rules and regulations of the state board or of the commissioner."

This enactment provides the basis for his review of the action of local boards of education. *Laba* vs. *Newark Board of Education, supra; Bd. Education, Beach Haven* vs. *State Bd. Education*, 115 N. J. L. 364, 367 (Sup. Ct. 1935); *Schwarzrock* vs. *Bd. Education of Bayonne*, 90 N. J. L. 370 (Sup. Ct. 1917); *Ridgway* vs. *Upper Freehold Bd. Education*, 88 N. J. L. 530 (Sup. Ct. 1916). And it is reasonable to suppose that the same avenue was meant to be followed in challenging an order of the Board of Examiners. *Clark* vs. *State Board of Examiners*, 5 N. J. Misc. 175 (Sup. Ct. 1937).

Consideration of the appeal may be by the Commissioner personally or he may delegate the "hearing and determination" to an assistant commissioner, "subject to the right of appeal from any such determination to the State Board." *N. J. S. A.* 18:3–2e. If the appeal is handled personally by the Commissioner, review of his decision may be had before the State Board of Education. *N. J. S. A.* 18:2–4d.

Masiello's appeal was sent to an assistant commissioner where full opportunity to *produce* and *examine* witnesses was given. Apparently the delegation to the subordinate official was made merely for the purpose of enabling him to act in the capacity of a gatherer of evidence. See *Horsman Dolls, Inc.* vs. *Unemployment, &c., Com.*, 134 N. J. L. 77, 80-81 (E. & A. 1946). Decisional authority was withheld. The record as compiled was returned to

the Commissioner (we assume without a report or recommendation, *Mazza* vs. *Cavicchia*, 15 N. J. 498 (1954)), who then rendered his decision.

As set forth above, the legislative scheme contemplates final administrative review by the Board of Education. That board may refer "the conduct and hearing of such appeals to a committee of not less than three in number of its members, which committee shall, after consideration, report thereon and recommend its conclusions to the board, which board shall thereupon decide the appeal by resolution in open meeting." *N. J. S. A.* 18:3–15. In this connection it should be noted that where such reference procedure is adopted, the report of the panel must be made available to the interested parties and they should be given an opportunity to file objections to it and to be heard thereon by the board itself before final determination is made. *Fifth St. Pier Corp.* vs. *City of Hoboken*, 22 N. J. 326 (1956); *Redcay* vs. *State Board of Education*, 128 N. J. L. 281 (Sup. Ct. 1942).

When the Commissioner regained the record after all of the evidence of the parties had been compiled, what was his function? He took the view that it was to study the proof in order to decide whether the action of the Board of Examiners was arbitrary or capricious or whether it was the result of bias or prejudice. We cannot agree.

The mandate of the legislature is that the Commissioner "shall decide * * * all controversies and disputes." "Decide" in such a context means decision after hearing on the facts presented to him. Manifestly, there was no adequate hearing before the Board of Examiners. The evidence was gathered for the first time on appeal to the Commissioner so that he could "decide" independently as the statute ordained, as distinguished from his more restricted appraisal of the action taken at the initial level. The importance of his pursuit of a proper course of action can be gauged by the fact that on further appeal the Board of Education, without opinion, simply affirmed his ruling.

We do not undertake to say that the hearing shall be had before the Commissioner or at what level of operation it shall be provided. Solution of these problems is left to the discretion of the department. The concern of the judicial branch of the government is that a hearing be given and an adequate record made either before the Board of Examiners or before the Commissioner. If such a hearing takes place before the former and decision is rendered there after the parties have had a proper opportunity to be heard, then on appeal the latter "[i]n reaching his determination * * * must * * * give due weight to the nature of the findings below, although his primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated." *Laba* vs. *Newark Board of Education*, *supra* at 382. More definitively, this means that the burden of the Commissioner is to weigh the evidence and to make an independent finding of fact on the record presented; and in the process of reaching that finding, he should give due regard to the opportunity of the hearer below to observe the witnesses and to evaluate their credibility. *Cf. R. R.* 1:5–4(*b*). On the other hand, if, as in this case, the hearing demanded by principles of fair play is had before him for the first time, then the obligation to "decide" signifies a completely de novo and independent decision on the facts.

Our view as to the scope of the various departmental appeals has been propounded because, as was said in *Laba* (at 381), the statutory language

"leaves much to be desired" and because of the prevalent apparent misconception of the Commissioner's function on review. On the record before us, if the facts had been in conflict on the crucial aspect of the case, i. e., compliance with the three-year service requirement for the administrator's certificate, a remand to the Commissioner would have been ordered for an independent resolution of the issue. But since the facts showing noncompliance with the time condition are undisputed, there is no need to do this. And because the stipulated records of the cases submitted in support of the claim of departure from precedent are not adequate to warrant a conclusion of discrimination, bias or prejudice against Masiello, we see no occasion for a remand on that score.

However, a word of caution seems advisable. In his opinion the Commissioner took the view that "It is not within the province of the Commissioner to order the State Board of Examiners to alter its interpretation of the rules" of the State Board of Education. Such self-imposed limitation does not appear to be proper upon a study of the broad statutory authority granted to him. As has already been indicated, he is required to enforce "all rules and regulations prescribed by the State Board" and to decide all disputes arising under the rules and regulations of the State Board. And as *Laba* notes, "his primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated." Consequently if, on appeal to him, it appears on the exercise of his independent judgment that an interpretation by the Board of Examiners of any rule of the Board of Education is violative of the letter or spirit of such rule, the proper discharge of his duty requires corrective action.

For the reasons stated, the order of the Board of Examiners refusing to grant a school administrator's certificate is affirmed. No costs.