State of New Jersey
Department of Education
Trenton

NEW JERSEY

SCHOOL LAWS

Enacted during the Legislative
Session of 1951

SCHOOL LAW DECISIONS
1950 - 1951

Keep with 1938 Edition of New Jersey School Laws

SCHOOL LAWS, SESSION OF 1951

AMENDMENTS

SUPPLEMENTS

SCHOOL LAWS, SESSION OF 1951

AMENDMENTS OF 1951*

CHAPTER 39, LAWS OF 1951

AN ACT to amend "An act authorizing the use of voting machines in school elections under certain conditions, and supplementing article three of chapter seven of Title 18 of the Revised Statutes," approved May twelfth, one thousand nine hundred and forty-seven (P. L. 1947, c. 146), as the same was amended by chapter thirteen of the laws of one thousand nine hundred and forty-nine (P. L. 1949, c. 13).

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

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

8. *The names of such candidates shall be arranged in the manner provided by section five of chapter two hundred thirteen of the laws of one thousand nine hundred and fifty.* The grouping of two or more candidates and political party designations are hereby prohibited.

2. This act shall take effect July first, one thousand nine hundred and fifty-one.

Approved April 13, 1951.

CHAPTER 40, LAWS OF 1951

AN ACT concerning education, and amending section 18:7–104 of the Revised Statutes.

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

1. Section 18:7–104 of the Revised Statutes is amended to read as follows:

18:7–104. *If the Attorney-General has approved the legality of the proceedings authorizing the issuance of bonds as provided in section 18:7–87 of the Revised Statutes, the* board may make contracts, within the authority conferred by the legal voters, notwithstanding the moneys to be raised therefor by the issuance of notes or temporary loan bonds or permanent bonds are not in hand.

2. This act shall take effect immediately.

Approved April 13, 1951.

CHAPTER 55, LAWS OF 1951

AN ACT concerning education and providing minimum salaries for teachers in school districts, and amending section 18:13–13 of the Revised Statutes.

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

1. Section 18:13–13 of the Revised Statutes is amended to read as follows:

18:13–13. The minimum salary of a teacher in any school district in any county of this State shall be *two thousand five* hundred dollars *($2,500.00)* per academic year, and a proportionate amount for less than an academic year.

An "academic year," for the purpose of this act, means the period between the time the school opens in the district after the general summer vacation and the next succeeding summer vacation.

The provisions of this act shall not apply to teachers employed as substitutes on a day-to-day basis.

2. This act shall take effect September first, one thousand nine hundred and fifty-one.

Approved May 4, 1951.

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* Italics show amendments of 1951.

CHAPTER 64, LAWS OF 1951

AN ACT to amend the title of "An act to protect all persons in their civil rights to prevent and eliminate practices of discrimination against persons because o race, creed, color, national origin or ancestry; to create a division in the Depart ment of Education to effect such prevention and elimination; and making ai appropriation therefor," approved April sixteenth, one thousand nine hundrec and forty-five (P. L. 1945, c. 169), as said title was amended by chapter elevei of the laws of one thousand nine hundred and forty-nine, so that the same shall read "An act to protect all persons in their civil rights; to prevent anc eliminate practices of discrimination against persons because of race, creed color, national origin or ancestry or because of their liability for service in the armed forces of the United States; to create a division in the Department of Education to effect such prevention and elimination; and making an appropriation therefor," and to amend the body of said act.

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

1. The title of "An act to protect all persons in their civil rights; to prevent and eliminate practices of discrimination against persons because of race, creed, color, national origin or ancestry; to create a division in the Department tof Education to effect such prevention and elimination; and making an appropriation therefor," approved April sixteenth, one thousand nine hundred and forty-five (P. L. 1945, c. 169), as said title was amended by chapter eleven of the laws of one thousand nine hundred and forty-nine, is amended to read "An act to protect all persons in their civil rights; to prevent and eliminate practices of discrimination against persons because of race, creed, color, national origin or ancestry or because of their liability for service in the armed forces of the United States; to create a division in the Department of Education to effect such prevention and elimination; and making an appropriation therefor."

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

3. The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin or ancestry *or because of their liability for service in the armed forces of the United States,* are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.

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

5. As used in this act, unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" includes only those unlawful practices and acts specified in section eleven of this act.

e. "Employer" does not include a club exclusively social or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized and operated for private profit, nor does it include any employer with fewer than six persons in his employ.

f. "Employee" does not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

ff. "Liability for service in the armed forces of the United States" means subject to being ordered, as an individual, or member of an organized unit, into active service in the armed forces of the United States by reason of membership in the National

uard, naval militia or a reserve component of the armed forces of the United States · subject to being inducted into such armed forces through a system of national lective service.

g. "Division" means the State "Division Against Discrimination" created by this :t.

h. "Commissioner" means the State Commissioner of Education.

i. "Commission" means the Commission on Civil Rights created by this act.

j. "A place of public accommodation" shall include any tavern, roadhouse, or otel, whether for entertainment of transient guests or accommodation of those eking health, recreation or rest; any retail shop or store; any restaurant, eating ouse, or place where food is sold for consumption on the premises; any place main- ined for the sale of ice cream, ice and fruit preparations or their derivatives, soda ater or confections, or where any beverages of any kind are retailed for consump- on on the premises; any garage, any public conveyance operated on land or water, · in the air, and stations and terminals thereof; any public bathhouse, public board- alk, public seashore accommodation; any auditorium, meeting place, or public hall; ıy theatre, or other place of public amusement, motion-picture house, music hall, oof garden, skating rink, swimming pool, amusement and recreation park, fair, bowl- ıg alley, gymnasium, shooting gallery, billiard and pool parlor; any comfort station; ıy dispensary, clinic or hospital; and any public library, any kindergarten, primary nd secondary school, trade or business school, high school, academy, college and niversity, or any educational institution under the supervision of the State Board f Education, or the Commissioner of Education of the State of New Jersey. Noth- ıg herein contained shall be construed to include, or to apply to, any institution, bona de club, or place of accommodation, which is in its nature distinctly private; nor ıall anything herein contained apply to any educational facility operated or main- ıined by a bona fide religious or sectarian institution, and the right of a natural arent or one in loco parentis to direct the education and upbringing of a child nder his control is hereby affirmed; nor shall anything herein contained be con- trued to bar any private secondary or post-secondary school from using in good aith criteria other than race, creed, color, national origin or ancestry, in the admis- ıon of students.

4. Section six of the act of which this act is amendatory is amended to read as ollows:

6. There is created in the State Department of Education a division to be :nown as "The Division Against Discrimination" with power to prevent and eliminate iscrimination in employment against persons because of race, creed, color, national ›rigin or ancestry *or because of their liability for service in the armed forces of the Jnited States,* by employers, labor organizations, employment agencies or other per- ıons and to take other actions against discrimination because of race, creed, color, ıational origin or ancestry *or because of their liability for service in the armed 'orces of the United States,* as herein provided; and the division created hereunder s given general jurisdiction and authority for such purposes.

5. Section eight of the act of which this act is amendatory is amended to read ıs follows:

8. The commissioner shall

a. Exercise all powers of the division not vested in the commission.

b. Administer the work of the division.

c. Organize the division into two sections, one of which shall receive, investi- gate, and act upon complaints alleging discrimination in employment against persons because of race, creed, color, national origin or ancestry *or because of their liability for service in the armed forces of the United States,* and the other of which shall receive, investigate, and act upon complaints alleging other unlawful acts of dis- crimination against persons because of race, creed, color, national origin or ancestry; prescribe the organization of said sections and the duties of his subordinates and assistants.

d. Subject to the approval of the commission and the Governor, appoint an assistant Commissioner of Education, who shall act for the commissioner, in his place and with his powers, and such other directors, field representatives and assistants as may be necessary for the proper administration of the division and fix their com- pensation within the limits of available appropriations. The assistant commissioner, directors, field representatives, and assistants shall not be subject to the civil service act and shall be removable by the commissioner at will.

e. Appoint such clerical force and employees as he may deem necessary and fi their duties, all of whom shall be subject to the civil service act.

f. Maintain liaison with local and State officials and agencies concerned wit matters related to the work of the division.

g. Subject to the approval of the commission adopt, promulgate, amend, an rescind suitable rules and regulations to carry out the provisions of this act.

h. Receive, investigate, and pass upon complaints alleging acts in violation c the provisions of this act.

i. Hold hearings, subpœna witnesses, compel their attendance, administer oath take the testimony of any person, under oath, and, in connection therewith, requir the production for examination of any books or papers relating to any subject matte under investigation or in question before the commissioner. The commissioner ma make rules as to the issuance of subpœnas by the assistant commissioner.

j. Issue such publications and such results of investigations and research tendin to promote good will and to minimize or eliminate discrimination because of rac creed, color, national origin or ancestry, as the commission shall direct.

k. Render each year to the Governor and Legislature a full written report of a the activities of the division.

6. Section eleven of the act of which this act is amendatory is amended to rea as follows:

11. It shall be an unlawful employment practice, or, as the case may be, an unlaw ful discrimination:

a. For an employer, because of the race, creed, color, national origin or ancestry of any individual, *or because of the liability for service in the armed forces of th United States,* of any individual, to refuse to hire or employ or to bar or to discharg from employment such individual or to discriminate against such individual in com pensation or in terms, conditions or privileges of employment, *however, it shall no be an unlawful employment practice to refuse to accept for employment an applican who has received a notice of induction or orders to report for active duty in th armed forces.*

b. For a labor organization, because of the race, creed, color, national origin o ancestry, of any individual, *or because of the liability for service in the armed force of the United States,* of any individual, to exclude or to expel from its membershi such individual or to discriminate in any way against any of its members or agains any employer or any individual employed by an employer.

c. For any employer or employment agency to print or circulate or cause to b printed or circulated any statement, advertisement or publication, or to use any form of application for employment, or to make any inquiry in connection with prospectiv employment, which expresses, directly or indirectly, any limitation, specification o discrimination as to race, creed, color, national origin or ancestry *or liability of an applicant for employment for service in the armed forces of the United States,* o any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

d. For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this act.

e. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

f. For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, or ancestry of such person, or that the patronage or custom thereat of any person of any particular race, creed, color, national origin or ancestry is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superin-

endent, or manager thereof, shall be presumptive evidence in any action that the ame was authorized by such person.

7. Section twenty-six of the act of which this act is amendatory is amended to ead as follows:

26. The provisions of this act shall be construed fairly and justly with due regard o the interests of all parties. Nothing contained in this act shall be deemed to repeal ny of the provisions of the civil rights law or of any other law of this State relating o discrimination because of race, creed, color, national origin or ancestry *or liability for service in the armed forces of the United States;* except that, as to practices and cts declared unlawful by section eleven of this act, the procedure herein provided hall, while pending, be exclusive; and the final determination therein shall exclude ny other action, civil or criminal, based on the same grievance of the individual con-erned. Nothing herein contained shall bar, exclude, or otherwise affect any right or ction, civil or criminal, which may exist independently of any right to redress gainst or specific relief from an unlawful employment practice or unlawful dis-rimination.

8. This act shall take effect immediately.

Approved May 8, 1951.

Chapter 81, Laws of 1951

An Act concerning education, and amending section 18:14–82 of the Revised Statutes.

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

1. Section 18:14–82 of the Revised Statutes is amended to read as follows:

18:14–82. Any pupil or student who has completed or shall complete the work of the junior year in any of the public high schools or educational institutions and who heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter in time of war, shall enter the active military or naval service of the United States or the active service of the United States Merchant Marine or the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, or the active military or naval service of the Dominion of Canada, *or who in time of emergency heretofore entered or hereafter shall serve on active duty with the armed forces of the United States,* and who continued or shall continue to attend the regular sessions in any of the public high schools or educational institutions until twenty-one days prior to such entry and whose school work has been satisfactory until twenty-one days prior to such entry, shall be given credit for the work of the complete senior year without examination, and shall be entitled to and receive the diploma, certificate, degree, or other credentials or standings awarded to those pupils or students of the school or institutions who have satisfactorily completed the work of the said senior year.

As used in this act the term "in time of emergency" shall mean and include any time after June twenty-third, one thousand nine hundred and fifty, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.

2. This act shall take effect immediately.

Approved May 17, 1951.

Chapter 114, Laws of 1951

An Act relating to the public schools of this State, and amending section 18:14–12 of the Revised Statutes.

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

1. Section 18:14–12 of the Revised Statutes is amended to read as follows:

18:14–12. At the time and place fixed in such advertisement for the submission of proposals the board of education, or any committee thereof authorized so to do, or any officer or employee of such board designated therefor, shall receive such proposals

and immediately proceed to unseal the same and publicly announce the contents it the presence of the parties bidding or their agents, if such parties choose to be ther and there present. Such board shall have the right to reject any and all bids. Nc proposals shall be opened previous to the hour designated in the advertisement anc none shall be received thereafter.

The State Board of Education shall prescribe the amount of liability insurance to be carried by the contractor or bus driver as well as other rules and regulations applicable to pupil transportation.

Nothing contained in this section or section 18:14–11 of this Title shall apply to school buses owned by boards of education, nor to annual extensions of a contract secured through competitive bidding when such annual extensions are desired by the board of education; *provided,* that the annual contractual amount is not increased, and each annual extension is approved by the county superintendent of schools; except that the annual contractual amount of such extension or extensions may be increased to an amount not exceeding fifteen per centtum (15%) of the original contractual amount during the present war emergency if such increase or increases are approved by the county superintendent of schools under rules and regulations prescribed by the State Board of Education; *except that the annual contractual amount of such extension or extensions of contracts entered into prior to May fourteenth, one thousand nine hundred and forty-two, may be increased to an additional amount not exceeding fifteen per centum (15%) of the original contractual amount, which amount is in addition to the fifteen per centum (15%) hereinabove provided for, during the present war emergency if such increase or increases are approved by the county superintendent of schools under rules and regulations prescribed by the State Board of Education.* For the purposes of this act the present war emergency is defined to be the period of time during which the United States of America continues in the present wars with the governments of Japan, Germany and Italy or any of them.

2. This act shall take effect immediately.

Approved May 29, 1951.

Chapter 149, Laws of 1951

An Act to amend "An act concerning State aid for schools, and supplementing Title 18 of the Revised Statutes," approved April eleventh, one thousand nine hundred and forty-six (P. L. 1946, c. 63).

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

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

5. The equalization aid to which each district shall be entitled in each school year shall be the higher of the following:

(a) The excess, if any, of the foundation program for such district, for such year, over the higher of

(1) Such sum as will result from an application of a rate of ten mills on each dollar of local valuation of the district; or

(2) The lesser of the sum which will result from multiplying the number of inhabitants in such district, according to the latest Federal census, excluding *inhabitants of any land or premises acquired by the United States, and used by the United States as a military encampment, and excluding* patients and inmates in Federal, State and county charitable, penal and correctional institutions, by ten dollars ($10.00) or the sum which will result from the application of a rate of thirty mills on each dollar of the local valuation of the district; *provided, that not more than such sum as will result from the application of a rate of ten mills on each dollar of local valuation shall be deducted from the foundation program in any district with less than one thousand five hundred dollars ($1,500.00) of local valuation per pupil in average daily attendance;* or

(b) The sum total of such sum as will result from multiplying the number of elementary pupils in the district by three dollars ($3.00), the number of approved special classes in the district by seventy-five dollars ($75.00) and the number of

high school and evening school pupils in the district by three dollars and seventy-five cents ($3.75).

2. This act shall take effect immediately.

Approved June 1, 1951.

CHAPTER 171, LAWS OF 1951

AN ACT to amend "An act concerning State aid for schools, and supplementing Title 18 of the Revised Statutes," approved April eleventh, one thousand nine hundreds and forty-six (P. L. 1946, c. 63).

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

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

7. Each district shall be entitled to receive also *during the school year 1951-52 the sum of fifty-five dollars ($55.00) and* in each school year *thereafter* the sum of *seventy-five dollars ($75.00)* for each person of school age whose name has been certified to the commissioner by the district as having attended the public schools of the district for at least three months during the preceding school year and is approved by the county superintendent as a resident of the district, on property belonging to the state or county which is not taxable, or by placement in the district by a public body authorized by the State to make such placement, or by location therein at the direction of any organization, society or agency incorporated and located in this State, having for its object the care and welfare of indigent, neglected or abandoned children, or as an inmate of a charitable institution located in the district; and *forty-five dollars ($45.00) for each person of school age*

(1) whose name and record of attendance has been certified to the commissioner by the district as residing on a United States Government reservation and as having attended the schools of such district for at least three months during the preceding school year; and

(2) whose name has been certified to the commissioner by the county superintendent as having attended the schools of the district and having parents or legal guardians who are engaged in farm labor in New Jersey, as provided by "An act relating to the public schools of this State, and supplementing Title 18 of the Revised Statutes," approved April sixth, one thousand nine hundred and forty-three (P. L. 1943, c. 91), which said sums shall be payable on or before February first.

2. This act shall take effect immediately.

Approved June 5, 1951.

CHAPTER 181, LAWS OF 1951

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending section 18:13–48 of the Revised Statutes.

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

1. Section 18:13–48 of the Revised Statutes is amended to read as follows:

18:13–48. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service, unless thereafter modified by the board of trustees upon application by the member within one year after the issuance or modification of a prior-service certificate or upon the discovery by the board of trustees of an error or fraud. When membership ceases, the certificate shall be void, but upon membership being resumed the prior-service certificate shall be restored for the same number of years of prior service as were previously credited. *Any member, or any former member who has retired, whose membership ceased and was resumed prior to March thirty-first, one thousand nine hundred and forty-five, shall, after July first, one thousand nine hundred and fifty-one, be entitled to receive the benefit of the same prior service credits as though his membership had been resumed subsequent to March thirty-first, one thousand nine hundred and forty-five.*

2. This act shall take effect immediately.

Approved June 6, 1951.

CHAPTER 194, LAWS OF 1951

AN ACT concerning education, and amending section 18:13–7 of the Revised Statutes

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

1. Section 18:13–7 of the Revised Statutes is amended to read as follows:

18:13–7. No contract between a board of education which has not made rules and regulations under section 18:13–5 of this Title and a teacher shall be valid unless the same be in writing, in triplicate, signed by the president and district clerk or secretary of the board of education and by the teacher.

The contract shall specify the date when the teacher shall begin teaching, the kind and grade of certificate held by the teacher, the date when the certificate will expire, the salary, and such other matters as may be necessary to a full and complete understanding. In every contract, unless otherwise specified, a month shall be construed and taken to be twenty school days or four weeks of five school days each. The salary specified in every contract shall be paid in equal *semimonthly or* monthly installments, *as the board of education shall determine,* not later than five days *after the first and fifteenth days of each month in the case of semimonthly installments and not later than five days* after the close of each month *in the case of monthly installments* while the school is in session.

The commissioner shall prepare and distribute blanks for contracts between boards of education and teachers.

One copy of each contract shall be filed with the board of education, one copy with the teacher, and one with the county or city superintendent.

2. This act shall take effect September first, one thousand nine hundred and fifty-one.

Approved June 8, 1951.

CHAPTER 203, LAWS OF 1951

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending sections 18:13–56, 18:13–69 and 18:13–70 of the Revised Statutes.

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

1. Section 18:13–56 of the Revised Statutes is amended to read as follows:

18:13–56. The total retirement allowance to be paid on and after July first, one thousand nine hundred and fifty-one, to a member who shall have retired prior to said date, with twenty or more years of service, shall be his annuity plus a pension of not less than *eight* hundred dollars *($800.00)* per annum, except that the pension paid to any new entrant referred to in subsection "C" of section 18:13–55 of the Revised Statutes, who shall have retired prior to said date, shall be not less than four hundred dollars ($400.00) per annum. The total retirement allowance to be paid after June thirtieth, one thousand nine hundred and fifty-one, to a member who retires after said date, with twenty or more years of service, shall be his annuity plus a pension of not less than four hundred dollars ($400.00) per annum.

2. Section 18:13–69 of the Revised Statutes is amended to read as follows:

18:13–69. All pensions payable prior to the month of September, one thousand nine hundred and nineteen, by the State under the provisions of an act entitled "An act to amend an act entitled 'A supplement to an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three,' approved March thirteenth, one thousand nine hundred and twelve," approved April twentieth, one thousand nine hundred and fourteen (P. L. 1914, c. 268, p. 557), shall, beginning with said month of September, one thousand nine hundred and nineteen, be paid from the pension fund created by this article; and *to a person who did not qualify for a quarterly annuity as provided in section 18:13–70 of the Revised Statutes, any such pension as is* below *eight* hundred dollars *($800.00)* shall be increased to and be paid at the rate of *eight* hundred dollars *($800.00); and to a person who did qualify for such a quarterly annuity, the com-*

oined pension under this section and annuity under section 18:13–70, if below eight hundred dollars ($800.00), shall be increased to and be paid at the rate of eight hundred dollars ($800.00).

3. Section 18:13–70 of the Revised Statutes is amended to read as follows:

18:13–70. The annuities of persons who have been annuitants of the teachers' retirement fund from a date prior to September first, one thousand nine hundred and nineteen, shall continue to be paid out of the pension fund created by this article. Such annuities shall be paid in quarterly installments on the last day of September, December, March and June.

Beginning with the quarterly payment due September thirtieth, one thousand nine hundred and *fifty-one,* any such annuity in an amount less than *eight* hundred dollars *($800.00)* per annum to a person who did not qualify for the monthly half pay pension as provided in section 18:13–69 of the Revised Statutes shall be increased to *eight* hundred dollars *($800.00)* per annum.

4. This act shall take effect July first, one thousand nine hundred and fifty-one.

Approved June 12, 1951.

CHAPTER 292, LAWS OF 1951

AN ACT concerning education, and amending section 18:13–19 of the Revised Statutes.

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

1. Section 18:13–19 of the Revised Statutes is amended to read as follows:

18:13–19. Nothing contained in sections 18:13–16 to 18:13–18 of this Title *or any other provision of law relating to tenure of service* shall be held to limit the right of any *board of education* to reduce the number of *superintendents,* supervising principals, *assistant superintendents,* principals *or* teachers employed in the school district *whenever, in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause.* Dismissals resulting from such reduction shall not be by reason of residence, age, sex, marriage, race, religion or political affiliation. *Any dismissals occurring because of the reduction of the number of persons under the terms of this section shall be made on the basis of seniority according to standards to be established by the Commissioner of Education with the approval of the State Board of Education. In establishing such standards, the commissioner shall classify, in so far as practicable, the fields or categories of administrative, supervisory, teaching or other educational services which are being performed in the school districts of this State and may, at his discretion, determine seniority upon the basis of years of service and experience within such fields or categories of service as well as in the school system as a whole. Whenever it is necessary to reduce the number of persons covered by this section, the board of education shall determine the seniority of such persons according to the standards established by the Commissioner of Education with the approval of the State Board of Education and shall notify each person as to his seniority status. A board of education may request the Commissioner of Education for an advisory opinion with respect to the applicability of the standards to particular situations and all such requests shall be referred to a panel to consist of the county superintendent of schools of the county in which the school district is situate, the secretary of the State Board of Examiners, and one assistant commissioner of education to be designated by the Commissioner of Education. No determination of any panel shall be binding upon the board of education or any other party in interest, nor upon the Commissioner of Education and the State Board of Education in the event of an appeal pursuant to sections 18:3–14 and 18:3–15 of the Revised Statutes. All persons dismissed shall be placed on a preferred eligible list to be prepared by the board of education of the school district, and shall be reemployed by the board of education of the school district, in order of seniority as determined by the said board of education.* In computing length of service within the district, the time of service by such *superintendents,* supervising principals, *assistant superintendents,* principals or teachers in or with the military or naval forces of the United States of America or of this State subsequent to September first, one thousand nine hundred and forty, shall be credited in determining seniority under this act as

though such *superintendents,* supervising principals, *assistant superintendents,* prin cipals or teachers had been regularly employed within the district during the time c such military service. Should any *superintendent,* supervising principal, *assistan superintendent,* principal or teacher under tenure be dismissed as a result of such re duction such person shall be and remain upon a preferred eligible list in the orde of *seniority* for re-employment whenever vacancies occur and shall be re-employe by the body causing dismissal in such order when and if a vacancy in a position fo which such *superintendent,* supervising principal, *assistant superintendent,* principal o teacher shall be qualified. Such re-employment shall give full recognition to previou years of service.

The services of any *superintendent, supervising principal, assistant superintendent* principal or teacher may be terminated, without charge or trial, who is not the holde of an appropriate certificate in full force and effect *issued by the State Board o Examiners under rules and regulations prescribed by the State Board of Education*

2. This act shall take effect immediately.

Approved July 13, 1951.

SCHOOL LAWS, SESSION OF 1951
SUPPLEMENTS

CHAPTER 38, LAWS OF 1951

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

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

1. The terms "crippled children" and "physically handicapped children" and any other terms of similar import, as used in the chapter to which this act is a supplement, shall be deemed to include children afflicted with cerebral palsy.

2. This act shall take effect immediately.

Approved April 13, 1951.

CHAPTER 73, LAWS OF 1951

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

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

1. No board of education shall call more than two special school elections, within any period of six months, for the purpose of submitting to the legal voters of the school district any proposition to raise a special district tax for the same purpose, or to authorize the board to issue bonds of the district for the same purpose, unless the Commissioner of Education shall first have certified to it in writing the necessity of calling an additional special election or elections for said purpose.

2. This act shall take effect immediately.

Approved May 15, 1951.

CHAPTER 100, LAWS OF 1951

AN ACT concerning the election of members of the boards of education of certain school districts governed under the provisions of chapter seven of Title 18 of the Revised Statutes, and supplementing chapter seven of Title 18 of the Revised Statutes.

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

1. In every incorporated town school district now governed by chapter seven of Title 18 of the Revised Statutes in which the board of education is appointed by the mayor, the question of whether or not such board of education shall be elected by the voters of the district at the regular school election may be submitted to the legal voters of the district at any special or regular school election to be held in the district, pursuant to a resolution adopted by the board of education, or at any general or municipal election, pursuant to a resolution adopted by the governing body of the town, directing that the question shall be so submitted. In any such district in which the board of education is elected by the legal voters, the question of whether or not such board of education shall be appointed by the mayor may be submitted to the legal voters in like manner.

2. There shall be printed upon the official ballot to be used at such election th following:

If you favor the proposition printed below make a cross (×), plus (+) c check (V) in the square opposite the word "Yes." If you are opposed thereto mak a cross (×), plus (+) or check (V) in the square opposite the word "No."

	Yes.	Shall the members of the board of education of .....
	No.	school district be ..... hereafter?

Note: Insert in the second blank space in the above ballot the words "elected' or "appointed," as the case may be.

3. If at such election the majority of all the votes cast in such district for an against the question shall be in favor of its adoption, the members of the board o education of said district shall thereafter be elected by the legal voters of the distric at the regular school election to be held in said district, or appointed by the mayor as the case may be.

4. The members of the board of education in office in the district at the tim such proposition is approved shall continue in office until the expiration of thei respective terms of office but their respective successors shall be elected by the lega voters of the district, or appointed by the mayor, as the case may be.

5. This act shall take effect immediately.

Approved May 22, 1951.

Chapter 129, Laws of 1951

An Act relating to the Teachers' Pension and Annuity Fund, and supplementing article three of chapter thirteen of Title 18 of the Revised Statutes.

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

1. At the death of a retired contributor, the allowance accrued from the first of the month in which he dies to the date of death shall be paid to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly acknowledged and filed with the board of trustees.

2. This act shall take effect immediately.

Approved May 31, 1951.

Chapter 145, Laws of 1951

An Act relating to the public schools of this State, and supplementing "An act relating to the public schools of this State, and supplementing Title 18 of the Revised Statutes," approved April twenty-second, one thousand nine hundred and forty (P. L. 1940, c. 47).

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

1. Whenever a group has or shall have been established in accordance with the provisions of section one of the act to which this act is a supplement, the board of education of the school district in which the group or groups are formed may pay as additional compensation to the individual members of the group or groups, a part or all of the premiums on the group policy or policies.

2. Nothing herein contained shall be construed as compelling the board of education of any school district to pay any portion of the premium on such group or groups.

3. This act shall take effect immediately.

Approved June 1, 1951.

CHAPTER 224, LAWS OF 1951

AN ACT concerning the raising of additional sums of money in certain school districts over and above the amounts fixed and determined in the last annual school budget and the borrowing of money in anticipation of taxes to be levied therefor, and supplementing chapter seven of Title 18 of the Revised Statutes.

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

1. Whenever it shall be determined that it is necessary to raise, in any school district governed under the provisions of chapter seven of Title 18 of the Revised Statutes, additional sums of money, over and above the amount fixed and determined in the last annual school budget, for

(a) Repairing or furnishing of a schoolhouse or schoolhouses,
(b) Industrial schools,
(c) Manual training,
(d) Evening schools or classes for foreign-born residents, or
(e) Current expenses of schools,

the board of education of the district is authorized to borrow, in anticipation of the taxes to be raised, levied and collected to provide for said expenditures, such sum or sums as it may deem to be necessary for said purpose, but not to exceed the sum or sums so authorized, upon its promissory notes bearing interest at a rate or rates not to exceed six per centum (6%) per annum, maturing not later than December thirty-first of the year in which such taxes shall be raised, levied and collected, the principal and interest of which notes shall be paid out of the sums so raised not later than the date of the maturity of said notes.

2. In any such school district in which the amounts to be raised, levied and collected by taxes for school purposes are determined upon by the voters of the district, the board of education shall first ascertain the amount or amounts necessary so to be raised for said purposes with the interest to be paid upon said notes and shall cause the question as to whether or not such amounts shall be so raised to be submitted to the legal voters of the district at a special election to be held on such date as shall be determined upon by the board and if a majority of the voters voting upon such proposition shall vote in favor thereof, the district clerk shall certify that the amount so determined upon has been authorized to be raised in said manner, to the county board of taxation, within five days after the date of the holding of such election.

3. In any such school district in which the amounts to be raised, levied and collected by taxes for school purposes are fixed and determined by a board of school estimate, the board of education of the district shall ascertain the amount necessary so to be raised for said purpose with the interest to be paid upon said notes and shall prepare and deliver to each member of the board of school estimate of the district a statement of the amounts of money so ascertained to be necessary, itemizing the same so as to make the same readily understandable Within seven days after the delivery of said statement, the board of school estimate shall meet and shall fix and determine the amounts necessary to be raised for said purpose and shall make a certificate of said amounts, which shall be signed by a majority of all of the members of such board of school estimate. The original of said certificate shall be delivered to the board of education but a copy thereof shall be delivered to the board or body of each of the municipalities situate within the territorial limits of the district having power to make appropriations of money to be raised by taxes in such municipality and a certified copy thereof shall be delivered by the district clerk of the board of education of the district to the county board of taxation and a duplicate of such certified copy shall be delivered to the county superintendent of schools, within five days after the receipt of the certificate by the board of education.

4. In case any such certificate shall be delivered to the county board of taxation on or prior to the first day of April in any year, the amount so certified shall be raised, levied and collected by taxes within that year and in case any such certificate shall be delivered to said board after the first day of April in any year, the amount so certified shall be raised, levied and collected by taxes in the next year.

5. The amounts so raised, levied and collected shall be paid to the custodian of school moneys for the district as other school moneys are paid and shall be used to pay the principal and interest due upon said notes as they severally mature.

6. This act shall take effect immediately.

Approved June 13, 1951.

CHAPTER 227, LAWS OF 1951

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

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

1. The term "crippled children," as used in the chapter to which this act is a supplement, shall be deemed to include children afflicted with cerebral palsy.

2. This act shall take effect immediately.

Approved June 14, 1951.

CHAPTER 229, LAWS OF 1951

AN ACT concerning audits of the books, accounts and moneys of the boards of education of school districts, and supplementing chapter five of Title 18 of the Revised Statutes.

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

1. The board of education in every school district shall cause an annual audit of the school district's accounts and financial transactions to be made and completed not later than three months after the end of the school fiscal year and for that purpose shall employ a registered municipal accountant of New Jersey, or a certified public accountant of New Jersey; *provided,* that three years after the effective date of this act, no person shall be employed to audit the accounts of a local school district unless he has qualified as a public school accountant as provided in section seven of this act.

Each such audit shall cover the books, accounts and moneys of the board of education, and of any officer or employee thereof, and of any organization of public school pupils conducted under the auspices of the board of education and shall include verification of all cash and bank balances of each such board, organization, officer and employee as of the date of the audit thereof and an audit of the accounts to such date from the date of the last preceding audit thereof.

2. Within thirty days following the receipt of the report of the audit required by section one of this act, the board of education in every school district shall, at a regularly scheduled meeting to which the public is admitted, cause the recommendations of the auditor to be read and discussed and the discussion duly noted in the minutes of said board.

At said meeting there shall be available for distribution to interested parties a synopsis or summary of all audits, together with the recommendations made by the auditor.

3. Prior to the meeting required by section two of this act, the secretary of the board of education or the district clerk, as the case may be, shall prepare, or have prepared, a synopsis or summary of such audit and recommendations, and shall have the same available for public distribution as provided in section two of this act.

4. On the failure of any school district to cause an audit to be made pursuant to section one of this act and to complete the same within the time limited therein, the Commissioner of Education may, by a registered municipal accountant of New Jersey or by a certified public accountant of New Jersey engaged by him for that purpose, conduct an audit of the books of such school district and such audit shall be taken to be the audit of the school district as made in accordance with the provisions of said section one and shall be paid out of funds of the school district on bill rendered therefor as a liability of the school district; *provided,* that three years after the effective date of this act, the commissioner shall not appoint any person to conduct said audit unless said person shall have qualified as a public school accountant as provided in section seven of this act.

5. Every registered municipal accountant or certified public accountant shall within five days after filing the report of this audit and recommendations with the school district, file two certified duplicate copies of the report and recommendations as filed with the school district, over his signature, in the office of the Commissioner of Education.

6. The audit herein provided shall be in addition to any act of auditing performed pursuant to sections 18:6–72 to 18:6–82, inclusive, of the Revised Statutes.

7. Except as otherwise provided in this act, the auditing of the accounts of school districts, when required by law, shall be made only by a registered municipal accountant of New Jersey or a certified public accountant of New Jersey who shall hold an uncancelled registration license as a public school accountant for New Jersey. Such registration licenses shall be issued to qualified persons annually by the New Jersey State Board of Public Accountants, and each such license shall state that the holder thereof has complied with the statutory requirements and is authorized to make audits of accounts of school districts of the State of New Jersey until January first following unless sooner cancelled as herein provided. The New Jersey State Board of Public Accountants may refuse to issue any such license for any cause authorizing a cancellation thereof as herein provided, or for any other stated cause which it may determine to be good and sufficient.

8. Except as otherwise provided in this act, no person shall undertake the auditing of the accounts of any school district unless he shall have qualified as a public school accountant for New Jersey upon proof that he is either a registered municipal accountant or a certified public accountant, of New Jersey, and by subscribing to the following declaration:

a. That he is fully acquainted with the laws governing the fiscal affairs of school districts of New Jersey and is a competent and experienced auditor; and

b. That he will honestly and faithfully audit the books and accounts of any school district when engaged to do so, and report any error, omission, irregularity, violation of law, discrepancy or other nonconformity to the law, together with his recommendations, to the board of education of such school district.

9. Upon proof that any public school accountant shall have knowingly omitted to report any error, omission, irregularity, violation of law or discrepancy found in the books or accounts, or shall have issued false reports of his audit of any school district; that is to say, shall have issued audits of such a nature as not to show an accurate, intelligent and complete statement of the financial condition of the school district, or of such a nature as not to comply with the requirements of the Commissioner of Education, or if such auditor or accountant shall fail to file such report and recommendations as required by section five of this act, or neglect or refuse to carry out any agreement or contract for audit, his license as a public school accountant may be canceled by the State Board of Public Accountants. Such cancellation shall not affect the accountant's right to practice as a registered municipal accountant or as a certified public accountant.

If the party whose license is thus canceled or refused shall feel that there was not sufficient cause for the cancellation or refusal of the license as herein described, he shall have the right of appeal by petition to the Superior Court and pending the hearing of the appeal on the return of an order to show cause why such cancellation should not be revoked, the court may stay such cancellation of license until such hearing. The proceedings shall be summary upon the petition and affidavits in reply thereto, and the final order shall finally dispose of the right to exercise the privileges so licensed.

If in the course of the hearing it shall be necessary to refer the same to a master to determine the facts as to accounts or to hear the same by production of the books and accounts of school districts, the hearing need not then be confined to the reading of the petition and affidavits supporting the petition and in reply thereto, and in such case the finding of the court shall be as in other cases upon the report of a master after reference.

10. Any person who shall make, or begin to make, any audit of accounts of any school district as required by this act, contrary to the provisions hereof, or without a license therefor in full force and effect, shall be liable to a penalty of one hundred dollars ($100.00) for every audit of account so made, to be recovered in an action of law instituted by the State Board of Public Accountants in any court having jurisdiction.

11. All reports of audit of accounts of school districts shall be signed by the auditor or accountant making the audit or in charge of the same, holding a license as herein provided, whether such audit or statement of account is made by any person employing such auditor or accountant, or otherwise, and the licensing or the revocation of the license of any such auditor shall not be construed to affect the contracting

with any school district by any person employing auditors or accountants; but upon the revocation of the license of an auditor or accountant, for the purposes herein specified and authorized, such person shall not employ in such work such auditors or accountants but only such persons as may be licensed as herein required, except that the auditor or accountant whose license may have been revoked may be employed in a subordinate capacity.

If any person shall willfully employ any person not holding a license in full force and effect as auditor or accountant in school district work within the purview of this act, the Commissioner of Education may direct the school districts to refuse to employ such person in such work during the continuance of such violation.

12. This act shall take effect July first, one thousand nine hundred and fifty-one.

Approved June 14, 1951.

CHAPTER 230, LAWS OF 1951

AN ACT requiring an annual report of comparative financial statistics of school districts, and supplementing chapter three of Title 18 of the Revised Statutes.

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

1. In addition to the reports required of the commissioner as provided in section 18:3–11 of the Revised Statutes, the commissioner shall compile an annual report of comparative financial statistics of all school districts tabulated to show the capital and current costs of the school district, the costs of principal services, the amount of debt, and other pertinent data. The annual report of school district financial statistics shall be published for general distribution. The commissioner may make a reasonable charge for copies of the annual reports to cover costs of printing.

2. This act shall take effect July first, one thousand nine hundred and fifty-one.

Approved June 14, 1951.

CHAPTER 322, LAWS OF 1951

AN ACT concerning the absence of pupils, of the public schools, from school by reason of religious observance, and supplementing chapter fourteen of Title 18 of the Revised Statutes.

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

1. No pupil of any public school, who shall be absent, by reason of observance of a religious holiday, from such school at any time when the same is in session, shall by reason of such absence be deprived of any award or of eligibility or opportunity to compete for any award, or of the right to take an alternate test or examination, for any which he missed by reason of such absence, if a written excuse signed by a parent of or person standing in loco parentis to, the pupil be presented to the proper school authority.

2. For the purposes of the administration of this act, any absence because of religious holidays shall be recorded as excused absence on the pupil's attendance record or on that of any group or class of which he is a member. Any transcript or application or employment form or any similar form on which information concerning a pupil's attendance record is requested shall show, with respect to absences, only absences other than absences excused because of religious holidays.

3. The Commissioner of Education, with the approval of the State Board of Education, shall prescribe such rules and regulations as may be necessary to carry out the purposes of this act. Such rules and regulations shall include, but not be limited to, a list of holidays on which it shall be mandatory to excuse a pupil under the provisions of this act. Nothing herein contained shall be construed to limit the right of any board of education, at its discretion, to excuse absence on any other day by reason of the observance of a religious holiday.

4. This act shall take effect immediately.

Approved July 17, 1951.

CHAPTER 328, LAWS OF 1951

AN ACT concerning the Teachers' Pension and Annuity Fund, and supplementing article three, of chapter thirteen, of Title 18 of the Revised Statutes.

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

1. Notwithstanding the provisions of chapter two hundred forty-five of the laws of one thousand nine hundred and forty-seven or any other law, the membership and interest accrual of any member of the Teachers' Pension and Annuity Fund, protected by tenure pursuant to Title 18 of the Revised Statutes, who heretofore was or may hereafter become unemployed by reason of the creation of a regional school district or a consolidated school district, shall not cease, except upon withdrawal of accumulated deductions, retirement, or death. Any such member, who may subsequently be employed as a teacher in a school district at a salary or compensation less than he was receiving in the district where he became unemployed, shall be permitted to pay or cause to be paid into such fund the same amount as he was paying immediately prior to becoming unemployed, and upon retirement his "average salary," for pension purposes, shall be the average annual salary upon which contributions were based for the last five years preceding retirement. If such member is not subsequently employed in a school district, his "average salary," for pension purposes, shall be the average annual salary earned, as a teacher in a school district, for the last five years of his contributing membership.

2. Any member who shall elect to come under the provisions of this act shall notify the board of trustees of the Teachers' Pension and Annuity Fund in writing within three years of the date of the termination of his employment by reason of the creation of the regional or consolidated school district.

3. This act shall take effect immediately.

Approved July 17, 1951.

CHAPTER 3, LAWS OF 1951

AN ACT to provide for temporary bonus for certain persons holding public office, position, or employment, whose compensation is paid by any county, municipality, school district, or other political subdivision of this State, or by any board, body, agency, or commission of any county, municipality, or school district of this State.

WHEREAS, Abnormal conditions presently existing are so increasing the cost of living as perhaps to necessitate temporarily, at least, an increase in the income of persons holding office, position, or employment under the government of any county, municipality, school district, or other political subdivision of this State, or of any board, body, agency, or commission of any county, municipality, or school district of this State, who are dependent upon their salary or pay, the amount whereof was fixed during normal times, and perhaps will be again adequate and proper when the conditions resulting from the present situation disappear; or if not, can be later readjusted to meet the then normal conditions, but in any event, should not be increased solely on account of abnormal conditions, except to meet them temporarily, and subject to readjustment when conditions again become normal; therefore,

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

1. Every board of chosen freeholders, governing body of a municipality, board of education, board, body and officer by whatsoever name, of any county, municipality, school district, or other political subdivision of this State, now having the power or charged with the duty of paying, on behalf of such county, municipality, school district, or other political subdivision of this State, or of such board, body, agency, or commission of any county, municipality, or school district of this State, the salary or pay of persons holding office, position, or employment, shall have the right and power in the discretion of such board of chosen freeholders, governing body, or board of education, to grant and order paid in monthly or other installments, to any person holding such office, position, or employment other than a member of such board of chosen freeholders, governing body or board of education, such sum, in addition to the regular salary or pay of such persons holding office, position, or employment, by way of bonus for the fiscal year in which such order is made, as such board of chosen freeholders, governing body, or board of education may determine, not exceeding four hundred dollars ($400.00) for each such person.

2. The said boards of chosen freeholders, governing bodies and boards of education, as the case may be, are empowered to determine, according to their discretion, the amounts of any such bonus and provide for the payment of different amounts according to the respective classes of persons to receive a bonus, taking into consideration their salary, salary ranges, their increments, and the services which they render. Where the duty of paying the salary or pay of said persons rests upon a board, body, agency or commission of any county, municipality, or school district, the board of chosen freeholders, governing body of the municipality, or the board of education, as the case may be, shall fix and determine the amounts to be so paid. Any such action in fixing and determining the said classes and amounts shall be by resolution. In the case of persons employed upon a seasonal basis, a separate classification shall be provided and the amount of any bonus to them shall be proportionate to their period of employment as shall be fixed and determined by the said board of chosen freeholders, governing body of the municipality, or board of education, as the case may be.

3. The provisions of this act shall extend to State employees whose compensation is paid in full by such county, municipality, school district or other political subdivision of this State.

4. No grant or payment of any bonus under this act shall be held or construed as an increase in the salary or pay of any person receiving the same; neither shall

the cessation of any such bonus, or any part thereof, be held or construed to amount to a reduction in the salary or pay of any person holding office, position, or employment, nor shall the amount of any such bonus be taken into consideration or included in any calculation respecting any amount to be paid into or out of any pension, retirement or other similar fund or in any similar connection.

5. If funds sufficient to pay any bonus granted under this act are not otherwise available, the same shall be raised by the county or municipality chargeable with the ultimate payment thereof by means of the issue of emergency notes or emergency bonds, pursuant to the provisions of section 40:2–31 of the Revised Statutes; and the governing body of any municipality shall raise, in the same manner, such amounts as shall be certified by the board of education of the school district for the purpose of carrying out the provisions of this act.

6. The provisions of this act shall apply regardless of the method by which the salary or pay was or is fixed.

7. The provisions of this act shall not be held or construed to permit such body, board or officer to grant or pay any such bonus to any person after the thirty-first day of December, one thousand nine hundred and fifty-two.

8. This act shall take effect immediately.

Approved February 15, 1951.

Chapter 7, Laws of 1951

An Act to amend "An act concerning motor vehicle special learners' permits, and supplementing article two of chapter three of Title 39 of the Revised Statutes," approved May tenth, one thousand nine hundred and fifty (P. L. 1950, c. 127).

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

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

1. The Director of the Division of Motor Vehicles may issue to a person over *sixteen* years *and six months* of age a special learner's permit, under the hand and seal of the director, allowing such person, for the purpose of fitting himself to become a motor vehicle driver, to operate a dual pedal controlled motor vehicle for a specified period, not in excess of a school year beginning in September and ending in the June following, while enrolled in a course of behind-the-wheel automobile driving education approved by the State Department of Education and conducted in a public, parochial or private school of this State, which special learner's permit shall be issued in lieu of the learner's permit provided for in section 39:3–13 of the Revised Statutes.

The special learner's permit described above shall be retained in the office of the school principal at all times except during such time as the person to whom the permit is issued is undergoing behind-the-wheel automobile driving instruction.

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

4. The holder of a special learner's permit shall be entitled to examination for a driver's license upon attaining the age of *seventeen years and* upon the satisfactory completion of an approved behind-the-wheel automobile driving education course as indicated upon the face of the special permit over the signature of the principal of the school in which the course was conducted.

3. This act shall take effect immediately.

Approved March 19, 1951.

Chapter 18, Laws of 1951

An Act to supplement "An act concerning persons holding office, position or employment, other than for a fixed term or period, under the government of this State or of any county, municipality, school district or other political subdivision of this State or of any board, body, agency or commission of this State or of any county, municipality or school district thereof, who after July first, one

thousand nine hundred and forty, have entered, or hereafter shall enter, the active military or naval service of the United States or of this State, in time of war or an emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service, or who after July first, one thousand nine hundred and forty, have entered or hereafter, in time of war, shall enter the active service of the United States Merchant Marine, or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy," approved May sixteenth, one thousand nine hundred and forty-one (P. L. 1941, c. 119), as said Title was amended by chapter three hundred twenty-seven of the laws of one thousand nine hundred and forty-two.

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

1. As used in the act to which this act is a supplement, the term "emergency" shall include, but shall not be limited to, any period of time after June twenty-third, one thousand nine hundred and fifty, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.

2. This act shall take effect immediately.

Approved April 2, 1951.

CHAPTER 21, LAWS OF 1951

AN ACT to amend the title of "An act concerning the rights, benefits and privileges of certain persons holding office, position or employment under the government of the State of New Jersey or of any county, municipality, school district or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States or the active service of the United States Merchant Marine or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy," passed June sixteenth, one thousand nine hundred and forty-two (P. L. 1942, c. 252), as said Title was amended by chapter three hundred and twenty-six of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 326) so that the same shall read "An act concerning the rights, benefits and privileges of certain persons holding office, position or employment under the government of the State of New Jersey or of any county, municipality, school district or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter, or heretofore or hereafter in time of emergency entered or shall enter, the active military or naval service of the United States or the active service of the United States Merchant Marine or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy," and to amend the body of said act.

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

1. The title of "An act concerning the rights, benefits and privileges of certain persons holding office, position or employment under the government of the State of New Jersey or of any county, municipality, school district or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States or the active service of the United States Merchant Marine or the active service of the Women's

Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy," passed June sixteenth, one thousand nine hundred and forty-two (P. L. 1942, c. 252), as said Title was amended by chapter three hundred and twenty-six of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 326), is amended to read "An act concerning the rights, benefits and privileges of certain persons holding office, position or employment under the government of the State of New Jersey or of any county, municipality, school district or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter; in time of war, shall enter, or heretofore or hereafter in time of emergency entered or shall enter, the active military or naval service of the United States or the active service of the United States Merchant Marine or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy."

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

1. No person holding any office, position or employment under the government of the State of New Jersey or of any county, municipality, school district or other political subdivision of the State, or under any board, body, agency or commission of the State or of any county, municipality or school district, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter, *or heretofore or hereafter in time of emergency entered or shall enter,* the active military or naval service of the United States or the active service of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy and who, at the time of such entry was or is a member in good standing of any pension, retirement, or annuity fund, shall suffer the loss or impairment of any of the rights, benefits or privileges accorded by the laws governing such pension, retirement or annuity funds; and the time spent in such service by any such person shall be considered as time spent in the office, position or employment held by him at the time of his entry into such service, in all calculations of the amount of pension to which he is entitled and of the years of service required to entitle him to retire; *provided, however,* that in the event of the death or disability of such person while in such service the pension to be paid such person or his dependents shall be the amount, if any, remaining after calculating the amount of pension that would be paid if such person had continued to hold such office, position or employment until the time of his death or disability and had continued to receive the same compensation as he received at the time of his entry into such service.

As used in this act the term "in time of emergency" shall mean and include any time after June twenty-third, one thousand nine hundred and fifty, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.

3. This act shall take effect immediately.

Approved April 3, 1951.

Chapter 91, Laws of 1951

An Act to amend the title of "An act concerning persons holding certain offices, positions and employments in the public school system of this State who, after July first, one thousand nine hundred and forty, have entered or hereafter shall enter the active military or naval service of the United States or of this State, in time of war or emergency, or for or during any period of training or pursuant to or in connection with the operation of any system of selective service or who, after July first, one thousand nine hundred and forty, have entered or hereafter, in time of war, shall enter the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, and to provide for and protect their rights to employment, re-employment and tenure in such

offices, positions and employments and the rights, privileges and benefits of certain of them in any pension, retirement or annuity fund of which they were or are members in good standing at the time of entering such service, and repealing 'An act concerning the holders of offices, positions and employments, in the public schools of this State, concerning re-employment, acquisition of tenure and protecting pension rights when the holders of such offices, positions or employments enter the military or naval services of the United States, and supplementing Title 18 of the Revised Statutes,' approved May nineteenth, one thousand nine hundred and forty-one (P. L. 1941, c. 134), as said title was amended by chapter one hundred nineteen of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 119)," approved April twenty-first, one thousand nine hundred and forty-four (P. L. 1944, c. 226) so that the same shall read "An act concerning persons holding certain offices, positions and employments in the public school system of this State who, after July first, one thousand nine hundred and forty, have entered or hereafter shall enter the active military service of the United States or of this State, in time of war or emergency, or for or during any period of training or pursuant to or in connection with the operation of any system of selective service or who, after July first, one thousand nine hundred and forty, have entered or hereafter, in time of war or emergency, shall enter the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, and to provide for and protect their rights to employment, re-employment and tenure in such offices, positions and employments and the rights, privileges and benefits of certain of them in any pension, retirement or annuity fund of which they were or are members in good standing at the time of entering such service, and repealing 'An act concerning the holders of offices, positions and employments, in the public schools of this State, concerning re-employment, acquisition of tenure and protecting pension rights when the holders of such offices, positions or employments enter the military or naval services of the United States, and supplementing Title 18 of the Revised Statutes,' approved May nineteenth, one thousand nine hundred and forty-one (P. L. 1941, c. 134), as said title was amended by chapter one hundred nineteen of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 119)," approved April twenty-first, one thousand nine hundred and forty-four (P. L. 1944, c. 226), and to amend and supplement the body of said act.

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

1. The title of "An act concerning persons holding certain offices, positions and employments in the public school system of this State who, after July first, one thousand nine hundred and forty, have entered or hereafter shall enter the active military or naval service of the United States or of this State, in time of war or emergency, or for or during any period of training or pursuant to or in connection with the operation of any system of selective service or who, after July first, one thousand nine hundred and forty, have entered or hereafter, in time of war, shall enter the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, and to provide for and protect their rights to employment, re-employment and tenure in such offices, positions and employments and the rights, privileges and benefits of certain of them in any pension, retirement or annuity fund of which they were or are members in good standing at the time of entering such service, and repealing 'An act concerning the holders of offices, positions and employments, in the public schools of this State, concerning re-employment, acquisition of tenure and protecting pension rights when the holders of such offices, positions or employments enter the military or naval services of the United States, and supplementing Title 18 of the Revised Statutes,' approved May nineteenth, one thousand nine hundred and forty-one (P. L. 1941, c. 134), as said title was amended by chapter one hundred nineteen of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 119)," approved April twenty-first, one thousand nine hundred and forty-four, is amended to read "An act concerning persons holding certain offices, positions and employments in the public school system of this State who, after July first, one thousand nine hundred and forty, have entered or hereafter shall enter the active military or naval service of the United States or of this State, in time of war or emergency, or for or during any period of training or pursuant to or in connection with the operation of any system of selective service or who, after July first, one

thousand nine hundred and forty, have entered or hereafter, in time of war or emergency, shall enter the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy, and to provide for and protect their rights to employment, re-employment and tenure in such offices, positions and employments and the rights, privileges and benefits of certain of them in any pension, retirement or annuity fund of which they were or are members in good standing at the time of entering such service, and repealing 'An act concerning the holders of offices, positions and employments, in the public schools of this State, concerning re-employment, acquisition of tenure and protecting pension rights when the holders of such offices, positions or employments enter the military or naval services of the United States, and supplementing Title 18 of the Revised Statutes,' approved May nineteenth, one thousand nine hundred and forty-one (P. L. 1941, c. 134), as said title was amended by chapter one hundred nineteen of the laws of one thousand nine hundred and forty-two (P. L. 1942, c. 119)," approved April twenty-first, one thousand nine hundred and forty-four (P. L. 1944, c. 226).

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

3. Any person holding any office, position or employment in the public school system of this State who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war *or emergency,* shall enter the active military or naval service of the United States or the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United States to serve with the Army or Navy and who, at the time of such entry was or is a member in good standing of any pension, retirement or annuity fund, shall retain and have all of the rights, benefits and privileges in said pension, retirement or annuity fund prescribed by chapter two hundred fifty-two of the laws of one thousand nine hundred and forty-two as amended and supplemented and shall be subject to all the conditions and provisions thereof except that if and in the event that during his said leave of absence the salary of any such person was or shall be increased or if salary increments arising from the carrying out of a scale of salary increments in full force and effect in the school district or public educational institution in which such person was employed and applying to all persons so employed in the same classification as such person, were or shall be granted, which such person would have enjoyed had he not entered such service, his right to participate in the benefits of said pension, retirement or annuity fund and the amount of the contributions required by said act to be made to said pension, retirement or annuity fund shall be calculated on the basis of such increased salary.

3. *As used in this act the term "in time of emergency" shall mean and include any time after June twenty-third, one thousand nine hundred and fifty and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.*

4. This act shall take effect immediately.

Approved May 22, 1951.

Chapter 98, Laws of 1951

An Act to amend and supplement "An act concerning bribery and corruption in connection with certain sporting contests, and supplementing subtitle thirteen of Title 2 of the Revised Statutes," approved April twenty-third, one thousand nine hundred and forty-five (P. L. 1945, c. 217).

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

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

1. Any person who shall, directly or indirectly, give or promise to give, any money or valuable thing, as a bribe, present or reward, to any person taking part or intending to take part, as a professional or amateur participant, in any baseball,

football, basketball or hockey game, boxing match or sporting contest, with intent to induce such person to lose or cause the loss, or attempt to lose or cause the loss, of any such game, match or contest, by such person or by the team or side of such person, *or to refrain from using his best efforts as a contestant in any such game, match or contest,* shall be guilty of a high misdemeanor, and punished by a fine not exceeding *ten* thousand dollars *($10,000.00)* or imprisonment at hard labor not exceeding *ten* years, or both.

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

3. Any person taking part or expecting to take part, in any baseball, football, basketball, or hockey game, boxing match or sporting contest, as a professional or amateur participant, who shall solicit or receive, directly or indirectly, any money or valuable thing, as a bribe, present or reward, to lose or cause the loss, or to attempt to lose or cause the loss, of such game, match or contest, by such person or by the team or side of such person, *or to refrain from using his best efforts as a contestant in any such game, match or contest,* shall be guilty of a high misdemeanor, and punished by a fine not exceeding five thousand dollars ($5,000.00), or imprisonment at hard labor not exceeding seven years, or both.

3. Any person taking part or expecting to take part, in any baseball, football, basketball, or hockey game, boxing match or sporting contest, as a professional or amateur participant, who shall be solicited to take or receive, directly or indirectly, any money or valuable thing, as a bribe, present or reward, to lose or cause the loss, or to attempt to lose or cause the loss, of such game, match or contest, by such person or by the team or side of such person, or to refrain from using his best efforts as a contestant in any such game, match or contest, and shall not with reasonable promptness report the same to the county prosecutor or the prosecutor of the pleas of the county in which said solicitation is made, shall be guilty of a misdemeanor, and punished by a fine not exceeding one thousand dollars ($1,000.00), or imprisonment not exceeding one year, or both.

4. This act shall take effect immediately.

Approved May 22, 1951.

Chapter 128, Laws of 1951

An Act to preserve the tenure and pension rights of teachers in high schools in school districts which unite to create a regional school district for the establishment and development of high school education.

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

1. Whenever, subsequent to April first, one thousand nine hundred and fifty-one, a regional school district shall be created for the establishment and development of high school education, the tenure and pension rights of the four-year high school teachers in any high school or schools located in any district or districts uniting to create a regional district shall be recognized and preserved by the regional board of education of the newly created district in the organization and operation of any high school in the regional district, and any period of employment in any one or all of the high schools in any district or districts uniting to create a regional district shall count toward the acquisition of tenure in the new regional district. Nothing contained herein shall be construed to apply to supervising principals or high school principals.

2. For the purposes of this act, a four-year high school teacher shall mean any high school teacher who, on the date of a referendum favorable to the creation of a regional school district for the establishment and development of high school education, is assigned for a majority of her time anywhere in grades nine to twelve, inclusive, in any high school or schools in any district or districts uniting to create a regional district for furthering high school education.

3. This act shall take effect immediately.

Approved May 31, 1951.

CHAPTER 208, LAWS OF 1951

AN ACT concerning pensioners in public employment, and amending section 43:3–1 of the Revised Statutes.

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

1. Section 43:3–1 of the Revised Statutes is amended to read as follows:

43:3–1. Any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State, shall be ineligible to hold any public position or employment other than elective in the State or in any county, municipality or school district, unless he shall have previously notified and authorized the proper authorities of said State, county, municipality or school district, from which he is receiving or entitled to receive the pension that, for the duration of the term of office of his public position or employment *he elects to receive (1) his pension or (2) the salary or compensation allotted to his office or employment.* Nothing in this chapter shall be construed to affect any pension status or the renewal of payments of the pension after the expiration of such term of office except that such person shall not accept *both such* pension or subsidy *and salary or compensation* for the time he held such position or employment.

2. This act shall take effect immediately.

Approved June 13, 1952.

CHAPTER 253, LAWS OF 1951

AN ACT to provide for the coverage of certain persons holding office, position or employment in the service of the State and of any county, municipality or school district and of any public department, board, body, commission, institution, agency, instrumentality or authority of, or in, the State and of, or in, any county, municipality or school district in the State under the old age and survivors insurance provisions of Title II of the Federal Social Security Act, as amended.

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

1. In order to extend to certain persons holding office, position or employment in the service of the State and of any county, municipality or school district and of any public department, board, body, commission, institution, agency, instrumentality or authority of, or in, the State and of, or in any county, municipality or school district in the State and to the dependents and survivors of such persons, the basic protection accorded to others by the old-age and survivors insurance system embodied in the Federal Social Security Act, it is hereby declared to be the public policy of this State, subject to the limitations of this act, that such steps be taken as to provide such protection to such persons, on as broad a basis as is permitted under the Social Security Act.

2. For the purposes of this act:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by any person holding office, position or employment in the service of the State or of any county, municipality or school district or of any public department, board, body, commission, institution, agency, instrumentality or authority of, or in, the State or of, or in, any county, municipality or school district in the State for such employer, except (1) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the State and the Federal Security Administrator entered into under this act.

(c) The term "employee" includes any person holding office, position or employment in the service of the State or of any county, municipality or school district or of any public department, board, body, commission, institution, agency, instrumentality

or authority of, or in, the State or of, or in, any county, municipality or school district in the State; *provided, however,* that neither the term "employee" as used in this act nor any provision of this act shall apply to any person who is now or shall become a member of any State, county or municipal pension fund created by any law of this State.

(d) The term "employer" means and includes the State and any county, municipality or school district and any public department, board, body, commission, institution, agency, instrumentality or authority of, or in, the State and of, or in, any county, municipality or school district in the State by whom employees, as defined in this section, are employed in employment, as defined in this section.

(e) The term "State Agency" means the State Treasurer.

(f) The term "Federal Security Administrator" includes any individual to whom the Federal Security Administrator has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of States and their political subdivisions;

(g) The term "Social Security Act" means the Act of Congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act" (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(h) The term "Federal Insurance Contributions Act" means subchapter A of chapter nine of the Federal Internal Revenue Code as such code has been and may from time to time be amended.

3. The State Agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Federal Security Administrator, consistent with the terms and provisions of this act, for the purpose of extending the benefits of the Federal old-age and survivors insurance system to employees with respect to services specified in such agreement which constitute "employment." Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State Agency and Federal Security Administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement (and their dependnts and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) The several employers other than the State shall pay to the State Agency and the State Agency shall in turn pay to the Secretary of the Treasury the amounts severally due on behalf of the State and of such other employers, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in section two of this act), equal to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into;

(4) All services which constitute employment as defined in section two and are performed in the employ of the State by employees of the State, shall be covered by the agreement;

(5) All services which constitute "employment" as defined in section two and performed by the employees of any employer other than the State in this State and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State Agency shall be covered by the agreement.

4. (a) Every employee of the State whose services are covered by an agreement entered into under section three shall be required to pay for the period of such coverage, into the Contribution Fund established by section six, contributions, with respect to wages (as defined in section two of this act), equal to the amount of tax which would be imposed by section 1400 of the Federal Insurance Contributions

Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this act.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State Agency shall prescribe.

5. (a) Each employer other than the State coming within the provisions of this act is hereby authorized to submit for approval by the State Agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such employer. Each such plan and any amendment thereof shall be approved by the State Agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State Agency, except that no such plan shall be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under section three;

(2) it provides that all services which constitute employment as defined in section two and are performed in the employ of such employer by employees thereof, shall be covered by the plan;

(3) it specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by such employer as are found by the State Agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that such employer will make such reports, in such form and containing such information, as the State Agency may from time to time require, and comply with such provisions as the State Agency or the Federal Security Administrator may from time to time find necessary to assure the correctness and verification of such reports; and

(6) it authorizes the State Agency to terminate the plan in its entirety, in the discretion of the State Agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State Agency and may be consistent with the provisions of the Social Security Act.

(b) The State Agency shall not finally refuse to approve a plan submitted by any such employer under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the county or municipality affected thereby.

(c) (1) Each such employer as to which a plan has been approved under this section shall pay into the Contribution Fund, with respect to wages (as defined in section two of this act), at such time or times as the State Agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State Agency under section three.

(2) Each such employer required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section two of this act), not exceeding the amount of tax which would be imposed by section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the Contribution Fund in partial discharge of the liability of such employer under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum (6%) per annum, be recovered by action in a court of competent jurisdiction against the employer liable therefor or may, at the request of the State Agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State.

6. (a) There is hereby established a special fund to be known as the Contribution Fund. Such fund shall consist of and there shall be deposited in such fund: (1) all contributions, interest, and penalties collected under sections four and five; (2) all moneys appropriated thereto under this act; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. Subject to the provisions of this act, the State Agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The Contribution Fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under section three; (B) payment of refunds provided for in section four (c) of this act; and (C) refunds of overpayments, not otherwise adjustable, made by the State or any county or municipality thereof.

(c) From the Contribution Fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the State Agency in accordance with any agreement entered into under section three and the Social Security Act.

(d) The Treasurer of the State shall be custodian of the Contribution Fund and shall administer such fund in accordance with the provisions of this act and the directions of the State Agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State Agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated annually to the Contribution Fund, in addition to the contributions collected and paid into the Contribution Fund under sections four and five, to be available for the purposes of section six (b) and (c) until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under section three.

(2) The State Agency shall submit to each regular session of the State Legislature, at least ninety days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the Contribution Fund by paragraph (1) of this subsection for the next appropriation period.

7. There is appropriated for the purposes of administering this act such sums as may from time to time be included in an annual or supplemental appropriation act.

8. The State Agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

9. The State Agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the State and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this act and shall submit a report to the Legislature at the beginning of each regular session, covering the administration and operation of this act during the preceding calendar year, including such recommendations for amendments to this act as it considers proper.

10. If any provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

11. This act shall take effect immediately.

Approved June 20, 1951.

CHAPTER 308, LAWS OF 1951

AN ACT concerning the election of boards of education in certain cities.

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

1. In every city of the second class, in any county which is a county of the second class according to its population as shown by the census of the year one thousand nine hundred and forty, governed by the commission form of government and having a population of one hundred thousand or more, in which the mayor appoints the board of education, the municipal clerk of such city, whenever there is presented to him a petition signed by at least ten per centum (10%) of the registered voters of such city requesting that there shall be submitted to the voters therein, the question whether or not the provisions of chapter seven of the Title, Education, of the Revised Statutes (§ 18:7–1 et seq.), shall be adopted, shall cause such question to be submitted to the voters therein as other public questions are submitted pursuant to Title 19 (Elections) of the Revised Statutes.

If a majority of the votes cast upon the question are for the adoption of the provisions of such chapter, the school district in such city shall thereafter in all respects be governed by the provisions of such chapter, and the board of education therein shall have all the powers and duties given and imposed by the several provisions of such chapter.

2. The question to be submitted as provided for herein, shall be submitted at the next general or municipal election, whichever shall occur first, following the filing of a valid petition pursuant to the provisions of this act, except that in the event such general or municipal election occurs within forty-five days of the filing of such petition, the question shall be submitted at the next general or municipal election.

3. The members of the board of education in office at the time of the acceptance by the voters of the provision of chapter seven of Title 18 of the Revised Statutes, shall continue in office until the organization meeting of the new board which shall be elected at the annual school election, provided for by section 18:7–14 of the Revised Statutes, following such acceptance.

4. This act shall take effect immediately.

Approved July 13, 1951.

SCHOOL LAW DECISIONS

1950–1951

DECISIONS OF STATE BOARD OF EDUCATION AND SUPERIOR COURT RENDERED ON DECISIONS OF COMMISSIONER OF EDUCATION PRINTED IN 1949-1950 BULLETIN

SCHOOL LAW DECISIONS
1950-1951

I

WHERE A FATHER CONSENTS TO HIS CHILDREN'S RESIDENCE WITH HIS DIVORCED WIFE, THE SCHOOL DISTRICT WHEREIN SHE RESIDES IS RESPONSIBLE FOR THE EDUCATION OF THE CHILDREN.

KENNETH B. WALTON,
Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF BRIGANTINE, ATLANTIC COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Messrs. Moore, Butler & McGee (J. M. Butler, of Counsel).
For the Respondent, Mr. Abraham Rosenberg.

The petitioner is a resident of the City of Brigantine in the County of Atlantic. His two children are enrolled in the Atlantic City High School which is the designated high school for the school district of the City of Brigantine. The Board of Education of Brigantine has refused to pay the tuition of the children for the reason that, in the opinion of said Board, they are domiciled in Linwood, New Jersey, and hence the Board of Education of Linwood is responsible for their education.

The following facts are stipulated:

"1. Appellant is and has been a resident of the City of Brigantine continuously since April, 1930.

"2. Appellant is the father of two children, John G. Walton, 17 years of age, and D. Sellers Walton, 15 years of age. John attended the public schools of Brigantine through the 8th grade and D. Sellers through the 7th grade. John attended Friends' School in Atlantic City through 3 years of high school and D. Sellers attended said Friends' School for 8th grade work and for one year of high school. Petitioner paid tuition to the Friends' School for his said children.

"3. On April 13, 1948, appellant and his former wife, Jessie S. Walton, were divorced. Prior to the divorce they entered into a written agreement under date of February 21, 1948, in which, among other things, it was agreed that the parties to such agreement should purchase a house at 2020 Shore Road, Linwood, New Jersey, for the use of the said Jessie S. Walton and for their sons. Said agreement provided for the payment of certain sums of money to the former wife and for the support of the sons. Said agreement provided in respect to custody, in Paragraph 12 thereof, as follows:

> 'It is further agreed between the parties hereto that their sons shall spend two week-ends of each month with each parent and the said sons shall spend their vacations with the party of the second part (appellant); with the exception that if the said sons desire to spend any part of them with the party of the first part (mother), they may do so; similarly if said sons desire to spend any part of their school year with the party of the second part, they may do so. It is agreed that their sons shall spend alternate Thanksgiving Days and Christmases with each parent, such visits to be arranged to correspond as far as possible with the wishes of their sons.'

"Said agreement also provided in paragraph 13 thereof as follows:

'During their periods of residence with one of the parties hereto it is agreed that that party shall not remove nor allow their sons or one of them to be removed from their home for a period of over two weeks without the knowledge and consent of the other party, and in no case beyond the boundaries of the continental United States without such knowledge and consent (except in the coastal waters of the United States).'

"4. The days that one or both of the said children have spent with appellant at their home in Brigantine, New Jersey, for a typical year are as follows:

Spring vacations	14 days
Summer vacations	91 days
Thanksgiving vacation	4 days
Christmas vacation	14 days
Weekends with appellant of 2 days each	34 days
Plus additional days at random, approximately	30 days
Total, approximately	187 days

"The balance of the year is spent with their mother at 2020 Shore Road, Linwood, New Jersey. There is maintained in Brigantine a bedroom, continuously set up and appointed for their use, and many of their personal belongings and clothing remain there.

"5. During the summer of 1949, appellant and his former wife decided to withdraw them from Friends' School in Atlantic City and enter them at the Atlantic City High School which High School has heretofore been designated by the Board of Education of the City of Brigantine as the High School to which its children should be sent. The High School designated by the Board of Education of the City of Linwood is the Pleasantville High School.

"6. Prior to the 1949 school year appellant notified the Board of Education of Brigantine of their wish to send the two children to Atlantic City High School. On October 28, 1949, appellant was advised in writing by John J. Rosenbaum, Secretary of the Board of Education of the City of Brigantine, that the Board of Education had, on October 27, 1949, denied the application for payment of tuition for appellant's children in the Atlantic City High School."

The following was stipulated in a supplementary stipulation:

"In addition to the facts already stipulated, the following facts are stipulated and agreed to:

"Kenneth B. Walton, the Appellant, and Jessie S. Walton, now his divorced wife, were divorced under and by virtue of a judgment and decree of the Second Judicial District Court of the State of Nevada. The said judgment and decree provided inter alia as follows:

'ORDERED, ADJUDGED AND DECREED: That plaintiff, JESSIE S. WALTON, be, and she hereby is granted an absolute divorce, and that the bonds of matrimony now and heretofore existing between plaintiff and defendant, KENNETH B. WALTON, be, and the same hereby are forever dissolved and each of the parties released from all the obligations thereof, and restored to the status of an unmarried person.'"

The decision in this case turns upon the determination of the domicile of the children for the reason that the school district wherein the children are domiciled is responsible for their education. The pertinent statute is R. S. 18:14–1, as amended by L. 1947, c. 138, which reads in part as follows:

"18:14–1. Public schools shall be free to the following persons over five and under twenty years of age:

"a. Any person who is domiciled within the school district;

"b. Any person who is kept in the home of another person gratis as if he were such other person's own child, but the board of education of any school district before accepting any such person as a pupil in such district may require such other person to file with the secretary or district clerk of the board, a sworn statement that he is domiciled within the district, is supporting the child gratis, will assume all personal obligations for the child relative to school requirements, and intends to so keep and support the child gratuitously and not merely through the school term;

"c. Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein but no person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed temporarily resident therein; . . . "

Counsel for the petitioner contends that the domicile of a child is that of the father. This contention is, generally speaking, well established. However, the domicile of minor children can be changed with the consent of the father. *Yarborough* vs. *Yarborough,* 290 U. S. 202. It is stipulated that a written agreement was entered into by the parents of the children whereby a house was purchased at 2020 Shore Road, Linwood, for the use of the divorced wife *and for their sons.* It is also stipulated that the sons spent their school days in Linwood with their mother. Only vacations and certain week-ends were spent with the father. It is the opinion of the Commissioner that the father has consented to the children's residence with the mother and, thereby, the children are domiciled in Linwood.

Petitioner contends that *Mansfield Township* vs. *State Board of Education,* 101 N. J. L. 474, is dispositive of the question at issue. It is the opinion of the Commissioner that the Mansfield case is not applicable. In that case the Court held that a child sent into the State to live in a boarding house was not entitled to an education at public expense. That situation can be distinguished from a situation where children reside with their mother with the consent of the father.

Ordinarily, children residing in a district without a high school must travel to a designated high school in the bus furnished by the board of education of the sending district. It happens in this case that both parents desire the children to attend Atlantic City High School and transportation facilities are not available. In most cases, however, it would not be possible for children of a divorced mother to travel to the school district where the father resides. In deciding this case, the Commissioner must avoid the establishment of a precedent whereby the children of divorced parents might encounter difficulty in securing an education.

If the petitioner should prevail in this case, a school district in which children of divorced parents are residing with their mother could save money by refusing to pay their tuition to high school on the theory that they are not domiciled in the district. It is the opinion of the Commissioner that such was not the intention of the Legislature.

The Commissioner finds and determines that the children of the petitioner are domiciled with the mother within the intendment of R. S. 18:14–1, as amended, and that the Board of Education of the Borough of Linwood is responsible for their education in the high school designated to receive the pupils of the district. The petition is dismissed.

COMMISSIONER OF EDUCATION.

July 7, 1950.

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed, for the reasons stated in the opinion filed by the Commissioner of Education.

September 8, 1950.

II

THE COMMISSIONER WILL GRANT AN APPLICATION FOR CHANGE OF DESIGNATION OR ALLOCATION OF PUPILS ONLY WHEN HE IS SATISFIED THAT BENEFITS TO THE PUPILS THEREBY WILL OUTWEIGH THE LOSS TO THE RECEIVING DISTRICT

BOARD OF EDUCATION OF THE BOROUGH OF HAWORTH,
Petitioner,
vs.
BOARD OF EDUCATION OF THE BOROUGH OF DUMONT,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Winne & Banta (Mr. George Winne, of Counsel).
For the Respondent, Walter H. Jones.

The Board of Education of the Borough of Haworth sends forty-eight per cent (48%) of its high school pupils to the Dumont High School and fifty-two per cent (52%) to the Tenafly High School. This allocation of pupils was in effect in 1943-1944 and became fixed by the provisions of R. S. 18:14–7 as amended by Chapter 210 of the Laws of 1944.

The Board of Education of the Borough of Haworth, pursuant to R. S. 18:14–7, has petitioned the Commissioner for authorization to send all its pupils to the Tenafly High School, or, in the alternative, for a reallocation of pupils between Tenafly and Dumont. The case is presented on a stipulation of facts and sworn certifications by Burton Johnson, Principal of the Tenafly High School, and by Charles A. Selzer, Supervising Principal of the Dumont Schools, in lieu of testimony. These certifications constitute the factual evidence for deciding the various issues. The Commissioner can also take notice of the records available to him in the State Department of Education. Able briefs were prepared by counsel for the parties and the issues were also argued orally.

The pertinent statute reads in part as follows:

> "18:14–7. 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 school.
>
> "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. . . .
>
> "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 considering an application for a change of designation or reallocation of pupils, the Commissioner must be mindful of the purpose of the high school designation law. In this State there are 165 school districts which maintain high schools for pupils of all high school grades. This means that 387 school districts must depend upon the 165 for the education of their high school pupils. This arrangement is mutually advantageous. The sending districts obtain high school facilities cheaper than such facilities can be provided by themselves and the additional pupils enable the receiving districts to expand their educational offerings and reduce their overhead.

The success of the so-called "receiving-sending set-up" has given New Jersey an enviable position in the nation in secondary education. New Jersey has fewer small high schools than any other State in the United States. It was to give stability to the receiving-sending set-up that the first high school designation law was enacted. Before the enactment of this law, receiving districts hesitated to bond themselves to erect buildings and to expand their facilities to provide for tuition pupils for the fear that the tuition pupils might be withdrawn after the facilities have been provided. The high school designation law protects such districts from the withdrawal of tuition pupils without good cause. This statute benefits the sending district as well as the receiving district. If the law were not in effect, many sending districts, either individually or by uniting with other districts, would be burdened with the erection and maintenance of high schools.

In order to provide for cases where good and sufficient reasons exist for the transfer of pupils to another high school, the Legislature charged the Commissioner with the duty of determining when there is good and sufficient reason for a change of designation. The Commissioner feels constrained to exercise his discretion under the statute with great caution. Otherwise, the law will not accomplish the salutary purposes intended by the Legislature. Accordingly, the Commissioner will grant an application for change of designation or reallocation of pupils only when he is satisfied that positive benefits will accrue thereby to the high school pupils sufficient to overcome the claims of the receiving district to these pupils.

The burden of proof rests upon the petitioning board to establish the good and sufficient reason for change required by R. S. 18:14–7. It is the opinion of the Commissioner that the petitioner has not sustained this burden of proof. The petitioner believes that the curriculum of the Tenafly High School is better suited for its students because of the emphasis of the Tenafly High School on college preparation. There is no doubt that the Tenafly High School is an excellent school, but the Dumont High School is also an excellent high school which can adequately prepare its graduates for college. The petitioner also asserts that there are intangible benefits which would result from a change of designation. Such intangible benefits are too indefinite to consider in the light of the requirements of the law.

A careful study of the well prepared certifications by Supervising Principal Selzer and Principal Johnson does not disclose good and sufficient cause for any change of designation or reallocation of pupils. Accordingly, the Commissioner must dismiss the petition.

COMMISSIONER OF EDUCATION.

August 24, 1950.

III

WHEN A POSITION IS ABOLISHED IN A DISTINCTIVE CLASSIFICATION, THE SALARY OF THE POSITION IS ALSO ABOLISHED AND THE INCUMBENT OF THE ABOLISHED POSITION IS ENTITLED ONLY TO THE SALARY OF THE POSITION IN THE CLASSIFICATION WHICH HE HOLDS AS THE RESULT OF THE ABOLITION OF HIS FORMER POSITION

HOWARD E. DEILY,
Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Milton A. Feller.
For the Respondent, Robert H. Doherty.

The petitioner, who had acquired tenure in the Jersey City School System as Grammar School Principal at a salary of $6,431.80 per annum, was, at a meeting of the Board of Education of the City of Jersey City, held on March 20, 1947, appointed to the position of Grammar Principal assigned to the Office of the Superinendent of Schools in charge of Statistics, effective March 14, 1947, at an annual salary of $8,000.00. On December 16, 1948, his salary was increased to $9,000.00. On December 1, 1949, his position as Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics was abolished for reasons of economy, effective December 15, 1949. Thereafter, the petitioner served as Principal of Grammar School No. 3 at a salary of $7,200.00 per annum. He alleges that he has been subjected to a reduction of salary without charges being preferred against him and without a hearing, contrary to the provisions of R. S. 18:13–17 which read as follows:

> "18:13–17. No teacher, principal, or supervising principal 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."

Petitioner seeks an order from the Commissioner:

1. Directing the respondent to restore to the petitioner the amount of salary he was receiving before he was subjected to the alleged illegal reduction of the same.
2. Directing the respondent to account for and pay to the petitioner all sums withheld from him by reason of said alleged reduction of salary.

Respondent denies that it is indebted to the petitioner in any sum for reduction in salary as Grammar School Principal for the reason that the services performed by him as Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics from March 20, 1947, until the position was abolished, were in a different classification and category than those performed by a grammar school principal. The salary paid during this period was for services performed for the Superintendent of Schools as a statistician and, accordingly, when the position of Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics was abolished, his salary reverted to that of Grammar School Principal.

The following has been established in previous decisions of the Commissioner, the State Board of Education, and the Courts of this State:

1. A board of education may abolish a position in good faith.

   Weider vs. *Board of Education of High Bridge,* 112 N. J. L. 285; *Harker* vs. *Bayonne,* 85 N. J. L. 176; *Werlock* vs. *Board of Education,* 5 N. J. S. L. D. 4, 5 N. J. S. L. D. 28, 5 N. J. Super. 140.

2. When, as a result of the abolition of a position, the incumbent takes a position in a different classification, he is entitled only to the salary paid for the position in that classification.

   Decision of the Commissioner of Education in the case of Kelly vs. *Board of Education of Red Bank,* January 7, 1941; *Werlock* vs. *Board of Education,* 5 N. J. S. L. D. 4, 5 N. J. S. L. D. 28, 5 N. J. Super. 140.

3. A reduction in salary within the intent of the tenure law means paying less salary for services performed in the same classification. This provision of the tenure law was intended to prevent a board of education from forcing a resignation of an employee protected by the tenure law through the device of decreasing his salary to a point where he could not afford to continue in the employ of the board. Paying less salary to a person who performs duties in a different classification as a result of the abolition of his position in another classification is not considered to be a reduction in salary within the meaning of the tenure law.

   Reed vs. *Board of Education of Trenton,* 1938 School Law Decisions, at page 441; *Werlock* vs. *Board of Education, supra.*

4. A person performing services in a distinctive classification or category cannot be transferred to a different classification or category paying a lower salary as long as the position in the higher paid classification continues to exist.

   Cassidy vs. *Board of Education of Jersey City,* 1938 School Law Decisions, 368, at pages 371 and 373.

The crux of the matter in this case appears to be, therefore, whether the services performed by the petitioner as Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics were in a distinctive classification from those performed by other grammar school principals.

The following is stipulated, subject to the objection of the attorney for the petitioner on the ground that such evidence is irrelevant and immaterial to the issues involved in this case:

"1. That upon the appointment to the Office of Superintendent of Schools of Jersey City as Statistician on March 20, 1947, the Petitioner's salary was simultaneously raised from the basic salary of a Grammar School Principal to the sum of Eight Thousand Dollars and that such sum is in excess of salaries paid to Grammar School Principals for the duties performed in the Jersey City School District.

"2. That, during the period between March 20, 1947, and December 23, 1949, the petitioner while performing duties as a Statistician in the Superintendent's Office, did no work generally performed by a Grammar School Principal and that he had no school assigned to him to perform the functions of a Grammar School Principal.

"3. That when Petitioner's salary was increased, on December 16, 1948, to take effect on July 1, 1949, from eight thousand to nine thousand dollars per annum, such increase was made at the time when he was Statistician, under the supervision of the Superintendent of Schools, and that at such time he was performing duties as a Statistician and not the duties of a Grammar School Principal.

"4. That the petitioner was not performing work after March 20, 1947, in the Superintendent's Office, as additional work to his duties as Grammar School Principal, as he had abandoned work assigned to him as Grammar School Principal and had no school assigned to him where he could perform such duties and, in fact, was performing duties in his new position as statistician.

"5. That a Grammar School Principal has supervision of the school in his charge, and that his duties are set forth in the Rules and Regulations of the Board of Education, pages 22 to 27, which are to be considered a part of this stipulation.

"6. That the position of petitioner, Howard E. Deily, Grammar School Principal, assigned to the Office of Superintendent of Schools, in charge of Statistics, was abolished for reasons of economy by resolution of the Respondent Board, dated December 1, 1949, effective December 15, 1949."

A reading of the Rules and Regulations of the Board of Education of the City of Jersey City, relating to Principals of Schools, indicates that the work of a statistician has nothing in common with the duties prescribed for a Grammar School Principal.

It is the opinion of the Commissioner that the petitioner was not in actual fact a Grammar School Principal during the period of his service in the Superintendent's Office, even though he was called "Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics." In the case of *Alice M. DeBros* vs. *Board of Education of the Town of West New York,* 2 N. J. S. L. D. 44, at pages 47 and 48 (affirmed by the State Board of Education without written opinion, June 7, 1946) the Commissioner said:

"Bestowing the title of 'principal' upon a person does not confer upon him the legal status of a principal. 'Courts will not be controlled by the nomenclature the parties apply to their relationship.' *Capozzoli* vs. *Stone and Webster Engineering Corporation,* 42 Atl. Rep. 2d Series, 524 at 525.

"In the case of *Phelps* vs. *State Board of Education,* 115 N. J. L. 310, affirmed by Court of Errors and Appeals, 116 N. J. L. 412, in referring to the proper classification of so-called 'teacher-clerks,' the Supreme Court said:

> 'As to the two so-called "teacher-clerks," we think that one holding a teacher's certificate, but doing only clerical work is properly classified as a clerk. The question is what such a person is doing, not what he or she is certified as qualified to do.'

"An examination of the statutory powers and duties of a principal reveals that a principal, as contemplated by the statutes, is a person having charge of a school building with certain responsibilities with respect to the building, the teachers, and the pupils.

"The following are some of the powers and duties of a principal, prescribed by statute:

"1. In a school where more than one teacher is employed, the principal makes an annual report to the county or city superintendent on blanks furnished by the Commissioner of Education. (Section 18:13–114.)

"2. In a school where there is more than one teacher employed, the principal alone may suspend a pupil. (Section 18:13–116.)

"3. When there is evidence of departure from normal health of any child, the principal of the school shall, upon recommendation of the school nurse, exclude such child from the building. (Section 18:14–59.)

"4. The principal is required to conduct fire drills and see that furnace rooms and fire doors are closed during school hours, and require teachers to keep doors and exits unlocked. (Sections 18:14–106 and 18:14–107.)

"5. The principal over a local school system serves as a public library trustee in the event that there is no city superintendent or supervising principal. (Section 40:54–9.)

"Rules 87, 90, 91, 95 and 109 of the Rules and Regulations of the State Board of Education, found in the 1938 Edition of the New Jersey School Law, also indicate that the State Board regards a principal as one who has charge of a school building.

"It is the opinion of the Commissioner that a person, whose duties are those of a research worker, is not a principal as contemplated by the School Law."

Even if it were held that petitioner was a Principal during the period he served as a statistician, he could not prevail in the instant case for the reason that the so-called position of Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics is certainly a very distinct type of principalship and hence can be properly placed in a different classification or category in so far as salary is concerned.

It is significant that the petitioner's salary was fixed in excess of salaries paid to other grammar school principals in the March 20, 1947, resolution of the Board of Education, whereby he was appointed as Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics. The Commissioner concludes that the petitioner, as Grammar Principal assigned to the Office of the Superintendent of Schools in charge of Statistics, held a distinctive position and that the higher salary was connected with this position. Therefore, when the position was abolished, the salary for the position was abolished.

Counsel for petitioner argues that the higher salary was given unconditionally, that petitioner's assignment was not temporary, that he was assigned or transferred, and cites precedents to show that in cases of transfers, salaries cannot be reduced. However significant the words "assignment" or "transfer" may be in other cases, they are not determining in his case. Regardless of whether he was "assigned" or "transferred" "temporarily" or "permanently," the petitioner held a distinctive position at a higher salary than other principals. This position the board had a right to abolish and the incumbent of the abolished position was entitled only to the salary of the position to which he reverted.

Counsel for the petitioner further argues that even if the Jersey City Board of Education had a legal right to reduce the petitioner's salary, the method was an illegal one for the reason that the Board proceeded to pay the petitioner less than he had been receiving without authorizing this reduction by an appropriate resolution.

The Commissioner takes the view that paying less to a person who reverts to another classification, as the result of the abolition of a position in a distinctive classification, is not a reduction of salary within the intent of the tenure law. The salary went out of existence with the position. Presumably, some official of the board paid the petitioner his salary according to the salary schedule for Grammar School Principal in charge of school buildings.

If there be any technical irregularity on the part of the Board of Education, it does not lie in its failure to pass a resolution reducing the petitioner's salary for the reason that there was no reduction in salary within the intent of the tenure law. The technical irregularity, if any, would lie in the Board's failure to take formal action to fix petitioner's salary according to the schedule for the position which he now holds as the result of the abolition of his position in a distinctive classification. Of course, a study of the minutes of the Board of Education and the salary schedule in effect in Jersey City would be required to determine whether there was any technical irregularity. Such a determination is unnecessary for the reason that the petitioner has no cause to complain of any technical failure of the Jersey City Board, if he is receiving the salary of a Grammar School Principal in charge of a building, to which he is entitled. Furthermore, it would seem that by defending this suit, the Board of Education ratified the action of the Board's official who fixed the salary of the petitioner, although, in the view which the Commissioner takes of this case, it is unnecessary to determine whether there was such a ratification.

It is the opinion of the Commissioner that the best interests of the school systems and the school personnel of the State would not be served if the contentions of the petitioner should prevail. Boards of education would hesitate to establish new services and create new positions with higher compensation if they felt compelled by law to continue the higher salaries of the personnel if later developments made it advisable to abolish the positions. Thus the school systems would be deprived of the advantages of trying new things and the personnel would be deprived of higher salaries in new positions.

For the foregoing reasons, the petition is dismissed.

COMMISSIONER OF EDUCATION.

February 27, 1951.

IV

WHEN A VOTE OF A MAJORITY OF THE LEGAL BALLOTS CAST IS REQUIRED BY LAW, REJECTED BALLOTS CANNOT BE CONSIDERED IN DETERMINING WHETHER A MAJORITY OF THE LEGAL BALLOTS WAS CAST FOR A PROPOSITION

ALFRED J. COLOMBO,
Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HASBROUCK HEIGHTS, BERGEN COUNTY,
Respondent.

} DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Charles S. Peraino.
For the Respondent, Julius Kepsel.

On January 25, 1951, the Board of Education of the Borough of Hasbrouck Heights, at a special election, submitted the following proposal to the legal voters:

"RESOLVED, that the Board of Education of the Borough of Hasbrouck Heights, in the County of Bergen, is hereby authorized:

"(a) To accept from the Borough of Hasbrouck Heights, as a site for a new high school a tract of land in the Borough containing approximately nine (9) acres, fronting on the Westerly side of the Boulevard between Paterson and LaSalle Avenues and consisting of Lots 16 to 33, 37 to 40, 43 to 49, 51 to 64, 66 to 68, in all cases inclusive, in Block 150, and Lots 9 to 19, 24 to 30, 33 and 34, in all cases inclusive, in Block 151-A and

"(b) To construct on said tract a new school for use as a high school, to expend therefor including incidental expenses not exceeding $835,000, and to issue bonds of the School District for said purpose in the principal amount of $835,000, thus using up all of the $35,715.09 borrowing margin of the Borough of Hasbrouck Heights presently available for other improvements and also increasing its net debt $197,139.10 beyond said borrowing margin."

The results as announced show the following:

Ballots Cast	2,030
Yes	1,013
No	998
Rejected	19

The Commissioner was asked by petitioner for a recount of the ballots cast and for a determination of the question as to whether rejected ballots are to be counted as part of the total vote cast and, therefore, whether a majority should be based thereon or upon the total votes cast minus rejected ballots.

On February 16, 1951, a recount was conducted by the Assistant Commissioner of Education in charge of Controversies and Disputes in the County Administration Building, Hackensack. The results of the recount show:

Ballots Cast	2,030
Yes	1,006
No	990
Rejected	34

Counsel agreed that the 34 ballots rejected could not be legally counted.

While the proposal has a majority of 16 of the ballots counted, it falls 26 short of a majority of all the ballots put in the ballot box. Therefore, the Commissioner is called upon to rule upon the question whether the proposal needs for adoption a majority of the ballots counted or a majority of the ballots put in the ballot box.

The pertinent statute is Section 18:7–85 of the Revised Statutes, which reads as follows:

> "18:7–85. The legal voters of a district may, either at the annual meeting of the district or at a special meeting thereof called for that purpose, *by the vote of a majority of the legal ballots cast*, authorize the board to issue bonds of the district for any or all of the following purposes:
>
> (a) Purchasing or taking and condemning land for school purposes or improving such land.
>
> (b) Building a schoolhouse or schoolhouses or other buildings for school purposes.
>
> (c) Making additions, alterations, repairs or improvements in or upon any school house or other buildings.
>
> (d) Purchasing school furniture and other necessary equipment."

In *Bott* vs. *Secretary of State*, 62 N. J. L. 107, affirmed by the Court of Errors and Appeals, 63 N. J. L. 289 at 300, a similar question was presented to the Court for determination. In this case an act of the Legislature, submitting a constitutional amendment to the electorate of the State, provided that a majority of all the votes cast in the State for and against the amendment would be required for adoption. The certificate of the Board of State Canvassers showed the following result of the referendum:

Names on Poll Books	141,672
For	70,443
Against	69,642
Rejected	961

Thus, if the ballots rejected were considered in ascertaining the result, the amendment was lost. On the other hand, if these ballots were not considered, the majority in favor of the amendment was 801. It was held by the Court that the rejected ballots were to be excluded from the computation of the votes cast for and against the amendment as such ballots were simply nullities.

It should be noted that even though the law which was interpreted in the *Bott case, supra,* did not specifically require a majority of the legal ballots cast, it was, nevertheless, construed to mean a majority of the legal ballots cast. Therefore, the fact that the statute which is being construed in the instant case specifically requires a majority of the *legal* ballots cast, makes it clear that the Legislature intended to exclude rejected ballots in computing the results of an election held pursuant to Section 18:7–85. Further support for this view is found by comparing the language of the sources of Section 18:7–85, among which are L. 1903 (2d Spec. Sess.), Chapter 1, Section 97, p. 38, and the amendment of this section by L. 1912, C. 259, Section 1, p. 464. According to the 1903 statute, a majority of *those present* was required, while according to the 1912 amendment, the requirement was changed to a majority of the *legal votes cast*. Thus it would appear that the petitioner would have had a better legal basis for his contentions under the 1903 statute. It is clear, however, that in amending the 1903 statute, the Legislature intended to consider only legal votes cast in determining a majority.

The Commissioner finds and determines that the proposal submitted to the legal voters on January 25, 1951, was carried by a majority of the legal votes cast.

Petitioner in his brief raises two questions not included in his petition of appeal:

1. The ballot was defective in that it was not in the precise form required by statute.
2. The voters should have been permitted to vote separately for the site of the proposed school and for the issuance of the bonds.

It is the opinion of the Commissioner that these questions are raised too late. By the terms of Section 18:7–89: "No action, suit, or proceeding 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 instituted after the expiration of twenty days from the date of such election or meeting."

In the case of *In re Special School Election in the Township of Tewksbury, Hunterdon County*, decided by the Commissioner of Education on August 11, 1949, the Commissioner held that matters not included in the original petition could not be introduced after the time to institute a proceeding to contest the validity of a bonding election, pursuant to R. S. 18:7–89, has expired. The Commissioner's decision was upheld by the Appellate Division of the Superior Court, 7 N. J. Sup. 141. The above questions were not raised in the original petition, and the time for raising them expired before the recount was held or petitioner's brief presented. The Commissioner was not requested to amend the petition.

However this may be, the objections to the ballot are without merit. It is well established that an election will not be set aside for technical errors in election procedures which do not affect the results of the election. *In re Clee*, 119 N. J. L. 310. In the *Tewksbury Township case, supra*, a similar question was raised about the ballot used at the election, and it was held that the ballot was in substantial conformity with the directory provisions of the statute. It is the opinion of the Commissioner that the type of ballot used in the election under consideration did not affect the result of the election.

As to the second objection, it is the opinion of the Commissioner that it was not necessary to permit the legal voters to vote separately to accept a site for a high school and to vote the bond issue. The question as framed is in accord with Section 18:7–68 of the Revised Statutes, which reads as follows:

> "The board shall frame the proposal or proposals to be submitted to the voters which shall be set forth in the notice of meeting and in the ballots. Each proposal shall state the purpose and amount of the bonds for such purpose. If bonds for more than one purpose are proposed, separate proposals for each may be submitted or several purposes may be submitted in one proposal which shall state such purpose and either the total amount of bonds to be authorized therefor, or the amount of bonds to be authorized for each purpose. Bonds authorized in separate proposals may be combined in one issue. A proposal which authorizes the purchase of land shall be sufficient to authorize taking and condemning such land."

It is also in accord with the instructions and examples in Section IV of the "Instructions and Forms for Proceedings Authorizing the Bonding of Chapter 7 School Districts of New Jersey, Revision of 1948" prepared by the State Department of Education to guide boards in submitting questions pursuant to Section 18:7–86.

The Commissioner has examined *State* vs. *Board of Education of Cranberry Township*, 31 Atlantic Reporter at 1033, and *Cadien* vs. *Board of Education of Cliffside Park*, 2 N. J. Misc. at 109, and does not consider them in point. It should also be pointed out that both these decisions were rendered prior to the enactment of Chapter 317 of the Laws of 1927, which is the source of Section 18:7–86, authorizing several purposes to be submitted in one proposal.

The petition is dismissed.

COMMISSIONER OF EDUCATION.

March 20, 1951.

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed, for the reasons stated in the opinion filed by the Commissioner of Education.
June 1, 1951.

V

THE BOARD OF COMMISSIONERS CAN EXERCISE NO CONTROL OVER THE DISBURSEMENT OF THE FUNDS APPROPRIATED AND RAISED FOR THE BOARD OF TRUSTEES OF THE SCHOOL FOR INDUSTRIAL EDUCATION

THE BOARD OF TRUSTEES OF THE SCHOOL FOR INDUSTRIAL EDUCATION IN THE CITY OF HOBOKEN,
Petitioner,

vs.

THE BOARD OF COMMISSIONERS OF THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN AND STEPHEN E. MONGIELIO, DIRECTOR OF REVENUE AND FINANCE,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Otmar J. Pellet.
For the Respondent, Dominick Marrone.

The petitioner, The Board of Trustees of the School for Industrial Education in the City of Hoboken, complains that the Board of Commissioners and the Director of Revenue and Finance have refused to pay to the petitioner the full amount of the sum of $12,000.00 appropriated and raised by taxation in 1950 for the support of the School for Industrial Education. Petitioner asks that an order be issued by the Commissioner of Education requiring the respondents to pay forthwith to the petitioner the full amount of the $12,000.00 appropriation.

Respondents defend their refusal to pay the full appropriation on the grounds (1) that one-third of the appropriation is used for administrative personnel instead of for strictly educational purposes; (2) that the $12,000.00 was appropriated with the proviso that the Board of Trustees would receive a like amount from the State of New Jersey; (3) that the school has been politically exploited in making jobs and appointments; and (4) that the Board of Trustees have not practiced economy in conducting the business of the school.

This case is presented on a Stipulation of Facts. There was oral argument before the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Conference Room of the State Department of Education on February 23, 1951.

Contentions (1), (3), and (4) raise the question whether the Board of Commissioners, having appropriated and raised funds by taxation pursuant to Section 18:15–18 of the Revised Statutes, is authorized to exercise control over the disbursement of the funds and whether it may refuse to pay to the Board of Trustees any part of the appropriation if, in its judgment, the funds are not being wisely expended. The answer to this question must be in the negative.

It was established as early as 1863 in the case of *Council of Newark* vs. *Board of Education of Newark*, 30 N. J. L. 374, that the board of education is given exclusive control and management of funds appropriated for school purposes, and is not subject to the direction or interference of the governing body of the municipality except in purchasing real estate. The following is quoted from the decision:

> "This board is by the charter made a corporation of itself, and endowed with a perpetual succession, the right to sue and be sued, etc., as corporations usually

are. All its powers and all its duties are expressly provided for in the charter itself. It derives no powers, and is subject to no control from the common council. It is quite independent of it as the council is of the board; and all the connection which there is between them and all that they have to do with each other is, that it is made the duty of the board of education to transmit to common council, annually, an estimate of the amount of moneys necessary for the support of public schools in the city during the year, specifying particularly the several sums required for each branch of expenditure; and the common council are then to determine, by resolution, the amount of moneys to be appropriated to the public schools during the year, and raise by tax the money so appropriated; and the board of education is to expend the money so raised for the support of the public schools in the city, according to the provisions of the charter. The board of education is also required to make to the common council an annual report of the number and condition of the schools, and what has been done in and for them during the year. But in the disbursement and distribution of the money raised the board of education are given the exclusive management and control, and are in no way subject to the direction or interference of the common council, except that it cannot purchase real estate without its concurrence."

In the case of *Superintendent of Schools* vs. *Hammell*, 31 N. J. L. 446, at 453, it was said:

"It is obvious that the Legislature intended to place the public schools entirely beyond the control of the common council, and not to subject the fund ordered to be raised for them to any action or limitation by that place."

In the case of *Hayes* vs. *Townsend*, 88 N. J. L. 97, the Supreme Court referred to the Newark decision *supra* and said:

"This decision has never been reversed or overruled, and we think it is applicable to the case at bar. The general powers of boards of education under the school act are substantially similar to those in the Newark charter."

It is the opinion of the Commissioner that the *Newark* and *Hayes* vs. *Townsend cases, supra,* are also applicable to the instant case. The powers and duties of "the board of trustees of schools for industrial education" as set forth in Sections 18:15–21 and 22 of the Revised Statutes are substantially similar to those prescribed for boards of education of school districts. The board of trustees under the terms of Section 18:15–22 is created a body corporate as are Chapters 6 and 7 districts under Sections 18:6–21 and 18:7–54, respectively. It is also expressly provided in Sections 18:15–19 and 18:15–21 of the Revised Statutes that the funds raised for industrial schools shall be applied under the direction of the board of trustees. The Commissioner concludes that the respondents are without authority to exercise supervision or control over the expenditures of the funds after such funds are appropriated for the industrial school and, therefore, are without authority to withhold any part of these funds for the reason that, in the judgment of the respondents, they are not being used wisely.

The final question raised by respondents' second contention is whether the respondents may reduce the amount of the $12,000.00 appropriation to $9,000.00 for the reason that the State provided only $9,000.00 for the school pursuant to Section 18:15–24 of the Revised Statutes. This question must also be answered in the negative. No evidence was produced to show that the appropriation was made conditionally nor was any statutory authority cited as a basis for making a conditional appropriation. The $12,000.00 appropriation was made for school purposes and can be used for no other purpose. *Hoboken* vs. *Phinney*, 29 N. J. L. 65.

Section 18:15–24 of the Revised Statutes reads in part as follows:

"When any school or schools shall have been established in any city there shall be contributed annually by the State, in the manner aforesaid, for the maintenance and support thereof, a sum of money equal to that contributed each year in the city for such purpose.

"The moneys contributed by the State as aforesaid shall not exceed in any one year the sum of $30,000.00 for each school established and maintained as provided in this section."

The provisions of this section must, however, be implemented in the annual appropriation bill according to another provision of this section that amounts paid from the treasury for industrial schools must be directly appropriated for the purpose and according to Paragraph 2 of Section II of Article VIII of the 1947 Constitution of New Jersey which provides that:

> "No money shall be drawn from the State treasury but for appropriations made by law."

While it is well established that one Legislature cannot bind any one of its successors to make an appropriation, previous Legislatures have consistently made appropriations in accordance with this act. There is no doubt that the full $12,000.00 would have been included in the annual appropriation act, if there had been timely notification that the local appropriation had been increased from $9,000.00 to $12,000.00. For a number of years prior to 1948, the local appropriation had been $9,000.00, which the State matched. When the local appropriation was increased to $12,000.00, the increase was not reflected in the Appropriation Act because of lack of timely notification. Therefore, only $9,000.00 was appropriated by the Legislature and, consequently, because of the provisions of the Constitution and the law quoted above, only $9,000.00 could be paid by the State. It is the opinion of the Commissioner that the respondents are without authority to withhold $3,000.00 of the $12,000.00 because the State paid only $9,000.00.

The respondents are hereby ordered to turn over to the Board of Trustees of the School for Industrial Education in the City of Hoboken the remainder due on the $12,000.00 appropriation for 1950.

COMMISSIONER OF EDUCATION.

March 29, 1951.

VI

IN THE ABSENCE OF STATUTORY AUTHORITY, AN OFFICER HOLDING FOR A DEFINITE TERM IS NOT REMOVABLE AT PLEASURE, BUT ONLY FOR CAUSE

WILLIAM F. SHERSHIN,
Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CLIFTON, COUNTY OF PASSAIC, AND GEORGE J. SMITH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF CLIFTON, PASSAIC COUNTY,
Respondent.

} DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Milton A. Feller.
For the Board of Education, Fred J. Friend.
For George J. Smith, John A. Matthews.

The question to be decided in this case is whether the Board of Education of the City of Clifton, County of Passaic, on March 1, 1950, erred in rescinding the resolution adopted by the Board on February 1, 1950, appointing the petitioner Superintendent of Schools effective July 1, 1950, and, thereby, preventing him from assuming the duties of the superintendency at the beginning of the school year 1950-1951. It is the opinion of the Commissioner that the Board of Education erred and the petitioner should have been permitted to assume the duties of the superintendency at the beginning of the school year 1950-1951.

It appears that the Board of Education adopted on April 20, 1949, a resolution which was amended on September 21, 1949, providing that

> "all employees regardless of job, position, or office held, shall terminate their employment after each reaches the age of 65 years."

On February 1, 1950, the Board reaffirmed the above-mentioned resolution and retired pursuant thereto the incumbent Superintendent of Schools effective June 30, 1950. At the same meeting, the following resolution was adopted:

> *"Resolved:* That William Shershin, now principal of School No. 8, be and hereby is, appointed Superintendent of the Schools of the entire City of Clifton School System, effective July 1, 1950, at a starting annual salary of $8,000, to fill the vacancy caused by the retirement of the present Superintendent of Schools on June 30, 1950."

The minutes disclose that the meeting adjourned at 9:34 P. M.

On March 1, 1950, the following resolution was adopted:

> *"Resolved:* That the resolution adopted by this Board on April 20, 1949, as amended on September 21, 1949, and February 1, 1950, providing for the retirement of employees who have or will reach the age of 65 years be and the same is hereby rescinded; and it is
>
> *"Further Resolved:* That all notices of retirement prepared or delivered by virtue of the aforesaid resolution be and the same are hereby cancelled."

The following resolution was adopted at the March 1, 1950 meeting:

> *"Resolved:* That the resolution adopted by this Board on February 1st, 1950, appointing William Shershin Superintendent of Schools of the Clifton School System effective July 1, 1950, be and the same is hereby rescinded and the said appointment vacated."

The respondent Board maintains that the following paragraph in the April 20, 1949, resolution, amended September 1, 1949, reaffirmed February 1, 1950, and rescinded on March 1, 1950, authorizes the rescission of the retirement of the incumbent Superintendent:

> *"It Is Further Resolved:* That this resolution may be rescinded, altered, modified or amended in the discretion of the Board of Education of Clifton in the County of Passaic, New Jersey, except that the pension of any employee whose employment has been terminated by virtue of this resolution shall not thereafter be affected by any action of this Board without legislative authority."

The Board further contends that, inasmuch as the incumbent's retirement was cancelled and he was under tenure, there was no vacancy for the petitioner to fill on July 1, 1950. Therefore, respondent Board believes it acted correctly in vacating the petitioner's appointment. The Commissioner takes a different view. In the case of *Harris* vs. *Board of Education of the Township of Pemberton,* decided on April 18, 1939, a previous Commissioner held that

> "an acquired right through the adoption of a resolution by a board of education cannot be invalidated by a rescinding of the resolution at a subsequent meeting."

The Commissioner relied on *Whitney* vs. *VanBuskirk,* 40 N. J. L. 462, which is also very much in point in this case. In this case, the Court held as follows:

> "The resignation of a public officer, to take effect at a future day named, when accepted by competent authority, is valid and binding, and will take effect according to its terms.

"A prospective appointment to public office, made by a body which as then constituted is empowered to fill the vacancy when it arises, is, in the absence of express law forbidding it, a legal appointment, and vests title to the office in the appointee.

"A deliberative body has the right to vote and reconsider its vote upon measures before it, at its own pleasure, until, by a final vote, accepted as such by itself, a conclusion is reached. Such final action is shown by its adjournment thereon, the public promulgation of its action, or by subsequent proceedings inconsistent with a purpose to review.

"The power of appointment to office, when executed by the performance of the last act made necessary in its execution, is not revocable without the consent of the appointee."

In the opinion of the Commissioner, the authority to rescind, alter, modify, or amend the resolution of April 20, 1949, as amended, did not apply to a situation where the rights of the petitioner had arisen prior to the rescission. It seems to the Commissioner that the part of the resolution quoted above merely makes it clear that the Board reserves the right to change its mind about future retirement of persons of age 65. It cannot be construed, however, to restore a retired Superintendent to an office to which another person had been appointed following his retirement.

It is the opinion of the Commissioner that the Board of Education retired the incumbent Superintendent effective June 30, 1950. This created a vacancy as of that date. According to *Whitney* vs. *VanBuskirk, supra,* the Board of Education had the right to fill the vacancy. It appointed the petitioner as of July 1, 1950. He accepted. The Board adjourned. The action of the Board in retiring the incumbent Superintendent and in appointing the petitioner was a finality. The action being a finality, the incumbent Superintendent, despite his years of faithful and efficient service, was in no better legal position than if he had never served the school system. The rights of the petitioner had become vested. The retired Superintendent could not be appointed Superintendent again unless or until there was a vacancy. There was no vacancy because the petitioner had been duly and legally appointed to the superintendency.

Next it is necessary to determine the length of the petitioner's term. The pertinent statute is R. S. 18:6–37, which reads as follows:

"When a superintendent of schools is appointed, it shall be by a majority vote of all the members of the board for a term not to exceed five years. He shall receive such salary as the board shall determine, which salary shall not be reduced during his employment. After a period of employment rendered prior or subsequent to April twenty-seventh, one thousand nine hundred and thirty-one, a board may appoint such superintendent either for a term not to exceed five years or without term to continue at the pleasure of the board. Under an employment without term the superintendent may be removed by a majority vote of all the members of the board. He shall have a seat in the board and the right to speak on all educational matters, but not the right to vote. Nothing in this section shall be construed as conferring permanent tenure."

According to R. S. 18:6–37, the initial appointment of a Superintendent of Schools shall be for a term not to exceed five years. In the resolution appointing the petitioner, the term is not precisely stated. Therefore, since the duration of the term is not precisely stated, the length of the term must be determined by considering all the circumstances. *Dennis* vs. *Thermoid,* 128 N. J. L. 303. By reason of the express authority to make the initial appointment for a term of more than one year, the Board of Education in appointing a Superintendent is not bound by the decisions that a noncontinuous body cannot fix a term beyond the life of the appointing Board.

It is the opinion of the Commissioner that all the circumstances point to the conclusion that the appointment was for a term of one year. It is common knowledge and, therefore, the Commissioner can take judicial notice that schools are set up on the basis of a school year. By the terms of R. S. 18:14–76 the school year begins on July first and ends on June thirtieth. The school staff generally is recruited and

employed for a school year or an academic year (September to June). As was said at page 119 in the case of *Mirable* vs. *Garfield,* 1938 School Law Decisions, 116, this practice may be considered to be the "common law" of school administration.

The petitioner was appointed effective July 1, 1950, at a starting annual salary of $8,000.00. In view of the customs set forth above, it is not reasonable to suppose that the Board of Education would appoint the petitioner for less than one school year. If the Board had so intended, it would have made a definite arrangement therefor. There is legal authority for holding that where an annual rate of salary is the only indication of the length of a term, the term must be considered to be for one year. *Dennis* vs. *Thermoid,* 19 Misc. 614; affirmed, *Dennis* vs. *Thermoid,* 128 N. J. L. 303. The Commissioner holds that the petitioner's term was fixed for one year.

The Commissioner cannot agree with the contention of the respondent Board that petitioner was not appointed for a fixed term but rather was appointed without term to continue at the pleasure of the Board pursuant to R. S. 18:6–37. According to this statute, a person cannot be appointed without term until he has had experience as a Superintendent. The power to appoint "without term" is an alternative to the power to appoint for a fixed term. The law was amended for this purpose by Chapter 272, Laws of 1931, as a result of the belief of certain schoolmen that, after a period of service as Superintendent, it might be better for both the Superintendent and the school system to have the Superintendent serve without term instead of having the periodic discussion and speculation, often associated with the expiration of a Superintendent's term, as to whether the incumbent would be reappointed. Thus, after a preliminary period of service as Superintendent, the Board of Education must choose between the above-mentioned alternatives by affirmative action. It is the opinion of the Commissioner that the Board's failure to state a term in precise language cannot be construed to be an appointment "without term" within the intent of R. S. 18:6–37. Furthermore, the petitioner was not eligible for an appointment without term for the reason that he had had no previous service as a Superintendent.

The next question to be considered is whether the petitioner could be removed by the Board. An office or position which is created by municipal ordinance or resolution adopted pursuant to power conferred by the Legislature upon the governing body of the municipality for that purpose is just as much created by law, and its term when fixed by such ordinance or resolution is just as much fixed by law as if the Legislature had acted in the premises. *McGrath* vs. *Bayonne,* 85 N. J. L. 188. Since he was appointed for a fixed term, there was no authority in the statute for the Board to make a removal. A power of removal cannot be implied as an incident to the power of appointment. No such power of removal exists, where the term of office is fixed by law, unless expressly given by the statute. *Murphy* vs. *Board of Chosen Freeholders of Hudson County,* 92 N. J. L. 244.

Employment for a fixed term may not be terminated at will without cause. *Dennis* vs. *Thermoid, supra.*

A Superintendent of Schools has been held to be an officer. *Scull* vs. *Somers Point,* 1938 School Law Decisions, 265. In the absence of statutory authority, an officer holding for a definite term is not removable at pleasure, but only for cause. 43 C. J. 656, sec. 1083. Power to remove at pleasure an officer appointed for a definite term will not be implied. It can exist only when expressly given. McQuillin on Municipal Corporations, Second Edition, Revised Vol. 2, 424, sec. 577. The Commissioner concludes that, after his appointment for a term of one year, the Board of Education was without power to remove the petitioner without cause during the term for which he was appointed. The view which the Commissioner takes of this case makes it unnecessary to decide any questions relating to the contract signed by the petitioner.

The Commissioner finds and determines that the petitioner is the *de jure* Superintendent of Schools of Clifton and must be permitted to carry out the duties of his office. The Board of Education of the City of Clifton in the County of Passaic is directed to recognize the petitioner as the Superintendent of Schools of Clifton and to carry out the resolution of February 1, 1950, appointing him to that office.

COMMISSIONER OF EDUCATION.

April 5, 1951.

VII

THE APPOINTMENT OF AN ASSISTANT SUPERINTENDENT OF SCHOOLS WITHOUT THE PREVIOUS NOMINATION OF THE SUPERINTENDENT OF SCHOOLS IS ILLEGAL

AMADEUS VALENTE,
Petitioner,
vs.
BOARD OF EDUCATION OF THE CITY OF HOBOKEN, HUDSON COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, James F. McGovern, Jr.
For the Respondent, William J. Hanley.

On or about June 21, 1948, the Board of Education of the City of Hoboken, at a public meeting, passed a resolution creating a position of Assistant Superintendent of Schools and designating Harry S. Keefe as Acting Assistant Superintendent of Schools. The resolution reads as follows:

"*Resolved:* That the position of Assistant Superintendent of Schools be and the same is hereby created; and be it further

"*Resolved:* That the Assistant Superintendent of Schools shall assist the Superintendent of Schools in the enforcement of rules and regulations for the government of schools and render such services as may be specifically prescribed, directed or assigned by the Superintendent on the adoption and with the approval of the Board of Education; in the absence of the Superintendent the Assistant shall be clothed with the powers of the Superintendent; and be it further

"*Resolved:* That Harry S. Keefe be and hereby is assigned to act as Assistant Superintendent of Schools in conjunction with his duties as Principal of the Wallace School at a salary of $5,500.00 per annum, effective as of July 1, 1948."

On June 27, 1950, the Board of Education of the City of Hoboken passed the following resolution:

"*Resolved:* That the Resolution creating the position of Assistant Superintendent of Schools, as proposed by Mr. Gratale and seconded by Mr. Bado and as adopted by the Hoboken Board of Education at its stated session June 21, 1948, be amended to read as follows:

"'*Resolved:* That the position of Assistant Superintendent of Schools be and the same hereby is created; and be it further

"'*Resolved:* That the Assistant Superintendent of Schools shall assist the Superintendent of Schools in the enforcement of the Rules and Regulations adopted for the government of the schools, and render such services as may be specifically prescribed, directed or assigned by the Board of Education, to which he shall be directly responsible; in the absence of the Superintendent of Schools the Assistant Superintendent shall be clothed with the powers of the Superintendent; and be it further

"'*Resolved:* That Harry S. Keefe, who for the past two years has satisfactorily acted as Assistant Superintendent of Schools, be and hereby is appointed to be Assistant Superintendent of Schools at a salary of $7,000.00 per annum, and that he be and hereby is relieved of his duties as Principal of Wallace School.'"

On June 27, 1950, there was adopted by the said Respondent Board of Education a resolution which reads as follows:

> *"Resolved:* That there be and hereby is established in the Hoboken public schools a Division of Research and Personnel, designed to serve all the administrative and teaching personnel in the system. Its primary purposes shall be:
>
> "1. To make available to all staff members as well as to the Board of Education, all information pertinent to on-going educational problems, which might be helpful in evaluating and developing proper procedures for the functioning of a modern educational program.
>
> "2. To organize and maintain an active and modern filing system or bureau of records, listing the qualifications of applicants for positions in the school system, together with like records of all currently employed personnel, which records shall be available at all times to the members of the Board of Education, members of the Central Administrative staff, and principals.
>
> "3. To devise and submit for approval of the Board of Education appropriate application forms for teaching and other positions in the schools; to arrange for interviews with all such applicants, and to direct them to staff members as should be informed of their availability.
>
> "4. To compile from such records listings of candidates available for vacancies in respective areas of school work; to keep a constant check on all teacher certification; to act as liaison between teaching personnel and the State Department of Education in all matters of certification.
>
> "5. To prepare for the Superintendent of Schools the names of qualified candidates for teaching and other positions as needed, which shall in turn be recommended by him to the Board of Education for consideration. And be it further
>
> *"Resolved:* That the Assistant Superintendent of Schools act as Director of the Division of Research and Personnel, and that to initiate this task he be furnished immediately by the Secretary of the Board of Education and by the Superintendent of Schools all personnel records now in their possession, and any information pertinent thereto."

It is stipulated that the incumbent Superintendent of Schools has never nominated Harry S. Keefe for the position of Assistant Superintendent of Schools. The petitioner, a citizen and taxpayer of the City of Hoboken, alleges (1) that the appointment of Harry S. Keefe as Assistant Superintendent of Schools is not in accordance with the pertinent statute, and (2) that the foregoing resolutions are illegal in that they divest the Superintendent of Schools of the City of Hoboken of the general power and authority conferred upon him by statute.

The first question to be decided is whether an appointment of an Assistant Superintendent without the previous nomination of the Superintendent of Schools is legal. The answer must be in the negative. The pertinent statute is R. S. 18:6–40 which reads in part as follows:

> "The board may, on the nomination of the superintendent of schools, appoint assistant superintendents and shall fix their salaries. . . ."

The language of the statute makes clear the intention of the Legislature that the Board of Education appoint to the assistant superintendency only such persons as are nominated by the Superintendent of Schools. The Legislature acted wisely in so providing. A superintendent of schools has large responsibilities in conducting the affairs of a school system. Whenever it becomes necessary for him to have an assistant, good administrative procedure dictates that he be permitted wide latitude in selecting a person in whom he can repose full trust and confidence. The Board of Education has the final power to make the appointment, but cannot take the initiative in appointing any person other than one nominated by the Superintendent. It is the opinion of the Commissioner that this method of selecting an assistant superintendent of schools is mandatory and cannot be circumvented. A school board

cannot by its vote or order deprive an officer of power conferred upon him by statute. 56 Corpus Juris, page 331, Section 202. The Commissioner concludes that the appointment of Harry S. Keefe as Assistant Superintendent of Schools was illegal at its inception and continues to be illegal. The resolution whereby he was appointed an assistant superintendent of schools must, therefore, be set aside.

The final question to be determined is whether the foregoing resolutions, particularly the third, are illegal for the reason that they deprive the Superintendent of Schools of the authority indispensable for the performance of his duties prescribed by law.

The answer to this question must be in the affirmative. The following powers of the Superintendent derive from the Legislature and not from the rules and regulations of the local board of education:

1. He has a seat in the board and the right to speak on all educational matters. R. S. 18:6–37.
2. He has general supervision over the schools of the district and is required to examine into their condition and progress. He may appoint the clerks in his office. R. S. 18:6–38.
3. He may, with the approval of the president of the board, suspend any assistant superintendent, principal or teacher and is required to report the suspension to the board forthwith. R. S. 18:6–42.
4. He may be appointed for a term longer than one year and after a probationary period enjoys tenure of office. R. S. 18:6–37 and 18:13–16.1.

Customary administrative practices and procedures have been considered to be the common law of school administration. *Gebhart* vs. *Hopewell,* 1938 School Law Decisions, 570, at 574, quoting from "Essentials of School Law," by Trusler. *Mirable* vs. *Garfield,* 1938 School Law Decisions, 116, at 119.

It is common knowledge and, therefore, the Commissioner may take judicial notice that the general practice in school administration in this State is for the Superintendent of Schools to be the professional leader of the school system. As was said by the State Board of Education in *Carr* vs. *Bayonne,* 1938 School Law Decisions, 276, at 281:

> "The success of a city school district is largely dependent on its superintendent. He is the expert who is supposed to have the special knowledge and ability required to secure the best results."

It is common practice for the superintendent to recommend the members of the professional staff and to administer and supervise their work. Boards of education, as a rule, meet in regular sessions once a month. In the interval between regular meetings, the superintendent of schools administers the schools in accordance with rules and regulations and policies established by the board. By custom, the contacts of the professional staff of the schools with the board of education are through the superintendent of schools. It seems to the Commissioner that this customary pattern must be considered in connection with the statutes referred to above as a background for the interpretation of the statutes and their application to the resolution under consideration.

Inasmuch as the powers of a superintendent of schools derive from statutes, a board of education cannot assume and exercise his powers. In *Burke* vs. *Kenney,* 6 N. J. Super. 524, it is said:

> "A governing body of a municipality may not by its own act or failure to act, enlarge, change or diminish its powers as any such action or inaction would be inconsistent with the rule as to municipal powers being wholly dependent on enabling legislation."

In McQuillin, Municipal Corporations, Second Edition, Revised Vol. 2, page 250, section 519, it is said that:

> "Officers may perform such duties as are prescribed by legislative act applicable, or which may be implied, or which are indispensable in performing duty prescribed by law."

It is the opinion of the Commissioner that the above mentioned resolutions, particularly the third, deprive the superintendent of the authority indispensable for the proper and effective administration of a New Jersey School System. It is significant that Section 18:6–41 gives the superintendent of schools power, with the approval of the president of the board, to suspend any assistant superintendent, principal, or teacher. It may be inferred that the Legislature considered that, between board meetings, these school personnel were to be under the control of the superintendent of schools. The third resolution, to all intents and purposes and as a practical matter, removes the head of the Division of Research and Personnel from the effective control of the superintendent, who is also by-passed in certain other matters customarily handled by the superintendent. For example: the recommendation of teachers, one of the most important and vital responsibilities of a superintendent of schools, is assigned to the assistant superintendent of schools. The superintendent is required to recommend to the board the names of qualified candidates prepared by the assistant superintendent. Recommendation is a professional matter involving discretion. Obviously, a superintendent cannot be required to recommend a candidate contrary to his best professional judgment. According to the resolution, the assistant superintendent is to act as liaison between the teachers and the State Department of Education in matters of certification, a customary prerogative of the superintendent. He is to interview all applicants for teaching positions, a customary duty of the superintendent or performed by a subordinate under his assignment and direction. It is the opinion of the Commissioner that the adoption of this resolution weakens the influence of the superintendent to the extent that he cannot exercise effectively that general supervision of the schools intended by the Legislature and, thereby, the board of education has deprived him of the statutory power conferred upon him. See quotations from McQuillin and Corpus Juris, *supra*.

The State Board of Education in the decision in the case of *Carr* vs. *Bayonne*, 1938 School Law Decisions, 279 at page 280, describes the need of protection for the superintendent of schools in the performance of his duties. The Legislature has afforded this protection through the provisions of a term of office and tenure. Tenure is meaningless if the board of education can deprive the superintendent of his statutory and inherent powers and transfer his duties to another person.

It has been held that any person holding an office or position in a classification or category protected specifically against dismissal in a tenure law cannot be transferred to another position in another category, even if there is no reduction in salary, for the reason that he is, thereby, dismissed from the office or position in his specific category. *Davis* vs. *Overpeck*, 1938 School Law Decisions, 464.

If this reasoning is extended, it becomes apparent that a superintendent of schools who is deprived of the powers essential to the performance of his duties is no longer a superintendent in fact but only in name and, accordingly, is actually dismissed as a superintendent. A superintendent under tenure can be removed only by the procedure prescribed by law. What cannot be done directly cannot be accomplished by indirection. *Sastokas* vs. *Freehold*, 134 N. J. L. 305, at 307. Tenure must not be made an idle gesture and must be protected against any possible weakening. *Seidel* vs. *Ventnor City*, 110 N. J. L. 31; *Viemeister* vs. *Prospect Park*, 5 N. J. Sup. 215; *Rein* vs. *Riverside*, 1938 School Law Decisions, at page 308.

The Commissioner of Education would point out that he is not holding that the Board of Education of the City of Hoboken is without power to establish a Division of Research and Personnel, and to prescribe the duties of school personnel. The Commissioner is merely holding that the resolution of June 27, 1950, establishing the Division of Research and Personnel, deprives the Superintendent of those powers indispensable to the performance of the duties of the superintendent prescribed by law.

The Board of Education of the City of Hoboken is directed (1) to remove Harry S. Keefe from the position of Assistant Superintendent of Schools unless and until he is nominated and appointed pursuant to law, and (2) to abolish the Division of Research and Personnel or to organize and operate it under rules and regulations which give proper recognition to the authority of the Superintendent of Schools.

COMMISSIONER OF EDUCATION.

April 12, 1951.

VIII

DELAY OF NINE MONTHS IN FILING OF APPEAL FOR RESTORATION TO POSITION CONSTITUTES LACHES

WILLIAM H. GILLING,
Petitioner,
vs.
BOARD OF EDUCATION OF THE TOWNSHIP OF HILLSIDE, UNION COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Milton A. Feller.
For the Respondent, Gilbert D. Chamberlain.

The petitioner is a janitor under tenure in the School District of the Township of Hillside. Prior to January 15, 1949, he was janitor in charge of the George Washington School and received the salary of a janitor. On January 15, 1949, he was transferred to the Senior High School where another janitor was in charge, from whom he alleges he took orders. In December, 1949, he was transferred to the Hillside Avenue School and after a few weeks was assigned to the night shift where he alleges he also took orders from a janitor in charge. At no time did the petitioner suffer a reduction in salary, no charges were filed, and no hearing was conducted. Petitioner claims that as a result of this transfer, he became, in fact, an assistant janitor. This transfer, he says, constitutes a demotion and is tantamount to a removal from his position of janitor without charges and hearing in contravention of the tenure law.

On February 17, 1950, petitioner appealed to the Commissioner of Education, asking that the Commissioner issue an order directing the respondent to reinstate him to the position of janitor in respondent's school system. The respondent denies that the petitioner was demoted and alleges that he is guilty of laches, abandonment, waiver, and bad faith.

Before discussing the merits of the case, it first must be determined whether the petitioner is guilty of laches. The essential facts are as follows: On January 15, 1949, petitioner was transferred from the George Washington School to the Hillside High School. On January 19th, he wrote a letter to the then chairman of the Buildings Operation Committee of the respondent Board of Education protesting his transfer from the position of janitor in the George Washington School to the assistant janitorship in the Senior High School. The term of the chairman expired in February and he was not a candidate for re-election. The latter part of February, 1949, a new chairman was appointed and at his invitation the petitioner attended a meeting of the Committee on March 8, 1949. On March 24, 1949, the respondent Board, by resolution, affirmed the transfer of the petitioner and directed the district clerk to notify him, which was done by letter under date of March 25, 1949. Another employee of the respondent, then an assistant janitor, was transferred on January 15th to the George Washington School to take the petitioner's place, and on May 12, 1949, was promoted to janitor as of July 1, 1949, and his salary was increased for the year 1949-1950 in the sum of $150 over what his pay would have been for that year as assistant janitor and he was granted extra pay of $75.00 for the period January 15, 1949, to June, 1949, all of which has been paid to him by the respondent.

On May 2, 1949, the petitioner attended a meeting of the Hillside Janitor's Association to discuss his case. A representative of the State Janitors' Organization Committee was present. The minutes of this meeting disclose that the petitioner was asked whether he was satisfied that the State Organization had done everything possible for him and he answered: "Yes, and as far as I am concerned the matter is closed." The petitioner testified that right after the summer vacation he was advised by a physical training instructor in the school system to see a lawyer. He made an appointment for some time in October and finally consulted counsel in November. In December, his counsel agreed to handle the case. On December 15, 1949, the petitioner was notified of his assignment to the Hillside Avenue School on the evening shift to begin on January 1, 1950. His petition was filed with the Commissioner on February 17, 1950.

This case involves public employment. The element of time is a more importan consideration in determining laches in situations where a person is removed fron his position than in situations where only a purely legal demand of a pecuniary nature is concerned. The State Board of Education distinguished between such situations in the case of *Jennie Biddle* vs. *Board of Education of the City of Jersey City,* decided November 19, 1938, cited in the case of *Mabel Marriott* vs. *Board of Education of the Township of Hamilton, Mercer County,* 6 N. J. S. L. D. 45.

In cases of removal from public employment, the protection afforded by tenure statutes must be invoked promptly. In the case of *Atlantic City* vs. *Civil Service Commission,* 3 N. J. Super. 57, at page 61, it was said:

> "The law of this State is well settled that in the case *sub judice,* a public employee's right to reinstatement, even assuming, but not deciding, that his removal or other interference with his rights may be unjust and unwarranted, may be lost by his unreasonable delay in asserting his rights. This recognized principle of law is founded upon considerations of public policy and its application is warranted here."

Justice Heher said in the case of *Marjon* vs. *Altman,* 120 N. J. L. 16 at page 18:

> "While laches, in its legal signification, ordinarily connotes delay that works detriment to another, the public interest requires that the protection accorded by statutes of this class be invoked with reasonable promptitude. Inexcusable delay operates as an estoppel against the assertion of the right. It justifies the conclusion of acquiescence in the challenged action. *Taylor* vs. *Bayonne,* 57 N. J. L. 376; *Glori* vs. *Board of Police Commissioners,* 72 Id. 131; *Drill* vs. *Bowden,* 4 N. J. Misc. 326; *Oliver* vs. *New Jersey State Highway Commission,* 9 Id. 186; *McMichael* vs. *South Amboy,* 14 Id. 183."

Furthermore, in cases involving removal from public employment, the disturbance to the morale of the employees associated with the uncertainty as to who is legally entitled to a position is detrimental to the public interest.

The following is quoted from *Marjon* vs. *Altman, supra,* at page 18:

> "Moreover, the long delay was clearly disadvantageous to the municipality, in that reinstatement would entail liability for double compensation, *to say nothing of the detriment that frequently flows from the uncertainty respecting the incumbent's status.*" (Italics supplied.)

In the case of *Glori* vs. *Board of Police Commissioners, supra,* it was said that:

> "The proper administration of the affairs of the city requires that the right of the dismissed policemen to be reinstated should be promptly determined."

A situation somewhat similar to the one in the instant case is found in *Jordan* vs. *Newark,* 128 N. J. L. 469. The prosecutor in that case discussed his case and corresponded with various commissioners and officers from time to time. He consulted counsel, but delayed to bring action. The Court said:

> "In the instant case, it is urged, in extenuation of the long delay, that prosecutor was lulled by the city into believing that his case was about to receive favorable action. While the unofficial statements of various persons connected with the municipality or the Civil Service Commission may have aroused such a hope, nevertheless, there should have come a time when to a reasonable person, the delay is indicated as mere temporizing."

It is the opinion of the Commissioner that the petitioner in the instant case should have filed his petition with the Commissioner of Education upon receipt of the letter of March 25, 1949, from the District Clerk notifying him that the Board of Education had affirmed his transfer and, therefore, laches began to run at this time. Even if the situation most favorable to the petitioner is taken that laches began to run after the meeting of the Board on May 12, 1949, when his successor at the George Washington School was promoted to the status of janitor and his salary increased, a period of nine months elapsed before his petition was filed with the Commissioner. Petitioner's

delay in securing counsel and in filing his appeal is, of course, chargeable to him. The Commissioner finds no evidence of any attempt on the part of the Board of Education to lull the petitioner into expecting any change in its action.

The case of *Albert* vs. *Caldwell* (Court of Errors and Appeals), 127 N. J. L. 202, is in point. In this case it was said:

> "The Court finds no fault with the action of the Supreme Court in holding that a delay of eight months was ample justification for finding a person guilty of laches."

Because of the foregoing precedents, the Commissioner must find the petitioner guilty of laches.

The Commissioner has examined the equity cases cited by the petitioner and finds that they are not in point as they do not deal with public employment. Petitioner quotes *Garfield* vs. *State Board of Education,* 130 N. J. L. 388. This case must be distinguished from the instant case for the reason that there was a stipulation that the Board of Education would waive the defense of laches pending disposition of a case where the same issue was involved.

Having reached the conclusion that the petitioner is guilty of laches, it is not necessary to determine the other questions raised and argued in this case.

The petition is dismissed.

COMMISSIONER OF EDUCATION.

April 30, 1951.

IX

THE PERIODS OF EMPLOYMENT PRIOR TO THE RESIGNATION OF A TENURE TEACHER WHO IS SUBSEQUENTLY RE-EMPLOYED COUNTS TOWARD THE ACQUISITION OF TENURE PURSUANT TO SUBSECTION (C) OF SECTION I OF CHAPTER 43 OF THE LAWS OF 1940

DOROTHY MATEER,
Petitioner,
vs.
BOARD OF EDUCATION OF THE BOROUGH OF FAIR LAWN, BERGEN COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Milton A. Feller.
For the Respondent, Maurice D. Emont.

The petitioner asserts that she is a teacher under tenure in the School District of the Borough of Fair Lawn, Bergen County, New Jersey. In answer to a letter requesting a leave of absence for maternity reasons, she received the following letter from the District Clerk of the Board of Education dated May 19, 1950:

> "At a Regular Meeting of the Board of Education held on Thursday evening, May 18, 1950, your request for a maternity leave, for the school year 1950-1951 was denied due to the fact that our Board Attorney has established the fact that you are not under tenure.
> "Our Board policy affecting this request is that a maternity leave shall not be granted to any school employee not under tenure."

This refusal of the Board of Education was in accord with the following resolution adopted on April 18, 1946:

> "That the recommendation of the Supervising Principal be adopted that this board establish a policy of not granting a maternity leave of absence to teachers not under tenure, because of the difficulty of filling these positions."

The Stipulation of Facts discloses that petitioner had requested a maternity leave on March 22, 1950, which was refused because she was not under tenure. In the Stipulation, counsel for the respondent, subject to objection by attorney for petitioner, submits that the leave was refused also on the ground that the petitioner has had too many leaves of absence which interfered with the effectiveness of her work.

It is further stipulated that petitioner on June 20, 1950, requested an assignment for September, 1950, but it turned out that she could not return until January, 1951, under medical advice. She gave birth to a child in November, 1950. On October 28, 1950, petitioner made a second request for a teaching assignment as of January, 1951. On February 24, 1951, she wrote to the Supervising Principal expressing surprise that she had not received a teaching assignment, inasmuch as she had notified him she was ready to return to duty on January 1, 1951.

It is also stipulated that on July 27, 1950, petitioner returned unsigned a contract offered to her by the respondent for the school year 1950-1951 with a letter indicating that she felt she might waive her tenure rights by signing the contract because of the thirty-day clause in it. In the stipulation, counsel for petitioner submits that at the time the contract was offered to the petitioner in July, 1950, it was the practice or policy of the Board of Education to issue contracts only to non-tenure teachers, which statement counsel for respondent considers irrelevant and immaterial.

It would appear that the first and principal question to be determined is whether the petitioner is under tenure. She relies on subsection (c) N. J. S. A. 18:13–16 which reads as follows:

> "The services of all teachers, principals and supervising principals of the public schools, excepting those who are not holders of proper teachers' certificates in full force and effect, shall be during good behavior and efficiency, (a) after the expiration of a period of employment of three consecutive calendar years in that district unless a shorter period is fixed by the employing board, or (b) after employment for three consecutive academic years together with employment at the beginning of the next succeeding academic year, or (c) after employment, within a period of any four consecutive academic years, for the equivalent of more than three academic years, some part of which must be served in an academic year after July first, one thousand nine hundred and forty; provided, that the time any teacher, principal or supervising principal had taught in the district in which he was employed at the end of the academic year immediately preceding July first, one thousand nine hundred and forty, shall be counted in determining such period of employment in that district.
>
> "An academic year, for the purpose of this section means the period between the time school opens in the district after the general summer vacation until the next succeeding summer vacation."

The Stipulation shows the following employment record:

ACADEMIC YEARS OF SERVICE

1936-1937	
1937-1938	
1938-1939	
1939-1940	
1940-1941	
1941-1942	
1942-1943	
1943-1944	
1944-1945	(Resigned April 30, 1945, effective immediately. Reappointed June 19, 1945.)
1945-1946	(Petitioner claims maternity leave began June 1, 1946. Respondent claims maternity leave began June 30, 1946. Petitioner claims last day taught was May 15, 1946, when she had whooping cough. Board records disclose no formal action by board granting a leave for month of June, 1946.)

1946-1947 (Absent entire year on maternity leave.)
1947-1948 (Absent entire year on maternity leave.)
1948-1949
1949-1950 (Absent on personal illness leave December 1, 1949, to June 30, 1950.)

It is the opinion of the Commissioner that petitioner satisfies the requirement of subsection (c) in that she was employed for an equivalent of more than three academic years within a period of four consecutive years (1942-1943, 1943-1944, 1944-1945, 1945-1946), some part of which was served after July 1, 1940.

Respondent contends that the petitioner's resignation on April 30, 1945, severed her connections with the respondent board completely and finally, and when she was re-employed in September, 1945, an entirely new employment began. Respondent further contends that the action, being a finality, the petitioner was in no better legal position than if she had never served in the school system. The case of *Shershin* vs. *Clifton,* recently decided by the Commissioner of Education, is cited as an authority. The Shershin case is not applicable to the situation under consideration. In that case, the superintendent had been retired and a new superintendent appointed. The board could not restore the superintendent to his former office because another person had been appointed and had acquired rights to the office. To apply the Shershin decision to this case, the board was under no obligation to appoint the petitioner to her former position and could not have done so if it had already entered into contract with another person for the position. However, when the board appointed petitioner to the vacant position, subsection (c) became applicable.

Respondent cites *Norwitz* vs. *Board of Education of Harrison Township,* 128 N. J. L. 13, *Ahrensfield* vs. *State Board of Education,* 126 N. J. L. 543, and *Paletz* vs. *Camden,* 1938 School Law Decisions 405. It should be pointed out that these decisions were in disputes arising prior to the enactment of subsection (c). Respondent also quotes from *Schulz* vs. *State Board of Education,* 132 N. J. L. 345 at page 351, to show that the purpose of subsection (c) was to prevent the circumvention of the tenure law by the practice of having a teacher resign to break her continuity of employment so that she would not acquire tenure. Respondent argues that this is not the case here and that petitioner was not prevented from achieving tenure by her resignation and her subsequent re-employment. Respondent maintains that petitioner was already under tenure when she resigned and that the situation of a teacher resigning while under tenure is quite different from a resignation in order to circumvent a statute which was passed in the public interest. Its contention is that to adopt the view of the petitioner would mean that a teacher who had tenure could resign her position and, if she were re-employed any time thereafter, short of a year, she would have tenure again the first day of her re-employment. This view, respondent says, is unsound.

The Commissioner cannot agree with the respondent. There are situations where the tenure law could be circumvented by resignation of persons under tenure. For example: It was held by the old Supreme Court (*MacNeal* vs. *Ocean City,* 1938 S. L. D. 377) that a teacher who is promoted to a principalship acquires tenure as principal at once. A board of education might ask a tenure teacher who is a candidate for a principalship to resign or he might offer to do so in order not to achieve immediate tenure as a principal. Furthermore, while it is true that the occasion of the passage of subsection (c) was the prevalent practice of asking a teacher to resign or a teacher's offering to do so during her third year of employment, it does not follow that the statute applies only to such situations. The statute is plain. In determining whether a teacher is under tenure under subsection (c), it is necessary only to ascertain whether the teacher was employed an equivalent of three years and one day within four consecutive academic years. No duty is imposed to ascertain whether a resignation was voluntary or forced to circumvent tenure or whether the teacher was under tenure when she resigned, and no such duty can be read into the statute by construction.

In interpreting a statute, its meaning must be sought. Only when a statute is ambiguous and of doubtful meaning is it necessary to look to its history to ascertain its intent.

"Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Caminetti* vs. *United States,* 242 U. S. 470, 61 L. Ed. 442, 37 Sup. Ct. 192 (1916); *Cf. Church of the Holy Trinity* vs. *United States,* 143 U. S. 457, 36 L.

Ed. 226, 12 Sup. Ct. 511 (1892). *Hamilton* vs. *Rathbone,* 175 U. S. 414, 44 L. Ed. 219, 20 Sup. Ct. 155 (1899). "Where legislative purpose is expressed in unmistakable language, it must be enforced by court as it is written without regard to its wisdom or utility." *Belfer* vs. *Borella,* 76 A. 2d. 25.

Even if the Commissioner errs in finding that petitioner acquired tenure immediately after she resumed her teaching following her resignation, she nevertheless, acquired tenure in four consecutive academic years (1945-1946, 1946-1947, 1947-1948, 1948-1949) following her re-employment. While she was on leave of absence much of this time, she was nonetheless employed by the Board of Education during these years. It should be noted that N. J. S. A. 18:13-16, relating to the acquisition of tenure, uses the words "period of employment" whereas N. J. S. A. 18:13-19, relating to seniority, uses the words "years of service." The words "years of service" are also used in the Teachers' Pension and Annuity Fund Law. It is the opinion of the Commissioner that these words were used advisedly by the Legislature in different statutes.

Furthermore, when subsection (b) of N. J. S. A. 18:13-16 was first enacted in Chapter 188, Laws of 1934, the words "upon beginning *service* for the fourth academic year" were used. This language was changed by the next Legislature in Chapter 27, Laws of 1935, to read "together with *employment* at the beginning of the next succeeding academic year." This is the language used in subsection (b) of N. J. S. A. 18:13-16. Therefore, it is clear that in counting time toward the acquisition of tenure, the Legislature meant to include the period of time the teacher holds employment with the board.

A board of education is not required to continue the employment of a non-tenure teacher on leave of absence after the expiration of her contractual period of employment, but if it does continue her employment and her leave of absence, she holds employment with the board, despite her leave, and this period of employment counts toward tenure. While the Commissioner can give no citation of authority for so holding, he can take judicial notice of the fact that this has been the practical interpretation of this statute over a long period of time.

A board of education cannot terminate the employment of a tenure teacher except after written charges have been preferred against her as provided in R. S. 18:13-17. There is no record that any charges were preferred. The precedents to be followed in deciding cases involving maternity leaves were established in the decisions of the Commissioner and the State Board of Education in the case of *Prince* vs. *Kenilworth,* 1938 S. L. D. 579. According to these decisions nonperformance by a teacher of her duties and absence from school by reason of childbirth do not constitute neglect of duty and grounds for dismissal. A board of education may make rules requiring absence for a reasonable time for the benefit of the mother and child and for the protection of the school from the optional return of a teacher at a time which may break the continuity of class instruction. In the absence of rules regulating periods of absence for maternity reasons a teacher is entitled to resume her duties when physically able to do so, and the denial of such right by a board of education is without justification.

It should be emphasized that a board of education may make reasonable rules governing leaves of absence for maternity reasons so that a teacher does not return at a time when the continuity of class instruction may be interrupted and to make sure that the teacher is physically fit to return. It would seem to be to the advantage of a board of education to grant such leaves so that it can control the time of the teacher's return. However, if it seems to the board of education more advantageous not to grant leaves under rules and regulations, it does not follow that a teacher who is denied a formal leave of absence is deprived of her right to be absent without losing her position. She is, under such circumstances, in the same position as a teacher who is absent for reasons of illness and she may return when she feels able to do so. The respondent Board did not grant the petitioner a leave of absence. Therefore, for the reasons set forth above, she was entitled to return to her duties when she felt able to do so.

It is the opinion of the Commissioner that the petitioner did not abandon her position. There is ample evidence in the record that she intended to return to her position and so notified the school authorities. Hence no intent to abandon can be shown. See *Attorney General* vs. *Mayberry,* 104 N. W. Reporter 324.

Even if the decision in the *Prince case, supra,* is error, or even if absence for a prolonged period for maternity reasons does not constitute neglect of duty, dismissal can be made only after charges have been preferred against the petitioner, examined

into, and found true in fact by the board of education after reasonable notice to the teacher, who may be represented by counsel. Since no charges were preferred, the petitioner was illegally dismissed. See *Lillian Turner Handcock* vs. *Board of Education of the Borough of Haddon Heights, Camden County,* decided by the Commissioner of Education, June 17, 1938.

Respondent further contends that it was not obligated to accept the petitioner as a teacher because she returned unsigned a contract offered her by the respondent to teach for the school year 1950-1951. The contract contained the clause: "Signed duplicate contract forms are to be returned to the Board of Education within 15 days from the date of issuance or the position held for the applicant shall be declared vacant." The contract also contained a clause permitting its termination by the board upon thirty days' notice. At the time the contract was issued, it was the practice of the respondent to issue contracts only to non-tenure teachers.

Petitioner justifies her refusal to sign the contract on the ground that the thirty day notice clause was inconsistent with tenure. She also contends that while a teacher cannot waive tenure rights acquired by law, nevertheless since the question of her tenure was at issue, she had to refrain from doing anything which might be held to be inconsistent with her claim of tenure.

It is the opinion of the Commissioner that the petitioner was justified in refusing to sign the contract. A teacher under tenure is not required to sign a contract setting forth the terms of her employment. The law prescribes the conditions of employment of a tenure teacher. A tenure teacher's salary, once fixed by a majority vote of all the members of the board (R. S. 18:7–58), cannot be reduced (R. S. 18:13–17). He holds his employment during good behavior or until his position is legally abolished (N. J. S. A. 18:13–16). He must give sixty days' written notice of his intention to terminate his employment (R. S. 18:13–20).

The law imposes upon the petitioner the duty to give sixty days' notice of her intention to terminate her employment. Therefore, the requirement of the respondent that she inform the board of her intention to return in fifteen days is inconsistent. Since her position can be vacated by the board only by abolition in accordance with seniority or by preferring charges, her position could not be vacated for failure to reply within fifteen days. The right of a board to terminate her employment within thirty days is inconsistent with the tenure law. Therefore, petitioner could not be required to sign a contract inconsistent with law.

The following is an excerpt from an opinion of the late Edward L. Katzenbach, then Attorney General, under date of May 23, 1924:

> "I find nothing in the Act of 1909 which authorizes the board of education to expressly contract for the services of a teacher by an agreement entered into after three consecutive years of service."

He ruled that a board or employee may not, by contract entered into after the acquisition of tenure, vitiate and nullify the express words of the tenure statute.

The Commissioner finds that the petitioner was protected by tenure at the time of her absence for maternity reasons, that she did not abandon her position, and that she was dismissed without charges being preferred as required. (R. S. 18:13–17.)

The Board of Education of the Borough of Fair Lawn is directed to reinstate the petitioner as a teacher. She is entitled to make application to the board of education for compensation for the period covered by the illegal dismissal pursuant to Chapter 241, Laws of 1948. (N. J. S. A. 18:5–49.1.)

COMMISSIONER OF EDUCATION.

June 29, 1951.

X

ONLY PERSONS WHOSE POSITIONS ARE ABOLISHED BY REASON OF A NATURAL DIMINUTION OF THE NUMBER OF PUPILS IN THE DISTRICT ARE ENTITLED TO BE PLACED UPON A PREFERRED ELIGIBLE LIST

CONSTANCE P. NICHOLS,
Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY,
Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Milton A. Feller.
For the Respondent, Robert H. Doherty.

On December 19, 1946, the petitioner was appointed Assistant Superintendent of Schools, effective January 1, 1947, at a salary of $6,000 per annum.

On December 15, 1949, the following resolution was adopted by the respondent board:

> "*Resolved,* That, for reasons of economy, the position of (Mrs.) Constance P. Nichols, Assistant Superintendent of Schools, be and the same is hereby abolished, effective December 15, 1949."

Under date of December 16, 1949, the petitioner notified the respondent that she was accepting an assignment as classroom teacher under protest. The annual salary of her teaching position was fixed at $4,140.20.

Since petitioner's service as Assistant Superintendent of Schools was preceded by employment as a teacher, she claims that she was under tenure as an Assistant Superintendent of Schools when her position was abolished. Petitioner maintains that according to R. S. 18:13–19 she is entitled to have her name placed upon a preferred eligible list in order of years of service for re-employment whenever a vacancy should occur in a position of assistant superintendent of schools. She prays, therefore, that the Commissioner of Education make an order directing that her name be placed and remain on a preferred eligible list in order of years of service whenever a vacancy shall occur in that position.

The respondent contends that the petitioner never acquired tenure as an Assistant Superintendent of Schools in the Jersey City School System under the provisions of N. J. S. A. 18:13–16.1 or of any other statute and is, therefore, not entitled to have her name placed upon a preferred eligible list. Petitioner relies upon R. S. 18:13–19 in support of her contention that she is entitled to be placed upon a preferred eligible list.

Respondent counters that this statute applies solely to supervising principals, principals, and teachers.

R. S. 18:13–19 provides as follows:

> "Nothing contained in sections 18:13–16 to 18:13–18 of this Title shall be held to limit the right of any school board to reduce the number of supervising principals, principals or teachers employed in the school district *when the reduction is due to a natural diminution of the number of pupils in the district.*
>
> "*Dismissals resulting from such reduction* shall not be by reason of residence, age, sex, marriage, race, religion or political affiliation. When principals, supervising principals or teachers under tenure are *dismissed by reason of such reduction* those principals, supervising principals or teachers having the least number of years of service to their credit shall be dismissed in preference to those having longer terms of service. In computing length of service within the district, the time of service by such supervising principals, principals or teachers in or with

the military or naval forces of the United States of America or of this State subsequent to September first, one thousand nine hundred and forty, shall be credited in determining seniority under this act as though such supervising principals, principals or teachers had been regularly employed within the district during the time of such military service. Should any supervising principal, principal or teacher under tenure be *dismissed as a result of such reduction* such person shall be and remain upon a preferred eligible list in the order of years of service for reemployment whenever vacancies occur and shall be reemployed by the body causing dismissal in such order when and if a vacancy in a position for which such supervising principal, principal or teacher shall be qualified. Such reemployment shall give full recognition to previous years of service.

"The service of any principal or teacher may be terminated, without charge or trial, who is not the holder of a proper teacher's certificate in full force and effect." (Italics supplied.)

It is the opinion of the Commissioner that in deciding this case he is controlled by *Werlock* vs. *Board of Education of the Township of Woodbridge in the County of Middlesex*, 5 N. J. Super. 140. In that case it was held that the benefits afforded by R. S. 18:13–19 apply only to teachers dismissed as the result of natural diminution in the number of pupils in the district. The law is not applicable to other situations where a position is abolished. It appears from the stipulation of facts, upon which this case is submitted, that petitioner's position was abolished for reasons of economy. According to the *Werlock case, supra,* the Commissioner must hold that the petitioner is not entitled to have her name placed upon a preferred eligible list for reemployment as Assistant Superintendent of Schools when a vacancy shall occur in that position. Inasmuch as the petitioner would not be entitled to be placed upon a preferred eligible list, even if she were under tenure as an Assistant Superintendent of Schools at the time her position was abolished, it is not necessary for the Commissioner to determine whether she was under tenure as an Assistant Superintendent of Schools. It is also unnecessary to decide any other questions raised and argued in this case.

The petition is dismissed.

COMMISSIONER OF EDUCATION.

June 29, 1951.

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed, for the reasons stated in the opinion filed by the Commissioner of Education.

September 7, 1951.

DECIDED BY COMMISSIONER OF EDUCATION, MARCH 30, 1950

IN THE MATTER OF MABEL MARRIOTT,
Petitioner-Appellee,

vs.

THE BOARD OF EDUCATION OF THE TOWNSHIP OF HAMILTON, COUNTY OF MERCER, STATE OF NEW JERSEY,
Respondent-Appellant.

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed, for the reasons stated in the opinion filed by the Commissioner of Education.

September 8, 1950.

DECIDED BY THE COMMISSIONER OF EDUCATION, MAY 9, 1950

IN THE MATTER OF GEORGE B. THORP, *Petitioner,* *vs.* THE BOARD OF TRUSTEES OF SCHOOLS OF INDUSTRIAL EDUCATION, NEWARK COLLEGE OF ENGINEERING, *Respondent.*	DECISION OF THE STATE BOARD OF EDUCATION

On or about February 2, 1950, petitioner was employed as special lecturer in Mechanical Engineering at the Newark College of Engineering located in Newark, New Jersey. On February 17, 1950, he received a written communication from the College informing him that under the terms of Chapter 23, Laws of 1949, he was required to sign an oath prescribed by said statute. Petitioner then notified the Newark College of Engineering that he could not in good conscience sign the oath for the reason that he believed thereby his constitutional rights would be abridged and infringed upon. His employment at the Newark College of Engineering was terminated because of his refusal to sign the aforsaid oath.

His prayer to the Commissioner of Education was that an order be issued reversing the action of the Newark College of Engineering in terminating his employment and directing that he be restored to his position.

The Commissioner of Education decided that he could not direct that the Petitioner be restored to his teaching position in the Newark College of Engineering; that as Commissioner, he had no power to pass upon the constitutionality of a statute.

The Petitioner appealed from the decision of the Commissioner to the Board and the gravamen of the appeal is: "We respectfully submit that Chapter 23, Laws of 1949, is manifestly unconstitutional and cannot be used as justification for breaching the contract of employment between the appellant and the Newark College of Engineering."

The appeal is, in effect, a demand that we pass upon the constitutionality of a statute which, of course, we have no authority to do. Justice Colie in the matter of *Schwartz* vs. *Essex County Board of Taxation,* 129 N. J. L. 129, stated "the final responsibility to pass upon the constitutionality of a given piece of legislation rests in the courts and it is the duty of the various State agencies and administrative bodies to accept a legislative act as constitutional until such time as it has been declared to be unconstitutional by a qualified judicial body. The State Board of Tax Appeals has recognized that it has no power to pass upon constitutional questions."

Therefore, we sustain the action of the Commissioner of Education.

July 7, 1950.

DECISION OF THE SUPREME COURT OF NEW JERSEY

No. A-63 September Term, 1950

Argued December 18, 1950, and January 2, 1951; decided March 12, 1951.
On appeal from the New Jersey State Board of Education.

Mr. Emil Oxfeld argued the cause for appellant. Messrs. Rothbard, Harris & Oxfeld, Attorneys.

Mr. Charles R. Hardin argued the cause for respondent. Messrs. Pitney, Hardin & Ward, Attorneys.

The opinion of the court was delivered by HEHER, *J.*

The question here is the constitutional sufficiency of ch. 23 of the Session Laws of 1949, which amends R. S. 18:13–9.1 and R. S. 18:13–9.2 to provide that every applicant for a license to "teach or supervise" in the public schools of the State, as a condition

prerequisite to the issuance of a certificate to that end, and every "professor, instructor, teacher or person employed in any teaching capacity" who shall thereafter "be employed * * * by, or in," any college, university, teachers college, or other school in New Jersey "supported in whole or in part by public funds, directly or through contract, or otherwise with the State Board of Education, before entering upon the discharge of his or her duties," shall subscribe to the "oath of allegiance and office" prescribed by R. S. 41:1-3, as amended by ch. 22 of the Session Laws of 1949. Pamph. L., pp. 68, 70. The oath is in terms following:

> "I....., do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of....., according to the best of my ability.
>
> "I do further solemnly swear (or affirm) that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of this State and to the Governments established in the United States and in this State, under the authority of the people; and will defend them against all enemies, foreign and domestic; that I do not believe in, advocate or advice the use of force, or violence, or other unlawful or unconstitutional means, to overthrow or make any change in the Government established in the United States or in this State; and that I am not a member of or affiliated with any organization, association, party, group or combination of persons, which approves, advocates, advises or practices the use of force, or violence, or other unlawful or unconstitutional means, to overthrow or make any change in either of the Governments so established; and that I am not bound by any allegiance to any foreign prince, potentate, state or sovereignty whatever. So help me God."

Plaintiff was employed by the defendant board of trustees as a "special lecturer" in mechanical engineering at its Newark College of Engineering for the Spring semester beginning February 1, 1950, and concluding June 15th ensuing, for a total compensation of $1,800, payable in equal semi-monthly installments. At the time of his employment, plaintiff was an experienced teacher and a specialist in the fields of mechanical and æronautical engineering. On February 17, 1950, after four days of teaching under the contract, the trustees requested plaintiff to take and subscribe the prescribed statutory oath; but a week later he declined, in writing, on the ground that this legislative requirement infringed upon "the rights of private citizens as guaranteed" by the Federal and State Constitutions. On March 9th following, his teaching employment was for that reason terminated by the trustees, although he was retained in a non-teaching capacity for the remainder of the contract term at the same salary. The Newark College of Engineering is under the management and control of the trustees, but is supported wholly or in part by public funds, according to an arrangement made with the State Board of Education. The trustees constitute a body corporate under ch. 164 of the Session Laws of 1881. Pamph. L., p. 208; R. S. 18:15-17, et seq.

The action of the trustees was sustained on appeal by the State Commissioner of Education and the State Board of Education. Plaintiff's appeal to the Appellate Division of the Superior Court was certified here for decision on our own motion.

I

First, it is contended that the oath of allegiance thus directed qualifies the oath prescribed for State officers by Article VII, Section I, paragraph 1 of the Constitution of 1947, and the act is therefore, in this respect at least, unenforceable as a legislative interference with an exclusive constitutional proscription and an enlargement of constitutional qualifications within the principle of *Imbrie* vs. *Marsh*, 3 N. J. 578 (1950). We think not.

Teaching is a profession; and in New Jersey the practitioners of the profession in the public school system are not deemed public officers. At the outset, the relationship between the public school teacher and the school authority is contractual in nature. The attainment of the tenure provided by R. S. 18:13-16 and R. S. 18:13-17 does not convert the teacher's employment into a public office. Tenure as therein ordained is a mere "legislative status" subject to legislative alteration and annulment. *Greenway* vs. *Board of Education of Camden*, 129 N. J. L. 46, affirmed *Ibid.* 461 (E. & A., 1943);

Offhouse vs. *State Board of Education,* 131 N. J. L. 391 (S. Ct. 1944), appeal dismissed, 323 U. S. 667, 65 S. Ct. 68, 89 L. Ed. 542 (1944). Teaching in the public schools does not involve the exercise of governmental powers, either of the State or the school district, and so the teacher is not an officer either of the State or the local corporate body; and *a fortiori,* this is true of plaintiff, who held a contract of employment with the defendant trustees and not with the State or a local school district, though the school was conducted by a public corporation and was supported by public funds.

An office is a place in a governmental system "created or recognized by the law of the State which, either directly or by delegated authority, assigns to the incumbent thereof the continuous performance of certain permanent public duties;" a position is analogous to an office "in that the duties that pertain to it are permanent and certain, but it differs from an office, in that its duties may be nongovernmental and not assigned to it by any public law of the State;" and an employment differs from both an office and a position "in that its duties, which are nongovernmental, are neither certain nor permanent." *Fredericks* vs. *Board of Health,* 82 N. J. L. 200 (S. Ct., 1912). The test of a public office is whether the incumbent is "invested with any portion of political power partaking in any degree in the administration of civil government, and performing duties which flow from the sovereign authority." *City of Hoboken* vs. *Gear,* 27 N. J. L. 265 (S. Ct., 1859). An office partakes in some degree of political power or governmental authority; a position is an employment "not calling for the exercise of governmental authority." *Dolan* vs. *Orange,* 70 N. J. L. 106 (S. Ct., 1903). See, also *Uffert* vs. *Vogt,* 65 N. J. L. 377 (S. Ct., 1900); *Duncan* vs. *Board of Fire and Police Commissioners of Paterson,* 131 N. J. L. 443 (S. Ct., 1944). There is a general acceptance of the view that tenure does not serve to render the teacher's employment a public office. *E. G. Kennedy* vs. *Board of Education,* 82 Cal. 483, 22 Pac. 1042 (1890); *Kostanzer* vs. *State,* 205 Ind. 536, 187 N. E. 337 (1933). See, also, 110 A. L. R. 800; 75 A. L. R. 1352.

Nor does the constitutional direction of Article VIII, section IV, paragraph 1 of the Constitution of 1947, that the Legislature provide "for the maintenance and support of a thorough and efficient system of free public schools" constitute those employed to give instruction in the schools public officers, either of the State or the local authority. Teachers so employed do not exercise what is in essence governmental authority.

II

The statute is also assailed as an invasion of "areas of freedom" which are inviolable under the Bill of Rights embodied in the First Amendment of the Federal Constitution, secured against adverse State action by the Fourteenth Amendment, and Article I, paragraphs 6, 18 and 21 of the State Constitution of 1947, and as an unconstitutional interference with plaintiff's "right or privilege to follow the profession of a teacher."

More specifically, it is said that the statutory proscription trespasses upon the sacred domain of belief, even though the subject matter be a settled conviction entertained by one who would teach and instruct youth of the right to overthrow or change the established Federal or State government by force or violence or other unlawful or unconstitutional means. This legislative directive is challenged as an unconstitutional "throttling of any unorthodox philosophy which must inevitably flow from such proscription."

"Beliefs are inviolate." *American Communications Association* vs. *Douds,* 339 U. S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950). The First Amendment of the Federal Constitution gives "freedom of mind the same security as freedom of conscience." *Thomas* vs. *Collins,* 323 U. S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945). It is of the very essence of the Freedoms guaranteed by the First Amendment that opinions or beliefs not manifested by an overt act shall not be the subject of criminal sanctions. Unorthodox thoughts as such may not be rendered punitive. There cannot now be punishment for the harboring of illicit beliefs and thoughts as was the case at the early common law. The Constitution, Federal and State, forbids. But the fundamental civil liberties here involved are not absolute. The particular guarantee of freedom of thought and opinion by the First Amendment is not free of all qualification. Government has the inherent right of self-protection against the forces that

would accomplish its overthrow by violence. It is of the very nature of the social compact that the individual freedoms at issue here are subject to reasonable restraint in the service of an interest deemed essential to the life of the community. *Prince* vs. *Commonwealth of Massachusetts*, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944). As was said by the late Chief Justice Hughes, "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." *Cox* vs. *New Hampshire*, 312 U. S. 569, 61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 396 (1941). The question is whether the statutory proscriptions bear a reasonable relation to the apprehended public evil. Where a regulation in the interest of public order results in an indirect partial abridgment of civil rights, the inquiry is as to which of the two conflicting interests demands the greater protection in the circumstances. The incidental limitation of personal freedoms is justifiable where necessary in the service of an overriding public interest. *American Communications Association* vs. *Douds, supra.*

True, our own government had its genesis in revolution; but it is nevertheless of the genius of our free society embodied in the Federal compact that changes in government shall be accomplished by orderly and lawful processes. It goes without saying that anarchic and kindred methods are alien to the spirit of our institutions. However natural law may justify revolt against tyranny, our democratic society is grounded upon the principles of liberty and order; and the preservation of our free institutions and the governmental structure that sustains them is a primary responsibility of government. Self-protection against "unlawful conduct" and, in some circumstances, against "incitements to commit unlawful acts" is so deeply infixed as to be an attribute of government. *American Communications Association* vs. *Douds, supra.*

In the exercise of the basic right of self-preservation, government may act against the erosive forces that would first undermine its structure and then accomplish its overthrow by force. It may move to restrain hostile action; and it may act to avert the perils of subversive influences, however they may seek to infiltrate and prostitute governmental processes to their own evil ends. A government not so empowered would hardly be worthy of the name. Self-preservation is a natural law. In a democracy such as ours, it is a principle of order derived from the consent of the governed. These fundamental personal freedoms are themselves "dependent upon the power of constitutional government to survive." *American Communications Association* vs. *Douds, supra.*

The accommodation of the State's discretion to take measures for the protection of its essential welfare and the superior interest shielded by the Federal compact is always a delicate exercise. *Cantwell* vs. *Connecticut*, 310 U. S. 96, 60 S. Ct. 900, 84 L. Ed. 1213 (1940); *Schneider* vs. *Irvington*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939). It is said that the restriction of these civil liberties is supportable only "by clear public interest, threatened not doubtfully or remotely, but by clear and present danger;" and that "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." Citing *Thomas* vs. *Collins, supra.* See, also, *Schenck* vs. *United States*, 249 U. S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919). But in the Douds case cited *supra*, the requirement of a somewhat similar oath by officers of labor unions (more specific and broader in its terms in that it called also for a sworn denial of membership in or affiliation with the Communist Party), as a condition to the use of the remedial measures and advantages afforded by the Federal Labor Management Relations Act of 1947 (29 U. S. C., section 159-h), was sustained as a measure reasonably necessary for the protection of interstate commerce against the "political strike." In addition to sworn disavowal of membership in the Communist Party, the statute there prescribes an oath that the affiant union officer "does not believe in, and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods;" and it was found that the oath was sustainable as applicable "to persons and organizations who believe in violent overthrow of the government as it presently exists under the Constitution as an objective, not merely a prohesy." The rationale of the view expressed by Chief Justice Vinson is to be found in this holding: "Congress might well find that such persons—those who believe that the present form of the government of the United States should be changed by force or other illegal methods—would carry that objective into their conduct of union affairs by calling political strikes designed to weaken and divide

the American people, whether they consider actual overthrow of the government to be near or distant. It is to those persons that section 9 (h) is intended to apply and only to them. We hold, therefore, that the belief identified in section 9 (h) is a belief in the objective of overthrow by force or by any illegal or unconstitutional methods of the government of the United States as it now exists under the Constitution and laws thereof." Apropos of the "clear and present danger" doctrine as related to the particular circumstances, the Chief Justice said: "When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial, it is obvious that a rigid test requiring a showing of imminent danger to the security of the nation is an absurdity."

The oath ordained by the New Jersey statute is but an extension and elaboration of the traditional oath of allegiance in matters considered by the Legislature vital to the essential common security. See the dissenting opinion of Mr. Justice Oliphant in *Imbrie* vs. *Marsh, supra.* The purpose of the oath is not to probe the mind of the teacher for the punishment of unorthodox or heretical views and beliefs, however inimical to the welfare and safety of the established government, but rather to determine the teacher's qualifications for the instruction of youth in the public schools. The test is largely subjective to forestall hostile action in an area deemed vital to the community. There is no interdiction upon the freedom of opinion, no effort to control thought, no censorship nor invasion of the sphere of conscience in matters of religion. The aim is not to stifle beliefs as such, but to disqualify for teaching one who, however capacitated otherwise, believes in the objective of overthrow of the government, Federal or State, by force or violence or other unlawful means. There is no mandate against the entertainment of unorthodox beliefs, and no personal penalty for nonconformity. One so mentally conditioned is deemed unsuited for the instruction of youth in the schools supported by public funds; and one who refuses to abjure such belief suffers the disqualification. This constitutes an entirely reasonable accommodation of the fundamental personal rights and the common interest in the safety of government and the integrity of its educational processes. The Legislature might well find that the teacher would carry that objective into his teaching. Thus, there is no undue infringement of civil liberties; no more than is needful for the essential public welfare. Paraphrasing the classic language of Justice Holmes in *McAuliffe* vs. *New Bedford,* 155 Mass. 216 (1892), the plaintiff may have a constitutional right to his belief in the overthrow of government by force or violence, but he has no constitutional right to be a teacher in the public schools. Of course, there can be no undue discrimination nor arbitrary exclusion. The First Amendment "requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom. It does not require that he be permitted to be the keeper of the arsenal." *American Communications Association* vs. *Douds, supra.*

There are other cases which exemplify the principle. In *United Public Workers* vs. *Mitchell,* 330 U. S. 75, 69 S. Ct. 556, 91 L. Ed. 754 (1946), a statute forbidding participation in partisan political activities by employees of the Federal Government, a right secured by the First Amendment, if they would remain in the Federal service, was sustained as consistent with that Amendment, in that there was a rational connection between the prohibitions of the statute and the end to be served, and the abridgment of the personal rights secured by the Amendment was of limited scope to further a large interest in the efficiency of government service. Also, a State court's refusal of admission to its bar of a person otherwise qualified, on the ground that he had conscientious scruples against war and would not take up arms or resort to force to prevent wrong under any circumstances, was upheld for the reason that the applicant could not in good faith swear to support the State Constitution, which called for service in the militia in time of war. The relation between the obligations of membership in the bar and service required by the State in time of war, the limited effect upon speech and assembly, and the State court's strong interest in the persons who become officers of the court, were deemed sufficient justification for the State action. *Re Summers,* 325 U. S. 561, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945). And a State statute requiring students at the State university to take a course in military science and tactics was held valid as against the contention that its enforcement would abridge the privileges and immunities and the liberty secured by the

Fourteenth Amendment. The Supreme Court said: "Government, Federal and State, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law." *Hamilton* vs. *University of California,* 293 U. S. 263, 55 S. Ct. 197, 79 L. Ed. 343 (1934).

The maintenance of the purity of the educational process against corruption by subversive influences is of the highest concern to society. It is in no real sense a denial of academic freedom to require of a teacher, as a condition to employment, a sworn disavowal of allegiance to the doctrine of force or violence as a mode of overthrowing government. That would seem to be axiomatic. Loyalty to government and its free democratic institutions is a first requisite for the exercise of the teaching function. Freedom from belief in force or violence as a justifiable weapon for the destruction of government is of the very essence of a teacher's qualification. The apprehended danger is real and abiding. We have long had evidence of the pressure here of a Godless ideology ruthlessly fostered by a foreign power which has for its aim the violent overthrow of government and free society. And one of its weapons is the debasement of teaching as a softening measure in the consummation of the subversive process. The school system affords the opportunity and means for subtle infiltration. There is no intrusion upon personal freedoms when government intervenes, as it has here, to avert this peril to its very existence. A teacher who is bereft of the essential quality of loyalty and devotion to his government and the fundamentals of our democratic society is lacking in a basic qualification for teaching. The teacher is not obliged to take the oath; but if he refuses to do so he is not entitled to teach. In the current struggle for men's minds, the State is well within its province in ensuring the integrity of the educational process against those who would pervert it to subversive ends.

The design of the statute is to obviate the danger of the translation of such beliefs into teachings. There is of necessity a close association between belief in force and teaching which is intimately related to fitness. One may not divorce one's beliefs from one's teaching. The Legislature may secure youth against indoctrination in the alien ideology of force and violence; and reasonable measures to that end are not obnoxious to the First Amendment. It may do whatever is required in the interest of youth and the common welfare. *Prince* vs. *Commonwealth of Massachusetts, supra.* The incidental qualification of personal freedom is a necessary concession to the basic interests of society. It is a legislative function to appraise the need and determine the remedy.

Freedom of thought is a cherished right. It is in the nature of a free people to treasure absolute freedom of mind; but this liberty would have no significance whatever if the society which gave it being ceased to exist, and the principle is *ex necessitate* subject to measures essential to its own security. To challenge the validity of this proposition is to deny the power of government to maintain its very existence. Civil liberties cannot be made the open door to subversive penetration. Unless the State may act to preserve the basic freedoms now invoked to stay its hand, those freedoms would hold in themselves the seeds of their own frustration.

III

Finally, it is urged that the statute is unenforceable as in contravention of the personal liberties secured by the Fourteenth Amendment for "vagueness and indefiniteness" and for insufficiency in the definition of "standards of guilt" and that the oath prescribed constitutes a bill of attainder and an *ex post facto* law in violation of Article IV, section VIII, paragraph 3 of the State Constitution of 1947. Neither of these contentions is well made.

As to the first, the specific point made is that the word "affiliated" related to the phrase "any organization, association, party, group or combination of persons" which hold to the views made the ground of disqualification is vague and uncertain and deficient in a "definable standard by which the association can be definitively fixed," and is also obnoxious as the embodiment of "the doctrine of guilt by association."

But a criminal prosecution for the making of a false oath would not be maintainable unless the false swearing was willful and corrupt. R. S. 41:3-1. Thus, there is a reasonably ascertainable standard of guilt comporting with the requirements of

due process. The same contention was made in the Douds case cited *supra*. Chief Justice Vinson said: "the question in any criminal prosecution involving a non-Communist affidavit must therefore be whether the affiant acted in good faith or knowingly lied concerning his affiliations, beliefs, support of organizations, etc. And since the constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning, the fact that punishment is restricted to acts done with knowledge that they contravene the statute makes this objection untenable. * * * Without considering, therefore, whether in other circumstances the words used in section 9 (h) would render a statute unconstitutionally vague and indefinite, we think that the fact that under section 35A of the Criminal Code no honest, untainted interpretation of those words is punishable removes the possibility of constitutional infirmity."

The second contention is likewise untenable. There is no punishment laid down for past actions, such as in *Cummings* vs. *Missouri* (1866), 4 Wall 277, 18 L. Ed. 356; *Ex parte Garland* (1887), 4 Wall 333, 18 L. Ed. 366; *United States* vs. *Lovett* (1946), 328 U. S. 303, 66 S. Ct. 1073, 90 L. Ed. 1253. The distinction was made in the Douds case. Referring to the above cases, the Chief Justice said: "Those cases and this also, according to the argument, involve the proscription of certain occupations to a group classified according to belief and loyalty. But there is a decisive distinction: in the previous decisions the individuals involved were in fact being punished for past actions; whereas in this case they are subject to possible loss of position only because there is a substantial ground for the Congressional judgment that their beliefs and loyalties will be transformed into future conduct. * * * Here the intention is to forestall future dangerous acts; there is no one who may not by a voluntary alteration of the loyalties which impel him to action, become eligible to sign the affidavit. We cannot conclude that this section is a bill of attainder." Here, also, the teacher becomes qualified by taking the oath.

The judgment of the State Board of Education is affirmed.