State of New Jersey
Department of Education
Trenton

NEW JERSEY

SCHOOL LAWS

Enacted during the Legislative Session of 1957
and Laws of 1956
Passed Too Late for Inclusion in 1956 Bulletin

SCHOOL LAW DECISIONS

1956 - 1957

Keep with 1938 Edition of New Jersey School Laws

SCHOOL LAWS, SESSION OF 1956

(Passed too late in 1956 to be printed in 1956 School Law Bulletin)

SUPPLEMENT

ACT

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SCHOOL LAWS, SESSION OF 1956

(Passed too late in 1956 to be included in the 1956 School Law Bulletin.)

SUPPLEMENT

CHAPTER 233, LAWS OF 1956

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

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

1. Every person employed as a school nurse, school nurse supervisor, head school nurse, chief school nurse or school nurse co-ordinator, or performing any school nursing service, in the public schools of this State shall be appointed by the board of education having charge of the school or schools in which the services are to be rendered and shall be under the direction of said board or an officer or employee of the board designated by it and the salary of such person shall be fixed by, and paid from the funds of, said board according to law, except that the performance of school nursing services in any public school in this State may be continued, under any original contract or agreement entered into, prior to the effective date of this act, or under any renewal or modification thereof, during the term of such contract or agreement or renewal or modification thereof.

2. This act shall take effect immediately but shall not be operative as to school districts now operating under chapter 13 of Title 40 of the Revised Statutes until July 1, 1960.

Approved February 27, 1957.

ACT

CHAPTER 158, LAWS OF 1956

AN ACT providing for the issuance of certificates to teach to certain persons who have declared their intention of becoming citizens of the United States.

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

1. Any citizen of any other country who has declared his or her intention of becoming a United States citizen and who is otherwise qualified may with the approval of the Commissioner of Education be granted a teacher's certificate, as provided in chapter 13 of Title 18 of the Revised Statutes, and employed as a teacher by a board of education.

2. Any certificate granted pursuant to this act shall be void and shall be canceled by the State Board of Examiners who issued the same, if the holder thereof shall not have become a United States citizen within 5 years of the

date of its issuance and may be revoked within said period by the State Board of Examiners if the said board is satisfied that the holder thereof has abandoned his efforts to become a United States citizen or has become disqualified for such citizenship.

3. Notwithstanding the provisions of any other law, no teacher certified pursuant to this act shall acquire tenure unless and until United States citizenship shall have been granted to such teacher.

4. This act shall take effect immediately.

Approved November 21, 1956.

RELATED LAW

CHAPTER 152, LAWS OF 1956

AN ACT to amend the title of "An act providing for the certification of librarians or professional library assistants employed by any officer or body having charge and control of any library supported in whole or in part by public funds within this State, except a board of education," approved May 9, 1947 (P. L. 1947, c. 132), so that the same shall read "An act providing for the certification of professional librarians and providing for the employment of professional librarians by the officer or body having charge and control of any library supported in whole or in part by public funds within this State, except a board of education, in certain cases," 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 providing for the certification of librarians or professional library assistants employed by any officer or body having charge and control of any library supported in whole or in part by public funds within this State, except a board of education," approved May 9, 1947, is amended to read "An act providing for the certification of professional librarians and providing for the employment of professional librarians by the officer or body having charge and control of any library supported in whole or in part by public funds within this State, except a board of education, in certain cases."

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

1. The State Board of Examiners shall, upon application, issue to any person a professional librarian's certificate to act as a professional librarian if he shall be a graduate from a library school accredited by the State Board of Education and shall meet such other requirements as shall be fixed by the State Board of Education for the issuance of such certificates except that the State Board of Examiners shall, upon application, issue such certificate to any person holding, at the time this act becomes effective, a professional office, or position, that requires for adequate performance the knowledge and techniques of library science as taught in accredited library schools, in any library within this State supported in whole or in part by public funds, except in a library under the charge and control of a board of education, provided such application is made within 3 years from the effective date of this act.

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

2. The State Board of Education shall make and enforce rules and regulations for the granting of such certificates for the issuance of each of which a fee of not less than $5.00 shall be charged.

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

3. The officer or body having charge and control of any library within this State supported in whole or in part by public funds, except a board of education, may, in its discretion, require, and any officer or body having charge and control of any such library serving any municipality or group of municipalities having a population of 10,000 inhabitants or over, except a board of education, shall require that any person hereafter employed in such library in any professional office or position, that requires for adequate performance the knowledge and techniques of library science as taught in accredited library schools, shall hold a professional librarian's certificate issued by the State Board of Examiners as provided in this act. No such officer or body shall terminate the employment of or refuse to continue the employment or re-employment of any person holding a professional office or position at the time this act becomes effective for the reason that such person is not the holder of any such certificate.

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

Approved September 11, 1956.

SCHOOL LAWS, SESSION OF 1957

AMENDMENTS*

CHAPTER 11, LAWS OF 1957

AN ACT concerning the issuance of bonds or other obligations of municipalities for school purposes, and amending sections 18:6–61 and 18:6–74 of the Revised Statutes.

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

1. Section 18:6–61 of the Revised Statutes is amended to read as follows:

18:6–61. The governing body of the municipality shall, subject to the provisions of section 18:6–62 of this Title, either:

a. Make appropriation of the sum or sums, fixed as provided in section 18:6–60 of this Title, for the purpose or purposes so fixed, in the same manner as other appropriations are made by it pursuant to the local budget law (§40:2–1 et seq.), and upon the taking effect of such appropriation pay said sum or sums to the custodian of school moneys of the district to be paid out by him only on the warrants or orders of the board of education for such purpose or purposes; or

b. By ordinance appropriate the sum or sums, fixed as provided in section 18:6–60 of this Title, for the purpose or purposes so fixed and, pursuant to said ordinance, borrow the sum or sums so appropriated and secure the repayment of the sum or sums so borrowed, together with interest thereon at a rate not to exceed 6% per annum, by the authorization and issuance of bonds in the corporate name of such municipality in accordance with the provisions of article 18 of chapter 5 of this Title (§18:5–84 et seq.). Bonds so issued shall be designated "school bonds," may be registered or coupon, or both, and of such denomination as the governing body may determine, and shall mature and be payable in such years and amounts as the governing body may determine in said ordinance or by subsequent resolution. *Any bonds, hereinafter in this section called "obligations," may be issued subject to redemption prior to maturity with or without premium at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the governing body of the municipality. No such obligation shall be issued subject to redemption at a premium or at a redemption price or prices in excess of the principal amount of such obligations plus interest accrued to date of redemption, unless the local government board in the Division of Local Government in the Treasury, shall by resolution record its finding, made after consultation with the Commissioner of Education and after consideration of the redemption premium or redemption price or prices applicable to such obligations, the time or times of proposed issuance of such obligations, the rate or maximum rate of interest borne or to be borne by such obligations, the maturity or maturities of such obligations and the earliest date of redemption of such obligations, that such redemption premium*

* Italics show amendments of 1957.

or redemption price or prices are not unreasonable or exorbitant, and shall assent to the issuance of such obligations subject to redemption at such redemption premium or at such redemption price or prices.

2. Section 18:6–74 of the Revised Statutes is amended to read as follows:

18:6–74. The notes or temporary loan bonds referred to in section 18:6–73 of this Title, upon the making of the appropriation, may be authorized by resolution which shall fix the maximum amount of such notes or bonds and the maximum rate of interest thereon.

The other matters in respect of the notes or temporary loan bonds may be left to be determined by subsequent resolution or by officials executing them or by a financial officer, from time to time as the money is called for by the board of education. The aggregate face amount thereof shall not exceed the amount of the appropriation. The notes or temporary loan bonds shall be general obligations of the municipality.

The board of education may, after any such appropriation and within the amount thereof, make contracts notwithstanding that the moneys appropriated are not in hand.

The proceeds of the permanent bonds when issued shall be applied to the payment of the principal of the notes or temporary loan bonds, and the interest thereon, and the principal thereof if not otherwise paid, shall be raised in the annual tax levy.

Any notes or temporary loan bonds, hereinafter in this section called "obligations," may be issued subject to redemption prior to maturity with or without premium or at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the governing body of the municipality. No such obligations shall be issued subject to redemption at a premium or at a redemption price or prices in excess of the principal amount of such obligations plus interest accrued to date of redemption, unless the local government board in the Division of Local Government in the Department of the Treasury, shall by resolution record its finding, made after consultation with the Commissioner of Education and after consideration of the redemption premium or redemption price or prices applicable to such obligations, the time or times of proposed issuance of such obligations, the rate or maximum rate of interest borne or to be borne by such obligations, the maturity or maturities of such obligations and the earliest date of redemption of such obligations, that such redemption premium or redemption price or prices are not unreasonable or exorbitant, and shall assent to the issuance of such obligations subject to redemption at such redemption premium or at such redemption price or prices.

3. This act shall take effect immediately.

Approved March 26, 1957.

AN ACT concerning the issuance of bonds and other obligations of school districts, and amending sections 18:7–90 and 18:7–100 of the Revised Statutes.

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

1. Section 18:7–90 of the Revised Statutes is amended to read as follows:

18:7–90. If the vote is in favor of the proposal submitted to the voters the board of education may carry out the purposes and issue the bonds subject to the terms of the proposal and of this Title.

The bonds shall be made payable in annual installments, commencing not more than 2 years from their date of issue, and no installment shall be more than 50% in excess of the amount of the smallest prior installment.

The bonds shall be signed by the president of the board of education and attested by the secretary and shall bear the seal of the district. Coupon bonds shall have coupons attached for current payment of interest which shall be signed by the secretary and numbered to correspond with the bonds to which they are attached. Bonds so issued shall be numbered, and a proper registry thereof shall be kept by the secretary.

Bonds (other than temporary loan bonds) issued by the board of education of any school district, under this Title, may be issued in registered or coupon form, and if in coupon form may contain provision for registration as to principal only, or provision for registration as to both principal and interest, or may contain both of such provisions. Bonds issued in fully registered form may contain provision for conversion into bonds in coupon form at the request of the registered owner or his authorized attorney or legal representative, and at his expense. Bonds issued in coupon form with provision for registration as to both principal and interest, may contain provision for reconversion, when fully registered, into bonds in coupon form, at the request of the registered owner or his authorized attorney or legal representative, and at his expense.

The delivery of any bonds or other obligations of a school district which are fully executed by the president and secretary of the board of education holding office at the time of such execution shall be valid, notwithstanding any change in such officers or in the seal of the school district occurring after such execution.

Any bonds, hereinafter in this section called "obligations," may be issued subject to redemption prior to maturity with or without premium or at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the board of education. No such obligations shall be issued subject to redemption at a premium or at a redemption price or prices in excess of the principal amount of such obligations plus interest accrued to date of redemption, unless the local government board in the Division of Local Government in the Department of the Treasury, shall by resolution record its finding, made after consultation with the Commissioner of Education and after consideration of the redemption premium or redemption price or prices applicable to such obligations, the time or times of proposed issuance of such obligations, the rate or maximum rate of interest borne or to be borne by such obligations, the maturity or maturities of such obligations and the earliest date of redemption of such obligations, that such redemption

premium or redemption price or prices are not unreasonable or exorbitant, and shall assent to the issuance of such obligations subject to redemption at such redemption premium or at such redemption price or prices.

Section 18:7–100 of the Revised Statutes is amended to read as follows:

18:7–100. Whenever *bonds, hereinafter called "permanent bonds,"* of a school district have *been authorized* pursuant to *chapter 7 of* this Title, the board of education may issue promissory notes or temporary loan bonds in anticipation of the issuance of permanent bonds. The promissory notes or temporary loan bonds may be authorized by resolution of the board of education which shall fix the maximum amount of such notes or bonds and the maximum rate of interest thereon. The other matters in respect of the notes or temporary loan bonds may be left to be determined by subsequent resolutions or by the officials executing them or by the secretary or the custodian of school moneys from time to time as the money is required for the purposes for which the permanent bonds are authorized. The aggregate face amount of such promissory notes or temporary loan bonds shall not exceed the aggregate amount of the permanent bonds authorized.

Any promissory notes or temporary loan bonds, hereinafter in this section called "obligations," may be issued subject to redemption prior to maturity with or without premium or at such redemption price or prices and under such terms and conditions as may be fixed by resolution of the board of education. No such obligations shall be issued subject to redemption at a premium or at a redemption price or prices in excess of the principal amount of such obligations plus interest accrued to date of redemption, unless the local government board in the Division of Local Government in the Department of the Treasury, shall by resolution record its finding, made after consultation with the Commissioner of Education and after consideration of the redemption premium or redemption price or prices applicable to such obligations, the time or times of proposed issuance of such obligations, the rate or maximum rate of interest borne or to be borne by such obligations, the maturity or maturities of such obligations and the earliest date of redemption of such obligations, that such redemption premium or redemption price or prices are not unreasonable or exorbitant, and shall assent to the issuance of such obligations subject to redemption at such redemption premium or at such redemption price or prices.

3. This act shall take effect immediately.

Approved March 26, 1957.

Chapter 51, Laws of 1957

An Act concerning education and amending section 18:11–14 of the Revised Statutes.

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

1. Section 18:11–14 of the Revised Statutes is amended to read as follows:

18:11–14. The board of education of any school district may provide such equipment, supplies, and services as in its judgment will aid in the preservation and promotion of the health of the pupils and it may also install, equip, supply and operate cafeterias or other agencies for dispensing food to public

school pupils without profit to the district. *The board of education may purchase food supplies, pursuant to rules and regulations of the State Board of Education, without advertisement for bids.*

2. This act shall take effect immediately.

Approved May 24, 1957.

CHAPTER 66, LAWS OF 1957

AN ACT to amend the "Law Against Discrimination," approved April 16, 1945 (P. L. 1945, c. 169).

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

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

4. All persons shall have the opportunity to obtain employment, to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation *and publicly assisted housing accommodation*, without discrimination because of race, creed, color, national origin or ancestry, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

2. Section 5 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 1 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 11 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 6 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 Guard, naval militia or a reserve component of the Armed Forces of the United States or subject to being inducted into such Armed Forces through a system of national selective service.

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

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 hotel, whether for entertainment of transient guests or accommodation of those seeking health, recreation or rest; any retail shop or store; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivaties, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water, or in the air, and stations and terminals thereof; any public bathhouse, public boardwalk, public seashore accommodation; any auditorium, meeting place, or public hall; any theatre, or other place of public amusement, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor; any comfort station; any dispensary, clinic or hospital; and any public library, any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to, any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post-secondary school from using in good faith criteria other than race, creed, color, national origin or ancestry, in the admission of students.

k. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to chapter 300 of the laws of 1949, chapter 213 of the laws of 1941, chapter 169 of the laws of 1944, chapter 303 of the laws of 1949, chapter 19 of the laws of 1938, chapter 20 of the laws of 1938, chapter 52 of the laws of 1946, and chapter 184 of the laws of 1949, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the Federal Government or any agency thereof.

3. This act shall take effect immediately.

Approved June 4, 1957.

AN ACT to amend "An act to provide for a schedule of minimum salaries and increments for certain persons holding office, position, or employment under any district or regional board of education, or any board of education of a county vocational school of this State, and supplementing article 2 of chapter 13 of Title 18 of the Revised Statutes," approved December 13, 1954 (P. L. 1954, c. 249).

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

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

1. As used in this act:

"Teacher" shall include any full-time member of the professional staff of any district or regional board of education or any board of education of a county vocational school, the qualifications for whose office, position, or employment are such as to require him to hold an appropriate certificate issued by the State Board of Examiners in full force and effect in this State and who holds a valid permanent, limited or provisional certificate appropriate to his office, position, or employment.

"Salary schedule" shall mean a schedule of minimum salaries fixed according to years of employment.

"Full-time" shall mean the number of days of employment in each week and the period of time in each day required by the State Board of Education, under rules and regulations prescribed for the purposes of this act, to qualify any person as a full-time teacher.

"Year of employment" shall mean employment by a teacher for 1 academic year in any publicly owned and operated college, school or other institution of learning for 1 academic year in this or any other State or territory of the United States.

"Academic year" shall mean the period between the opening day of school in the district after the general summer vacation, or 10 days thereafter, and the next succeeding summer vacation.

"Employment increment" shall mean an annual increase of *$200.00* granted to a teacher for 1 "year of employment."

"Adjustment increment" shall mean, in addition to an "employment increment," an increase of *$150.00* granted annually as long as shall be necessary to bring a teacher, lawfully below his place on the salary schedule according to years of employment, to his place on the salary schedule according to years of employment; provided, that a fraction of an "adjustment increment" may be granted when such amount is sufficient to bring a teacher to his place on the schedule according to years of employment.

"Bachelor's degree or the equivalent" shall mean a bachelor's degree conferred by a college or university whose courses for such degree are acceptable to the State Board of Examiners for certification purposes or proof of the satisfactory completion of 128 semester hours in courses in any college or university, or colleges or universities, whose courses for the bachelor's degree are acceptable to the State Board of Examiners for certification purposes.

"Master's degree or the equivalent" shall mean a master's degree conferred by a college or university whose courses for such degree are acceptable to the State Board of Examiners for certification purposes or proof of the satisfactory completion of 30 additional semester hours in graduate courses beyond the course requirements for the bachelor's degree in any college or university, or colleges or universities, whose graduate courses for the master's degree are acceptable to the State Board of Examiners for certification purposes.

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

2. *Except as hereinafter provided, the salary schedule in this State (1) for a teacher who does not hold a bachelor's degree or its equivalent and who is employed as a school nurse shall be as provided in Column A below, (2) for a teacher who does not hold a bachelor's degree or its equivalent and is not employed as a school nurse shall be as provided in Column B below, (3) for a teacher who holds a bachelor's degree or its equivalent shall be as provided in Column C below, and (4) for a teacher who holds a master's degree or its equivalent shall be as provided in Column D below:*

Years of Employment	*Salary*				*Employment Increment*
	A	*B*	*C*	*D*	
1	*$3,200.00*	*$3,600.00*	*$3,300.00*	*$4,000.00*	----------
2	*3,400.00*	*3,800,00*	*4,000.00*	*4,200.00*	*$2,00.00*
3	*3,600.00*	*4,000.00*	*4,200.00*	*4,400.00*	*200.00*
4	*3,800.00*	*4,200.00*	*4,400.00*	*4,600.00*	*200.00*
5	*4,000.00*	*4,400.00*	*4,600.00*	*4,800.00*	*200.00*
6	*4,200.00*	*4,600.00*	*4,800.00*	*5,000.00*	*200.00*
7	*4,400.00*	*4,800.00*	*5,000.00*	*5,200.00*	*200.00*
8	*4,600.00*	*5,000.00*	*5,200.00*	*5,400.00*	*200.00*
9	*4,800.00*	*5,200.00*	*5,400.00*	*5,600.00*	*200.00*
10	*5,000.00*	*5,400.00*	*5,600.00*	*5,800.00*	*200.00*
11	----------	----------	*5,800.00*	*6,000.00*	*200.00*
12	----------	----------	----------	*6,200.00*	*200.00*

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

3. Any teacher holding office, position, or employment in any school district of this State shall be entitled annually to an employment increment until he shall have reached the maximum salary provided *in the appropriate training level column* in section 2 of this act.

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

5. Any teacher *covered by* this act who is below his place on the salary schedule according to *the appropriate training level column and* years of employment shall receive on *September 1 of each year* an adjustment increment until he shall have attained his place on the schedule according to his *appropriate training level column and* years of employment but any such teacher who is under contract for *any* year of employment at a salary of less than *the amount provided for the first year of employment in the appropriate training level column of section 2 of this act* shall receive an increase in his

salary to *the amount provided for the first year of employment in the appropriate training level column* in lieu of his adjustment increment unless such adjustment increment is greater.

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

6. Every teacher who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of this State, including active service in 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, 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, shall be entitled to *receive equivalent years of employment credit for such service as* if he had been employed for the same period of time in some publicly owned and operated college, school, or institution of learning in this or any other State or territory of the United States, except that the period of such service shall not be credited toward more than 4 employment or adjustment increments.

Nothing contained in this section shall be construed to reduce the number of employment or adjustment increments to which any teacher may be entitled under the terms of any law, or regulation, or action of any employing board or officer, of this State, relating to leaves of absence.

6. This act shall take effect July 1, 1958.

Approved July 17, 1957.

CHAPTER 174, LAWS OF 1957

AN ACT concerning education, and amending sections 18:6–25 and 18:7–64 of the Revised Statutes.

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

1. Section 18:6–25 of the Revised Statutes is amended to read as follows:

18:6–25. The board shall, prior to the beginning of each school year, cause advertisements to be made for proposals for furnishing supplies required in the schools and by the board during the ensuing year. If other and further supplies are required during the year, they shall be purchased in like manner; but the board may at any time authorize the purchase of supplies to an amount not exceeding *$1,000.00* without advertisement.

Textbooks and kindergarten supplies may be purchased without advertisement.

No contract for the building of a new schoolhouse or for the enlargement of an existing schoolhouse shall be entered into without first advertising for proposals therefor. No contract for the repairing of an existing schoolhouse at a cost of more than *$2,000.00* shall be entered into without first advertising for proposals therefor.

The advertisements required by this section shall be made under such regulations as the board may prescribe.

2. Section 18:7–64 of the Revised Statutes is amended to read as follows:

18:7–64. The board shall, prior to the beginning of each school year, cause advertisement to be made for proposals for furnishing supplies required in the schools and by the board during the ensuing year. If other and further supplies are required during the year, they shall be purchased in like manner; but the board may at any time authorize the purchase of supplies to an amount not exceeding *$1,000.00* without advertisement.

Textbooks and kindergarten supplies may be purchased without advertisement.

No contract for the building of a new schoolhouse or for the enlargement of an existing schoolhouse shall be entered into without first advertising for proposals therefor. No contract for the repairing of an existing schoolhouse at a cost of more than *$2,000.00* shall be entered into without first advertising for proposals therefor.

The advertisements required by this section shall be made under such regulations as the board may prescribe.

3. This act shall take effect immediately.

Approved August 8, 1957.

CHAPTER 181, LAWS OF 1957

AN ACT concerning education, relating to tenure and seniority of school nurses, and repealing section 18:14–64.1 of the Revised Statutes.

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

1. The services of all school nurses, school nurse supervisors, head school nurses, chief school nurses, school nurse co-ordinators or any other nurse performing school nursing services in the public schools, excepting those who are not the holders of appropriate certificates in full force and effect issued by the State Board of Examiners under rules and regulations prescribed by the State Board of Education pursuant to P. L. 1947, chapter 133, section 1, or whose employment is not protected by P. L. 1947, chapter 133, section 3, shall be during good behavior and efficiency, (a) after the expiration of a period of employment of 3 consecutive calendar years in that district unless a shorter period is fixed by the employing board, or (b) after employment for 3 consecutive academic years together with employment at the beginning of the next succeeding academic year, or (c) after employment, within a period of any 4 consecutive academic years, for the equivalent of more than 3 academic years; provided, that the time that any school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse co-ordinator or any other nurse performing school nursing services in the public schools has served in the district in which he or she is employed during the academic year immediately preceding July 1, 1957, shall be counted in determining such period or periods 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.

2. No school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse co-ordinator or any other nurse performing school

nursing services in the public schools under the tenure referred to in this act shall be dismissed or subjected to a reduction of salary in the school district except for inefficiency, incapacity, conduct unbecoming a school nurse 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.

3. Nothing contained in this act 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 school nurses, school nurse supervisors, head school nurses, chief school nurses, school nurse co-ordinators or any other nurse performing school nursing services in the public schools 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 school nursing 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 1 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 re-employed 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 school nurses, school nurse supervisors, head school nurses, chief school nurses, school nurse co-ordinators or any other nurse performing school nursing

services in the public schools, in or with the military or naval forces of the United States of America or of this State subsequent to September 1, 1940, shall be credited in determining seniority under this act as though such school nurses, school nurse supervisors, head school nurses, chief school nurses, school nurse co-ordinators or any other nurse performing school nursing services in the public schools had been regularly employed within the district during the time of such military service. Should any school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse co-ordinator or any other nurse performing school nursing services in the public schools 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 seniority for re-employment whenever vacancies occur and shall be re-employed by the body causing dismissal in such order when and if a vacancy in a position for which such school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse co-ordinator or any other nurse performing school nursing services in the public schools shall be qualified. Such re-employment shall give full recognition to previous years of service.

The services of any school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse co-ordinator or any other nurse performing school nursing services in the public schools may be terminated, without charge or trial, who is not the holder of an appropriate certificate in full force and effect issued by the State Board of Examiners under rules and regulations prescribed by the State Board of Education pursuant to P. L. 1947, chapter 133, section 1 or whose employment is not protected by P. L. 1947, chapter 133, section 3.

4. Section 18:14–64.1 of the Revised Statutes is repealed, provided that the repeal of the said act shall not in any manner affect any tenure of service or tenure of service rights to which any person was entitled thereunder on the effective date of this act but said tenure of service and tenure of service rights shall continue with the same force and effect as though said act had not been repealed.

5. This act shall not apply to any person covered in the classified service of the Civil Service under Title 11, Civil Service, of the Revised Statutes.

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

Approved August 15, 1957.

SCHOOL LAWS, SESSION OF 1957

SUPPLEMENTS

CHAPTER 133, LAWS OF 1957

AN ACT relating to the public schools of this State, and supplementing chapter 14 of Title 18 of the Revised Statutes.

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

1. The board of education of any school district may require all pupils to have received immunizing treatment against poliomyelitis as a prerequisite to attendance at school, and it may at its discretion require or waive proof of immunity, except as hereinafter provided.

Any pupil failing to comply with such a requirement may be excluded from school, unless the pupil shall present a certificate signed by a physician stating that the pupil is unfit to receive such immunizing treatment.

A board of education *shall* exempt the pupil from the provisions of this act if the parent or guardian of said pupil objects thereto in a written statement signed by him upon the ground that the proposed immunization interferes with the free exercise of his religious principles.

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

Approved July 11, 1957.

CHAPTER 142, LAWS OF 1957

AN ACT to authorize and permit the Board of Trustees of the Teachers' Pension and Annuity Fund to purchase group life insurance from 1 or more life insurance companies to provide members of the Teachers' Pension and Annuity Fund with death benefits, and supplementing the "Teachers' Pension and Annuity Fund-Social Security Integration Act," approved June 1, 1955 (P. L. 1955, c. 37).

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

1. The Board of Trustees of the Teachers' Pension and Annuity Fund is hereby authorized and permitted to purchase from 1 or more life insurance companies, as determined by it, a policy or policies of group life insurance to provide for the benefits specified in sections 37, 38, 41, 42, 44 and 53 of chapter 37 of the laws of 1955.

2. Any life insurance company must meet the following requirements in order to qualify under section 1 of this act: (a) be licensed under the laws of the State of New Jersey to transact life and accidental death insurance, and (b) the amount of its group life insurance in the State of New Jersey shall at the time said insurance is to be purchased equal at least 1% of the total amount of such group life insurance in the State of New Jersey in all life insurance companies.

3. The Board of Trustees of the Teachers' Pension and Annuity Fund may, in its discretion, determine to purchase group insurance coverage for either the noncontributory death benefit provisions as provided for in chapter 37 of the laws of 1955 or for additional death benefit coverage as provided for in section 53 of chapter 37 of the laws of 1955. The Board of Trustees of the Teachers' Pension and Annuity Fund may also, in its discretion, determine to purchase group insurance coverage for both the noncontributory death benefit provisions as provided for in chapter 37 of the laws of 1955 and for the additional death benefit coverage as provided for in section 53 of chapter 37 of the laws of 1955. The Board of Trustees of the Teachers' Pension and Annuity Fund may also, in its discretion, determine not to purchase any group insurance coverage for the death benefit provisions provided in chapter 37 of the laws of 1955.

4. In the event that the Board of Trustees of the Teachers' Pension and Annuity Fund shall determine to purchase group coverage for the noncontributory death benefits, premiums for same shall be paid from the contingent reserve fund established by section 18 of chapter 37 of the laws of 1955, as amended. In the event the Board of Trustees of the Teachers' Pension and Annuity Fund shall determine to purchase group coverage for the additional death benefits, premiums for same shall be paid from the members' death benefits fund established by section 26 of chapter 37 of the laws of 1955. In the event both the noncontributory and additional death benefit coverage are included in the same group life policy, and dividend or retrospective rate credit allowed under the policy shall be credited to the aforesaid funds in an equitable manner.

5. In the event that the Board of Trustees of the Teachers' Pension and Annuity Fund shall determine to purchase group insurance coverage for the additional death benefit coverage, each member selecting the additional death benefit coverage shall agree to the deduction of a percentage of his compensation determined from a schedule of contributions to be established by the Board of Trustees of the Teachers' Pension and Annuity Fund. The schedule of contributions shall be established by said board of trustees on a basis it deems appropriate and shall be subject to adjustment by said board of trustees from time to time for the purpose of maintaining the members' death benefit fund established by section 26 of chapter 37 of the laws of 1955 at a level sufficient to meet the obligations of the fund for the cost of the insurance.

6. Any such group policy or policies shall include, with respect to any insurance terminating because the member ceases to be in service, the conversion privilege available upon termination of employment as prescribed by the law relating to group life insurance; and shall also include, with respect to insurance terminating because of termination of the group policy resulting from a termination of the death benefits for all members established under sections 37, 38, 41, 42, 44 and 53 of chapter 37 of the laws of 1955, the conversion privilege available upon termination of the group policy as prescribed by such law. Any such group policy or policies shall also provide that if a member dies during the 31-day period during which he would be entitled to exercise the conversion privilege, the amount of insurance with respect to which he could have exercised the conversion privilege shall be paid as a claim under the group policy.

If any member who has exercised the conversion privilege under the group policy or policies again becomes a member of the Teachers' Pension and Annuity Fund, and the individual policy obtained pursuant to the conversion privilege is still in force, he shall not again be eligible for any of the death benefits provided by chapter 37 of the laws of 1955 unless he furnishes satisfactory evidence of insurability.

7. Benefits under such group policy or policies shall be paid by the company to such person, if living, as the member shall have nominated by written designation duly executed and filed with the insurance company through the board of trustees, or in the absence thereof by a written designation pertaining to the death benefits under the Teachers' Pension and Annuity Fund, executed and filed with the board of trustees prior to the effective date of coverage of such member under such group policy or policies, otherwise to the executors or administrators of the member's estate; except that if the board of trustees accepts from the member during his lifetime a request directing that the retirement system rather than the insurance company make payment of any death benefit in equal annual installments over a period of years or as a life annuity and such request is effective upon his death, or if the board of trustees accepts from a beneficiary to whom payment would otherwise be made by the insurance company in 1 sum a similar request for payment by the retirement system in equal annual installments over a period of years or as a life annuity, the insurance company shall make payment of the death benefit to which such request for payment pertains in 1 sum directly to the retirement system, and the retirement system shall thereupon make payment to the beneficiary in the manner directed by the member or the beneficiary as the case may be, and except, further, that if a member dies in active service as a result of accident and claim is made and allowed under section 46 of chapter 37 of the laws of 1955, the death benefit payable under the policy in such case, exclusive of any additional death benefit provided by section 53 of said chapter, shall, in lieu of being paid as aforesaid be paid to the retirement system to be credited to the contingent reserve fund established by section 18 of chapter 37 of the laws of 1955, as amended, and paid therefrom in accordance with said section 18. A member may file with the insurance company through the board of trustees and alter from time to time during his lifetime, as desired, a duly attested written nomination of his payee for the death benefit.

8. Any such group policy or policies shall provide that payment of any death benefits which are payable by the insurance company may be made in 1 sum directly to the beneficiary as hereinafter provided, in equal annual installments over a period of years or as a life annuity or in such other manner as may be made available by the insurance company. A member may make such arrangements for settlement, and may alter from time to time during his lifetime any arrangement previously made, by making written request to the insurance company through the board of trustees. Upon the death of a member, a beneficiary to whom a benefit is payable in 1 sum by the insurance company may likewise arrange for a settlement as described above. Any arrangement for payment under the group policy to a beneficiary other than the retirement system shall be in lieu of that provided by sections 37, 38, 41, 42, 44 and 53 of chapter 37 of the laws of 1955.

9. Notwithstanding any other provision of law, any insurance company or companies issuing such policy or policies may credit the Teachers' Pension and Annuity Fund, in the form of reduced premiums, with savings by said company or companies in the event that no brokerage commission or commissions are paid by said company or companies on the issuance of such policy or policies.

10. This act shall take effect immediately.
Approved July 11, 1957.

CHAPTER 149, LAWS OF 1957

AN ACT concerning education, and supplementing chapter 8 of Title 18 of the Revised Statutes.

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

1. Whenever any school district uniting to form a regional district shall be a consolidated district and shall have membership on the regional board of education in number equal to or more than the member districts of the consolidation, such membership on the regional board of education shall further be apportioned and from time to time reapportioned among the consolidated district by the county superintendent of schools of the county in which such a school district is situated as nearly as may be according to the number of the inhabitants of said constituent districts, in the same manner as if each said district were the only constituent of a regional district. Thereafter such members of the regional board of education shall be elected in the same manner and at the same time as if each district of the consolidated district were a constituent of the regional district: provided, that the provisions hereof shall apply only to members appointed or elected at or after the first annual regional school district election held more than 30 days after the effective date of this act.

2. This act shall take effect immediately.
Approved July 17, 1957.

SCHOOL LAWS, SESSION OF 1957

ACTS AND RELATED LAWS

CHAPTER 20, LAWS OF 1957

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

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

1. Section 18 of the act of which this act is amendatory is amended to read as follows:

18. In the case of any civilian absentee voter who claims the right to vote by absentee ballot by reason of disability, the voter shall include within the outer envelope a certificate of a duly licensed physician *or a duly accredited Christian Science practitioner* certifying that the voter is confined by reason of sickness or physical disability and will be unable to cast his ballot at the polling place in the absentee voter's election district on the date of the election.

2. This act shall take effect immediately.

Approved April 8, 1957.

CHAPTER 29, LAWS OF 1957

AN ACT to amend the "General Noncontributory Pension Act," approved January 11, 1956 (P. L. 1955, c. 263).

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

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

5. The amount of pension granted under this act shall be fixed by the employer according to uniform percentages of final average salary applicable generally to all employees of such employer subject to the provisions of this act, which percentages shall be adopted by resolution, but which shall not exceed an amount which, when added to the Social Security Old Age Insurance benefit for which the employee is or could be eligible, will produce a total retirement allowance equal to:

(a) 30% of his final average salary if he has been employed by the employer for less than 20 years; or

(b) 50% of his final average salary if he has been employed by the employer for 20 years or more; provided, however, that in the case of an employee having 35 *or more* years of public employment and being age 65, *or having 40 or more years of public employment,* the total retirement allowance shall not be less than 25% of his final average salary.

The amount of the pension, once established, shall not thereafter be reduced because of an increase in the amount of the employee's Social Security benefit.

No employee shall be eligible for pension benefits based upon disability hereunder unless he shall have at least 5 years of employment continuously, or in the aggregate, with the employer. No employee shall be eligible for pension benefits other than benefits based upon disability hereunder unless he shall have at least 15 years of employment continuously, or in the aggregate, with the employer.

2. This act shall take effect immediately.

Approved April 29, 1957.

CHAPTER 31, LAWS OF 1957

AN ACT to amend the "Public Employees' Retirement-Social Security Integration Act," approved June 28, 1954 (P. L. 1954, c. 84).

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

1. Section 79 of the act of which this act is amendatory is amended to read as follows:

79. (a) All employees of the State whose compensation is paid in whole or in part by any county or municipality in which chapter 15 of Title 43 of the Revised Statutes has been, or in which this act is, adopted shall be entitled to receive the same benefits as employees of such county or municipality are entitled to receive and the county or municipality paying such compensation shall have the same obligations with respect to such employees of the State as it has to its own employees under this act.

(b) All employees of the State, employed on or before the effective date of this amendatory act, whose compensation is paid in whole or in part by any county or municipality or by any board, body, commission or agency of any county or municipality maintained by funds supplied by the county or municipality in which chapter 15 of Title 43 of the Revised Statutes or in which this act has not been adopted and for which a separate retirement system has been provided by statute, and who were members of such system on the effective date of this amendatory act and do not apply for withdrawal from such system within 60 days from such effective date, shall be treated as county or municipal employees for the purpose of membership in a retirement or pension system and, as such, they shall be ineligible for membership in the public employees' retirement system.

(c) Except as provided in subsection (b) hereof, an employee of the State whose compensation is paid in whole or in part by any such county or municipality or by any board, body, commission or agency of any such county or municipality maintained by funds supplied by such county or municipality shall be eligible for membership in the public employees' retirement system and shall not be a member of any county or municipal pension system by reason of such State service. Any such veteran employee who is not a member of such county or municipal pension system on the effective date of this amendatory act may within 60 days from such effective date

apply for prior service credit as provided in section 60 of this act, and shall be entitled to same as therein provided. The county or municipality shall be deemed to be the employer of such employees of the State for the purposes of this act and shall have the obligation as such employer as set forth in section 81 of this act.

Any employee who applies to withdraw from a county retirement system, as provided in subsection (b) hereof, shall, within said 60-day period file a copy of such application with the board of trustees of the public employees' retirement system together with his application for membership in the public employees' retirement system. The county retirement system to which such employee has made contributions shall cause to be transferred to the public employees' retirement system within 90 days thereafter the amount of such employees' contributions to such county retirement system, without interest, for which such employee shall receive prior service credit for the time of his membership in such county retirement system. Any such veteran member who, in his application for membership in the public employees' retirement system requests prior service credit as provided by section 60 of this act, shall be entitled to same as therein provided.

(d) Any State employee veteran, who is not eligible for membership, by reason of subsection (b) hereof, in the public employees' retirement system, and who is paid in whole or in part by any county or municipality or by any board, body, commission or agency of any county or municipality maintained by funds supplied by the county or municipality, shall not thereby be rendered ineligible for retirement benefits under sections 43:4–1, 43:4–2 and 43:4–3 of the Revised Statutes, and the responsibility for the payment of said retirement benefits shall be upon the county or municipality or such board, body, commission or agency which pays his salary.

(e) When any employee of any county in which chapter 15 of Title 43 of the Revised Statutes or this act has not been adopted and for which a separate retirement system has been provided by statute, who was a member of such system on February 10, 1956, later becomes an employee of the State, whose compensation is paid in whole or in part by such county, he shall retain his membership in such retirement system, notwithstanding the provisions of section 7 of the act of which this act is amendatory, provided that he shall notify the Board of Trustees of the Public Employees' Retirement System of his desire to retain such membership within 30 days after his becoming a State employee, or within 30 days from the effective date of this amendatory act, whichever is later. Thereafter he shall be treated as a county employee for the purpose of membership in a retirement system and, as such, shall be ineligible for membership in the Public Employees' Retirement System.

2. This act shall take effect immediately.

Approved April 29, 1957.

CHAPTER 59, LAWS OF 1957

AN ACT to amend the title of "An act concerning veterans' pensions, and supplementing chapter 4 of Title 43 of the Revised Statutes," approved July 15, 1954 (P. L. 1954, c. 169), so that the same shall read "An act authorizing veterans to waive payment and receipt of a portion of any pension to which they may be entitled," 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 veterans' pensions, and supplementing chapter 4 of Title 43 of the Revised Statutes," approved July 15, 1954, is amended to read "An act authorizing veterans to waive payment and receipt of a portion of any pension to which they may be entitled."

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

1. Any person who has *retired or shall retire pursuant to any pension act or retirement system established pursuant to law* may, upon written request, waive payment of a portion of *any* pension to which he is *so* entitled.

3. This act shall take effect immediately.

Approved May 29, 1957.

CHAPTER 145, LAWS OF 1957

AN ACT concerning certain pensioners, and amending section 43:3–5 of the Revised Statutes, and supplementing chapter 3 of Title 43 of the Revised Statutes.

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

1. Section 43:3–5 of the Revised Statutes is amended to read as follows:

43:3–5. The provisions of this chapter shall not apply to any appointment of a temporary nature made or created by any rule or order of procedure of any court of this State, so as to interfere with any rule or order of procedure in such courts for the proper administration of justice therein; nor shall the provisions of this chapter apply to any person appointed to the office of court crier in any court where the term of such office is indefinite, or to any person who is appointed to the office of magistrate of any municipal court in a municipality having a population of less than 5,000, where the salary paid to such municipal magistrate is less than the amount of his pension; nor to the appointment and employment of any pensioned former municipal manager as an engineer or consultant or member of any commission or board by any municipality, county or by the State, or as a teacher or lecturer in any school or educational institution in the State; nor to the employment, by the State or by any county, municipality or school district in any position or employment, *to the duties of which the holder thereof is not required to devote his full time,* at a salary or compensation of not more than $1,200.00 per calendar year, of 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 of this or any other State; nor to any person who has or who may hereafter receive permanent disability in the performance of his duty while serving as a member of the Armed Forces of the United States, the New Jersey State Police, or the police department, or the fire department of any county or municipality in this State. *The provisions of this section shall not authorize the employment as a policeman or fireman of any person who is receiving or 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 as a result of services as a member of a police department or a fire department.*

2. In order to qualify for continued receipt of pension or subsidy, any person receiving any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State who accepts employment by the State or by any county, municipality or school district in any position or employment the duties of which do not require him to devote his full time, shall, within 30 days of entering upon such employment, file with the agency or retirement system from which he is receiving pension or subsidy payments, notice of the fact that he is employed by a governmental agency, the name and address of such agency, the compensation to which he will be entitled under such employment and such further information in connection with such employment as the agency or retirement system shall, by rule or regulation, from time to time, require.

3. This act shall take effect immediately.
Approved July 15, 1957.

SCHOOL LAW DECISIONS

1956 - 1957

DECISIONS OF STATE BOARD OF EDUCATION AND SUPERIOR COURT RENDERED ON DECISIONS OF THE COMMISSIONER OF EDUCATION AND STATE BOARD OF EDUCATION PRINTED IN 1955-1956 BULLETIN

IN RE RECOUNT OF BALLOTS CAST AT THE SPECIAL ELECTION HELD IN THE BOROUGH OF RIDGEFIELD, BERGEN COUNTY

For the Petitioner, Mr. Saul R. Alexander.
For the Board of Education, Mr. George A. Duffy.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of a special meeting of the legal voters held on June 14, 1956, in the School District of the Borough of Ridgefield, Bergen County:

Election Districts	*Polling District No. 1 Firehouse No. 3 2 and 5*	*Polling District No. 2 School No. 2 1*	*Polling District No. 3 School No. 3 3*	*Polling District No. 4 School No. 4 4*	*Totals*
Yes	509	294	243	205	1251
No	438	334	302	170	1244

Number on Polling List		2495
Number of Votes Cast		2495
Maintenance Man Test Votes	1	
Void	5	
		6
Absentee Ballots—Yes	7	
Absentee Ballots—No	2	
Total Yes 1251 plus 7 absentee		1258
Total No 1244 plus 2 absentee		1246

Edward E. Hannigan petitioned the Commissioner for a recount of the ballots cast at the special election on the grounds that the election was conducted in an illegal manner in several respects in that certain void ballots were tallied in favor of the proposal, several voting machines were defective, and errors were made in tabulation and other irregularities occurred in violation of the school election laws and procedures, which if properly applied would have altered the result of the said election.

A recheck of the voting machines, poll lists and voting authority slips was conducted by the Assistant Commissioner in Charge of Controversies and Disputes on Friday, July 6, 1956, at 11:00 A. M. in Hackensack, at which counsel for the petitioner made a motion to amend the petition. The motion

was denied by the Assistant Commissioner of Education on the grounds that the twenty-day period for contesting the election had expired in accordance with section 18:7–89 of the Revised Statutes which reads as follows:

> "No action to contest the validity of any election ordering the issue of bonds or election or district meeting held pursuant to section 18:7–95 of this Title shall be commenced after the expiration of twenty days from the date of such election or meeting."

The voting authority slips and poll lists indicate a total of 2495 persons voted in the election. There were four polling districts: Polling District No. 1 comprised municipal elections Districts No. 2 and No. 5; Polling District No. 2 comprised municipal election District No. 1; Polling District No. 3 comprised municipal election District No. 3; Polling District No. 4 comprised municipal election District No. 4.

A recheck of the voting authority slips and poll lists reveal the following: In District No. 1 there were two books containing the poll list and voting authority slips beginning with No. 876—one for registered voters in municipal election District No. 2 and one for municipal election District No. 5. The total number of people authorized to vote was correct. In the opinion of the Commissioner this irregularity does not constitute an illegal election. The poll lists and voting authority slips totalled 2495 votes for all polling districts.

A recheck of the voting machines revealed the following results:

Machine Number	*Yes*	*No*	*Total Number of Voters Recorded on Machine*
12994	294	334	628
12995	205	170	376 —1
12996	243	302	545
12997	210	189	404 —5
12998	299	249	548
TOTAL	1251	1244	2501 —6 = 2495
Absentee ballots as certified by the County Election Board	7	2	9
	1258	1246	2504

In the report of proceedings of the election, the election board certified that 5 test votes were cast on machine No. 12997 and 1 test vote on machine No. 12995. These test votes resulted in a reading of the total votes cast on machine No. 12997 of 404—yes, 210, no, 189; on machine No. 12995 a total of 376—yes, 205, no, 170. The test votes simply increased the number of recorded voters on the machines but they do not affect the number of yes or no votes as recorded. These test votes accounted for the discrepancy between the total number of voters registered on the machine and the total yes and no votes. These test votes were referred to in the petition as "void ballots."

The results of the rechecking of the machines indicate that the total yes and no votes equals 2495. The number of voters listed on the poll list and the number of voting authority slips issued was also 2495.

The Commissioner finds and determines that the result of the referendum held on June 14, 1956, to acquire a school site and issue bonds therefor in the principal amount of $1,886,000 shows 1258 votes for the proposal and 1246 votes against the proposal. Therefore, the proposal was adopted by the legal voters of the School District of the Borough of Ridgefield, Bergen County.

July 12, 1956.

II

BOARD OF EDUCATION REQUIRED TO AWARD BID IN ACCORDANCE WITH SPECIFICATIONS

STANLEY FLEMING,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF BLOOMSBURY, HUNTERDON COUNTY,

Respondent.

For the Petitioner, Hauck, Herrigel & Sutton
(Warren Herrigel, of Counsel)

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks the Commissioner of Education to set aside the award of a transportation contract to Paul Eichlin and to require the respondent to award the contract to the petitioner.

A conference between counsel for the petitioner and the secretary of the Bloomsbury Board of Education was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes on Tuesday, April 10, 1956, at which it was agreed that the case would be submitted on the following stipulated facts:

1. The respondent Board of Education published the required advertisement for transportation bids in the Hunterdon County Democrat, stating that specifications were available to bidders.
2. The following bids were received on February 23, 1956:
   (a) Stanley Fleming on a 1956 GMC, 54 passenger high school body $3245
   (b) Trans-Bridge Lines, Inc. The bus which will be furnished for the duration of this contract will be newly acquired, and will conform with all of the New Jersey Board of Education's requirements, and subject to the Bloomsbury Boro's School District approval $3247

(c) Paul D. Eichlin on a 1956 Chevrolet, 54 passenger high school body $3200

(d) Stanley Fleming on a 1955 GMC, 54 passenger high school body $2445

3. Paul Eichlin was the low bidder on a new bus and Stanley Fleming on a used bus, and Stanley Fleming's bid on a used bus of $2445 was the lowest bid received by the Board of Education on February 23, 1956.
4. Paul Eichlin and Stanley Fleming are both responsible bidders.
5. The Bloomsbury Board of Education on February 23, 1956 accepted Paul Eichlin's bid of $3200, rejecting the bid on a used bus on the ground that it decided it wanted a new bus.
6. Neither the advertisement nor the transportation specifications specified whether the Board would require new or used vehicles.
7. Dr. Lane, President of the Board of Education, told Stanley Fleming orally, prior to February 23, 1956, that the Board had not decided whether to accept new or used bus bids and that bids would be received for both.
8. The bids submitted by Paul D. Eichlin and Stanley Fleming were in proper form and had sufficient deposits attached to them.

The petitioner contends that the Board of Education is required to award the bus contract to him because he was the lowest responsible bidder within the purview of section 18:14–11 which reads:

> "No contract for the transportation of children to and from school shall be made, when the amount to be paid during the school year for such transportation shall exceed three hundred dollars, unless the board of education making such contract shall have first publicly advertised for bids therefor in a newspaper circulating in the school district once, at least ten days prior to the date fixed for receiving proposals for such transportation and shall have awarded the contract to the lowest responsible bidder.
>
> "Each transportation bid shall be accompanied by information required on a standard form of questionnaire approved by the state board of education and by a cashier's or certified check for five per cent of the annual amount of the contract, which deposit shall be forfeited upon the refusal of a bidder to execute a contract; otherwise, checks shall be returned when the contract is executed and a bond filed."

He further contends that the Board was required to furnish specifications in advertising for school bus contracts according to rules of the State Board of Education, that the respondent Board did not specify whether a new or used bus would be the subject of the bids, that the approval of the county superintendent of schools is required for any specifications prescribed by the Board beyond the minimum requirements of the State Board of Education, and that no notice of the additional requirement was set forth in the written specifications furnished to bidders. The petitioner admits, however, that the president of the respondent Board of Education stated to him that the Board had not decided whether to use new or used equipment, but claims that the verbal specifications were outside the powers of the president of the Board. He further contends that in the absence of specific requirements set forth

in the specifications to the effect that bidders should bid on new or used equipment, the Board is required to award the contract to the lowest responsible bidder, and that while the Board may have had good cause to reject all bids in accordance with the advertisement, unless all bids are so rejected, the contract must be awarded to the petitioner, who was the lowest responsible bidder.

The respondent argues that it had good grounds for rejecting the petitioner's bid on used equipment, since it decided after reviewing all bids that new equipment was desired. It further argues that the Board rejected all bids on used equipment, but since the petitioner's bid was the only one in that class it might appear that his bid was singled out for rejection. The respondent contends that there was no proof of fraud or partiality on the part of the Board of Education, and argues that upon inquiry by him the petitioner was informed prior to submitting any bids that the Board had not decided whether to accept new or used equipment, and that the petitioner by submitting two bids is estopped from objecting to the rejection of his bid on used equipment, since he was aware that the Board might award the contract on the basis of either new or used equipment. The respondent further argues that the Board did not alter the minimum standards required by the State Board of Education by awarding the contract for new equipment, that all bidders had the opportunity to submit two bids—one on new and one on used equipment—and had the petitioner's bid on new equipment been the low bid, he would have been the successful bidder and would have received the award of the contract.

Although there is no evidence of fraud or collusion on the part of the respondent Board of Education, it is the opinion of the Commissioner that the Board did not prepare its specifications in such manner as to authorize it to determine, after the bids were opened, whether to award the contract for new or used equipment.

The specifications under section 2 read:

"CAPACITY OF BUS AND SEATING ARRANGEMENTS

"Bus to have a seating capacity of 54 high school pupils.
(15 inches per pupil)

"Bus to have a seating capacity of ___ elementary school pupils.
(13 inches per pupil)

"Bidder to insert here description of the seating arrangement and the length of each seat: also, bid form is to specify make, year and model of bus bidder proposes to use."

The specifications did not indicate that the Board of Education desired any particular make, model or year of bus; and accordingly, a bid based on used equipment was entitled to compete with all other bids. The president of the Board of Education, in informing the petitioner that the Board might award the contract for either new or used equipment and suggesting that he submit a bid on both, could neither officially speak for the Board of Education nor change the specifications.

It is the opinion of the Commissioner that under the specifications as prescribed by the respondent Board of Education it must either reject all bids and re-advertise, making the specifications clear that the Board will accept bids only on new equipment, or accept the bid of the petitioner on used equipment which was the lowest bid received for the transportation contract, as advertised.

July 24, 1956.

III

BOARD OF EDUCATION MUST ACCEPT BID OF LOWEST RESPONSIBLE BIDDER

CUNDIFF OIL COMPANY, INC.,
A NEW JERSEY CORPORATION,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF WILLINGBORO,
BURLINGTON COUNTY,

Respondent.

For the Petitioner, Ross & Flowers
(Robert E. Gladden, of Counsel)

For the Respondent, Mr. Sidney W. Bookbinder

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks that the Commissioner of Education declare the award of a fuel oil contract to a higher bidder to be null and void and that the contract be awarded to the petitioner.

The respondent in its answer denies the allegation in the petition that, although the petitioner's bid was the lowest one submitted and although the petitioner is a responsible bidder, nevertheless the contract was awarded to a higher bidder, and sets up the following as its First Separate Defense:

1. Although the bid of the petitioner was the lowest numerical bid, the party awarded the bid had been servicing the respondent with excellent service for prior years.
2. In addition to the product involved, namely, oil, the party awarded the bid did supply and will continue to supply many services all of which have a high value to the taxpayer in the instant matter.
3. The money difference between the bid awarded and the lowest bid amounted to $\frac{2}{10}$ of one cent per gallon or $16.00 overall.
4. The product offered by the party awarded the bid. enjoyed a higher reputation in the community than that of the lowest bidder.

The respondent seeks to have the award to the Sinclair Refining Company sustained and the appeal dismissed.

A conference in this case was conducted between the attorneys in this case by the Assistant Commissioner of Education in Charge of Controversies and Disputes in Trenton, after which the following facts were established:

"The following advertisement appeared in the Mount Holly Herald on August 4, 1955:

'The Willingboro Township Board of Education will accept sealed bids for 8,000 gallons, more or less, of medium fuel oil to be delivered to the school during the season of 1955-1956, bids to be opened on Monday evening, August 15, 1955, at 8:00 P.M.'

'The Board reserves the right to reject any and all bids.

(Signed) Robert S. Ranken,
Secretary'

"Two sealed bids were submitted as follows:

1. Sinclair Refining Company, $.010 below posted delivery price in effect at the time of delivery.
2. Cundiff Oil Company, Inc., $.012 below posted delivery price in effect at the time of delivery.

"Thereafter the respondent awarded the contract to the Sinclair Refining Company.

"On September 1, 1955 counsel for the petitioner wrote to the Board asking for an explanation. The Board replied that the difference in price did not warrant a change in dealers. On November 17, counsel for the petitioner wrote to the Board and requested a hearing. This request was denied by a letter from counsel for the respondent. This appeal now ensues.

"The respondent admits that the petitioner submitted the lowest bid and that the petitioner is responsible."

The pertinent statutes are N. J. S. A. 18:7–64 and 18:7–65 which read as follows:

"18:7–64. The board shall, prior to the beginning of each school year, cause advertisement to be made for proposals for furnishing supplies required in the schools and by the board during the ensuing year. If other and further supplies are required during the year, they shall be purchased in like manner; but the board may at any time authorize the purchase of supplies to an amount not exceeding five hundred dollars ($500.00) without advertisement.

"18:7–65. No bid for building or repairing schoolhouses or for supplies shall be accepted which does not conform to the specifications furnished therefor, and all contracts shall be awarded to the lowest responsible bidder."

It is settled in this State that in the absence of a question as to the financial responsibility of a bidder, the low bidder is entitled to an award of the contract as a matter of right. *Sellitto* vs. *Cedar Grove, 133 N. J. L. 41, Frank P. Farrell, Inc.* vs. *Board of Education of Newark, 137 N. J. L. 408.* The status of the lowest bidder on a public contract is not one of grace but

one of right and may not be lightly disturbed for it is based upon competition, a State policy. *Sellitto* vs. *Cedar Grove*, *supra*. To reject the bid of the lowest bidder there must be such evidence of the irresponsibility of the bidder as would cause fair minded and reasonable men to believe that it was not for the best interest of the municipality to award the contract to the lowest bidder. *Sellitto* vs. *Cedar Grove*, *supra*.

None of the defenses advanced by the respondent deny that the petitioner was the lowest responsible bidder for the product mentioned in the advertisement for bids. If the respondent wished the bid to include services of the kind mentioned in paragraph 2 of the First Separate Defense, such services should have been specified in the advertisement so that all parties would have had an equal opportunity to bid thereon. Furthermore, there is no showing here that the petitioner would be unable or unwilling to supply the services in question.

It is the opinion of the Commissioner that the petitioner was the lowest responsible bidder and is entitled to the award of the contract to furnish fuel oil to the Board of Education of the Township of Willingboro, Burlington County.

July 27, 1956.

IV

COMMISSIONER WILL NOT SET ASIDE RULING OF STATE BOARD OF EXAMINERS, WHERE THERE IS NO EVIDENCE OF ILLEGALITY, UNREASONABLENESS, BIAS OR PREJUDICE

JOSEPH J. MASIELLO, JR.,

Petitioner,

vs.

STATE BOARD OF EXAMINERS,

Respondent.

For the Petitioner, Green & Yanoff.
(Mr. Kermit Green, of Counsel)

DECISION OF THE COMMISSIONER OF EDUCATION

This is an appeal from the decision of the State Board of Examiners dated June 6, 1956, in which the petitioner, Joseph J. Masiello, Jr. was denied an administrator's certificate for the following reasons: (1) that he was not officially designated by the board of education as vice principal or assistant principal in the Madison schools, and (2) that during his services as Dean of Boys he did not hold a principal's certificate. The controversy centers on

the interpretation and application of the following rule of the State Board of Education concerning Administrators' certificates:

"*School Administrator*

"AUTHORIZATION. This certificate shall be required for the positions of supervising principal or superintendent of schools.

"REQUIREMENTS.

1. A permanent New Jersey teacher's certificate or its equivalent.
2. A master's degree from an approved institution.
3. a. Three years of experience as a school principal,

   or

   b. Three years experience as a vice principal, when so designated by a board of education and properly certificated as a principal, spending more than half time in the fields of administration or supervision,

   or

   c. Three years of experience as an assistant superintendent in a position requiring the general supervisor's certificate or as a general supervisor of instruction, a general elementary supervisor, or a general secondary supervisor, with at least one half time devoted to administrative or supervisory duties.
4. Thirty-two semester-hour graduate or undergraduate credits in the field of administration and supervision. These credits must be in addition to those required for the permanent teacher's certificate and must include work in each of the following areas:
   a. Administration and supervision of public education.
   b. Administration and supervision of secondary education.
   c. Administration and supervision of elementary education.
   d. Curriculum of public instruction.
   e. Electives related to the fields of administration and supervision. including such areas as tests and measurements, curriculum, guidance, school law, school finance, and public relations."

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes in Newark on September 11, 1956. At the hearing it was agreed that all issues involved in this case were comprehended within section 3b of the above rule, and that all other prerequisites to the administrator's certificate had been met by the petitioner.

The responsibility for issuing certificates to administer or to teach in the public schools of this State is conferred upon the State Board of Examiners under section 18:13–1 of the Revised Statutes, which provides:

"There shall be a State Board of Examiners, consisting of the Commissioner of Education, one assistant commissioner of education, two presidents of State teachers colleges, a county superintendent of schools, a superintendent of schools, appointed pursuant to chapter six of this Title, and a superintendent of schools appointed pursuant to chapter seven of this Title, a high school principal, a high school teacher, a principal of an elementary school, an elementary teacher and a librarian employed

by the State or one of its political subdivisions. With the exception of the Commissioner of Education, who shall be chairman of the board, the members shall be appointed by the commissioner subject to the approval of the State Board of Education. The State Board of Examiners as herein constituted shall organize not later than September fifteenth of any year. Members shall hold office for two years from the date of organization of the board except that in the first appointments one-half of the members shall be appointed for a term of one year. Vacancies in membership shall be filled for the unexpired term in the same manner as for full terms. . . .

"The board shall grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instructing or educational guidance of pupils in public schools operated by boards of education. and such other certificates as it shall be authorized to issue by law based upon certified scholastic records or upon examinations, and revoke the same under rules and regulations prescribed by the State Board of Education. . . ."

Rules and regulations for granting appropriate certificates or licenses to teach or to administer, direct, or supervise the teaching, instruction, or educational guidance of pupils in public schools operated by boards of education pursuant to section 18:2–4e of the Revised Statutes and implementing section 18:13–1 *supra* adopted by the State Board of Education provide, under General Regulations:

"No person shall be employed to teach, to administer, direct or supervise the teaching instruction or educational guidance of pupils in the public schools operated by a board of education in this State unless at the time he or she begins service he or she holds a State Certificate, which certificate shall be in full force and effect in this State and valid for the position to be filled."

The facts in this case are as follows:

The petitioner was employed as a teacher in the Madison public schools from September 1, 1935 to September 11, 1946. On March 25, 1942, the board of education increased the petitioner's salary by $300 for the school year 1942-1943. The testimony of the supervising principal of schools during this period and of the president of the board of education supports the contention of the petitioner that this increase in salary was additional compensation for his assignment as Dean of Boys in the Madison High School, and that he continued to perform these duties until he resigned from his position on September 11, 1946. On February 28, 1944, the petitioner requested the State Board of Examiners to evaluate his credits and to determine his eligibility for a supervisor's certificate. On March 1, 1944, the following letter was mailed to the petitioner:

"You have completed the requirements for a supervisor's certificate. You should now apply to your county superintendent of schools for a letter of eligibility covering this certificate."

On April 20, 1944, the petitioner was issued a letter of eligibility for a supervisor's certificate; however, he never obtained the certificate itself.

On April 7, 1948, the following letter was mailed to the petitioner by the Secretary of the State Board of Examiners:

> "You are eligible for a high school principal's certificate. You should apply to your county superintendent of schools for a letter of eligibility concerning this certificate. When you present additional transcripts covering the course completed by you since 1943 and evidence of supervisory experience, we shall be glad to advise you concerning your eligibility for a supervising principal's certificate.

In May, 1948, the State Board of Examiners received from the supervising principal of the Madison public schools a communication dated May 5, 1948, stating that Mr. Masiello had been Dean of Boys in Madison High School from September, 1941, to June, 1946, and that, in this capacity, he had been virtually an assistant to the principal, handling problems of personnel for approximately three hundred students and teachers. On May 20, 1948, the following letter was mailed to Mr. Masiello by the Secretary of the State Board of Examiners:

> "We have received a statement from the Supervising Principal concerning your experience in the high school there. This experience cannot be accepted for the experience requirement on a supervising principal's certificate."

On September 15, 1948, Mr. William H. Flaherty, County Superintendent of Schools of Passaic County, recommended that Mr. Masiello be issued a statement of eligibility for the high school principal's certificate, the educational requirements for which had been completed by Mr. Masiello. On September 20, 1948, this statement of eligibility was issued, annotated with the following notice: "This is not to be taken for the certificate itself."

On November 25, 1955, after the petitioner had evidently been refused a school administrator's certificate, he requested an appointment to appear before the State Board of Examiners on December 13 for the purpose of reconsidering his qualifications for such certificate. On December 20, 1955, the following letter was mailed to the petitioner:

> "At their meeting held on December 13, 1955, the State Board of Examiners moved that the request for the acceptance of the records submitted to satisfy the experience requiremnt for a school administrator's certificate must be denied, as the only interpretation possible under the certification regulations.
>
> "You are eligible for the general supervisor's certificate. A statement of eligibility covering this certificate will be issued when the application is received from your County Superintendent's office."

On December 23, a request was received from the Passaic County Superintendent of Schools that a statement of eligibility for a general supervisor's certificate be issued to Mr. Masiello. Such statement of eligibility was issued to Mr. Masiello by the State Board of Examiners on January 11, 1956. On January 12, a letter was received from the County Superintendent of Schools of Passaic County, requesting the issuance of a general supervisor's certificate, and such certificate was issued on January 16, 1956.

The petitioner refers to Section III of the Introduction of the booklet entitled: "Rules Concerning Teacher Certification," which reads in part as follows:

> "III. Basic Policies Governing Certification.
>
> Our certification rules, regulations, and practices are based upon the following general policies:
>
> A. The goal of certification is to provide the best possible instruction, supervision, administration, and allied services in the public schools.
>
> B. The interpretation and application of rules and regulations should be made in keeping with practical administrative assignments and arrangements.
>
> C. Responsibility on the part of boards of education, school administrators, and teacher training institution executives for the proper educational placement and adjustments of teachers and supervisors is recognized. It is expected that teachers will not be placed in positions of educational importance without having acquired suitable training and experience.
>
> D. The maintenance of such minimum requirements for services as outlined in the rules and regulations of the State Board of Examiners must be considered an essential foundation upon which educational service in the public schools is established. . . ."

The petitioner contends that his experience as Dean of Boys in the Madison High School was that of a vice principal, and submits statements from the supervising principal and high school principal to the effect that the duties which he performed as Dean of Boys are similar to the duties which in many schools are performed by a vice principal or an assistant principal. He argues that the definition of "dean" as given in Webster's New International Dictionary, Second Edition, Unabridged, further supports this contention:

> "3. Educ. a, in the Universities of Oxford and Cambridge a resident fellow of a college who supervises the undergraduates, as in matters of discipline, presents them for graduation, etc.
>
> b, The responsible direction administrative officer, under the president of a college, school or faculty; as the dean of the College of Liberal Arts; also an officer in a college or high school having supervision of one kind of student or one branch of administration; as Dean of Women."

The president of the Board of Education of the Borough of Madison and the Supervising Principal during the petitioner's incumbency testified that after due consideration and deliberation by the Madison Board of Education the title "Dean of Boys" had been given to the position which the petitioner held. A certified copy of the minutes of the Board of Education of the Borough of Madison dated September 11, 1946, reads in part as follows:

> "RESOLVED, that the resignation of Joseph J. Masiello, a high school teacher and Dean of Boys, who is taking up work with the New Jersey Education Association, be accepted to take effect as soon as arrangements

can be made to take care of his departmental work and that the Supervising Principal be instructed to express to Mr. Masiello the appreciation of the Board of Education for the service he has rendered in the Madison Public Schools."

The State Board of Examiners has determined in this case that the designation of the petitioner as "Dean of Boys" did not constitute a designation as vice principal within the meaning of the rules of the State Board of Education for the issuance of an administrator's certificate.

The petitioner also claims that he has been properly certificated as a principal, by reason of the fact that he received a Statement of Eligibility for a supervisor's certificate on April 20, 1944, and by reason of the fact that he also received a Statement of Eligibility for a secondary principal's certificate in September, 1948. The Statement of Eligibility issued to the petitioner on April 20, 1944, reads as follows:

"STATE OF NEW JERSEY
DEPARTMENT OF PUBLIC INSTRUCTION
TRENTON

STATEMENT OF ELIGIBILITY FOR TEACHERS CERTIFICATE

April 20, 1944

"TO WHOM IT MAY CONCERN:

"THIS CERTIFIES that ..... Joseph Masiello ..... is eligible for a limited ..... supervisor's certificate.

"This certificate will be issued when the applicant presents the certificate fee and on the form below, a report that ..... he has been appointed to a position in the public schools of the State within the field of eligibility.

"This statement of eligibility is valid until ..... April 20, 1948.

Very truly yours,

J. B. Dougall
Secretary, State Board of Examiners.

REPORT OF EMPLOYMENT

....., 19 .....

"To the State Board of Examiners,
Trenton, New Jersey.

"I hereby report that ..... has been appointed to teach ..... in the ..... School in the school district of ....., New Jersey.

Very truly yours,

Superintendent of Schools."

The Statement of Eligibility issued to the petitioner on September 20, 1948, reads as follows:

"STATE OF NEW JERSEY
DEPARTMENT OF PUBLIC INSTRUCTION
TRENTON

September 20, 1948

"TO WHOM IT MAY CONCERN:

"THIS CERTIFIES THAT ..... Joseph J. Masiello, Jr. ..... is eligible for a limited ..... high school principal's ..... certificate.

"The certificate will be issued when the applicant presents the certificate fee and on the form below, a report that ..... he has been appointed to a position in the public schools of the State within the field of eligibility.

"This statement of eligibility is valid until ..... September 20, 1952.

"It is not to be taken for the certificate itself.

Very truly yours,
EVERETT C. PRESTON,
Secretary, State Board of Examiners.

REPORT OF EMPLOYMENT

....., 19.....

"To the State Board of Examiners,
Trenton, New Jersey.

"I hereby report that ..... has been appointed to teach ..... in the ..... School in the school district of ....., New Jersey.

Very truly yours,
Superintendent of Schools."

The rules of the State Board of Education regarding the issuance of teachers' certificates in effect from January 1, 1937, to September 1, 1948, provided in section 23:

"STATEMENT OF ELIGIBILITY FOR CERTIFICATE.

"23. Except as otherwise provided in rules of the State Board of Education, a certificate will not be issued unless the applicant holds a position for which the certificate is required. A New Jersey resident or a graduate of a New Jersey College who satisfies the requirements of these rules for a certificate which his position does not require will receive a statement of eligibility, which during a period of four years will maintain his right to the certificate when needed."

These same rules provided in section 72:

"72. GENERAL SUPERVISOR.

"A. This certificate authorizes the holder to serve as principal of any school, supervisor of any department or field of education, assistant superintendent in any school district, and supervising principal or superintendent in charge of a district employing not more than one hundred teachers. . . ."

The Board of Examiners held that possessing a statement of eligibility for a supervisor's certificate was not equivalent to holding a principal's certificate, as required under rule 3b of the State Board of Education for the issuance of an administrator's certificate *supra*. The Board of Examiners also held that the issuance of a statement of eligibility for a principal's certificate in 1948 could not in any way be pertinent to the period 1943 to 1946 when the petitioner was acting as Dean of Boys.

The petitioner further claims that he must receive the same treatment as other applicants similarly situated and that to deny him a school administrator's certificate now would constitute an illegal discrimination. In support of this claim he refers to ten instances where, in his opinion, the State Board of Examiners issued certificates to applicants who did not possess all the requirements for certification. Principally, he cites the case of Joseph F. Francis, who was his successor as Dean of Boys in the Madison High School, who was issued a limited secondary principal's certificate on July 1, 1947, and a permanent Secondary Principal's certificate on April 5, 1951, on the basis of his experience as Dean of Boys in Madison High School.

The facts in the Francis case are as follows:

Joseph Francis was issued a limited high school principal's certificate in accordance with the rules of the State Board of Education on July 1, 1947, and on September 26, 1950, made application for a permanent high school principal's certificate. On October 25, the following letter from the Secretary of the State Board of Examiners was mailed to Mr. William H. Mason, Jr., County Superintendent of Schools of Morris County, regarding Mr. Francis' application for a permanent high school principal's certificate:

"We cannot accept his experience as dean of boys to establish his eligibility for a permanent principal's certificate. . . ."

Mr. Francis protested this decision, claiming that his duties came within the scope of the duties of a vice principal. On April 5, 1951, the permanent high school principal's certificate was issued to Joseph Francis by the Secretary of the State Board of Examiners. This case was not presented to the State Board of Examiners for review by the entire board, nor is the validity of the issuance of the certificate before the Commissioner for his consideration at this time.

In reviewing the records in the other nine instances cited by the petitioner, the Commissioner finds that several of the applicants held certificates issued under the authority of previous rules adopted by the State Board of Education authorizing them to serve as principals of schools although the certificates were not called principal's certificates, and, therefore, the applicants were properly certificated when they obtained the administrative experience required for the administrator's certificate. These cases, therefore, are not analagous to the present issue. In other cases, the Commissioner finds that the Board

of Examiners had used discretionary authority in equating supervisory and administrative experience at a State Teachers College with public school administrative experience. Such experience at a Teachers College is different from experience as Dean of Boys, so that those cases are likewise distinguished from the situation of the petitioner.

The function of the Commissioner on this appeal is to determine whether the State Board of Examiners committed error in refusing to issue to the petitioner a school administrator's certificate. The primary responsibility for interpreting and applying the rules regarding certification rests upon the State Board of Examiners, pursuant to R. S. 18:13–1 *supra*. It is well settled that in cases where the body from whose determination an appeal is taken to the Commissioner under R. S. 18:3–14 is charged with primary responsibility for such determination, the Commissioner should not reverse such determination except upon a finding that the action below was illegal, arbitrary, unreasonable or the result of bias or prejudice. As was said by the Commissioner of Education in *Mackler* vs. *Board of Education of the City of Camden*, (October 8, 1953), affirmed by the State Board of Education without written opinion (March 12, 1954), and affirmed by the New Jersey Supreme Court (16 N. J. 362):

> "It seems clear that the original discretionary power to dismiss a school official is vested in the Board of Education. The Commissioner can only review the lawfulness of the action. The review of a local board's action by the Commissioner was greatly clarified by the Court of Errors and Appeals in the case of Boult and Harris v. Board of Education of the City of Passaic, 1939-1949 S. L. D. 15; 136 N. J. L. 521. In commenting on R. S. 18:3–14 and 15 *supra*, the Court said:
>
> > 'Neither of the quoted statutory provisions was intended to vest in the appellate officer or body the authority to exercise originally discretionary power vested in the local board. The review authorized of the local board's action here involved is judicial in nature. Thompson v. Board of Education, 57 N. J. L. 628 (Sup. Ct. 1895). In exercising that reviewing power the Commissioner was properly guided by the principles governing the scope of judicial review of municipal action. The reviewing officer was not empowered to substitute his discretion for that of the local board'."

In the case of *Fitch* vs. *Board of Education of South Amboy, 1938 S. L. D. 292*, the State Board of Education said at page *294:*

> "In a word, the serious charge against Mr. Fitch was that he was a supervisor who did not supervise. The Board unanimously decided that the charge was sustained. Upon a new hearing before the Commissioner he also was of the opinion that Mr. Fitch had been inefficient in the discharge of his duties as supervising principal. Mr. Fitch now urges that we should be convinced 'beyond a preponderance of evidence' that he was inefficient and incapable. As we have today indicated in another case, it is our opinion that we should not interfere with the determination of a local board of education unless it appears that its conclusion was the result, not of honest judgment, but of passion or prejudice. The Tenure of Service Act provides that all charges shall be examined into by the local board of education, and that if such board finds they are true in fact, the teacher may be dismissed. The Legislature has imposed the duty

of determining if the charges are true in fact upon the local board. Where evidence against a teacher is clear, or where, if not entirely clear, there is room for an honest difference of opinion, we should not interfere with the determination of the local board. To do so would mean that we could substitute our judgment in place of its judgment, a substitution which, in our opinion, would be unauthorized and contrary to the intention of the Legislature." (See also, Clark v. State Board of Examiners, 1938 S. L. D. 606, 609).

The rule in question in this case plainly requires that an applicant have three years of experience as vice principal while two conditions exist: (1) he has been "so designated (i. e. as vice principal) by a board of education" and (2) he has been "properly certificated as a principal." The word "when" as used in the rule clearly means "during a time that" or "if at that time." In other words, the experience in the field of administration or supervision must coincide with the designation and certification; one without the other does not count toward meeting the qualifications set up by the rules.

The Commissioner cannot hold that, under the rules as adopted by the State Board of Education, a person who held a statement of eligibility for a supervisor's certificate was properly certificated as a principal; nor can the Commissioner hold that a statement of eligibility for a principal's certificate can relate back to an earlier time, thereby making experience in performing supervisory and administrative duties while uncertificated count toward a school administrator's certificate. If such retroactive effect were allowed, eligibility for a school administrator's certificate would become most uncertain, and chaos in administration of the rules would result. Furthermore, the Commissioner finds no adequate basis for holding that the State Board of Examiners committed error in its determination that the petitioner was not designated by the board of education as vice principal. The duties of Dean of Boys may or may not be the same of those of vice principal; the two positions cannot be deemed synonymous in all cases. The rule in question makes designation as vice principal an essential element of certification. Under a literal reading of the rule, the fact that the petitioner may have performed the duties of a vice principal does not help him without the necessary designation as such, any more than if he had performed such duties while only designated as a teacher.

We come now to the consideration of the petitioner's argument that in other cases before the Board of Examiners it has waived some certification requirements and that, therefore, the Board of Examiners must follow that practice in this case, either on the theory that the Board cannot discriminate against one applicant, or on the theory that the practical construction of the rule in other similar cases indicates how it should be construed here.

As previously noted, the Commissioner finds in reviewing the material submitted by the petitioner that some of the cases are of different natures and do not involve parallel circumstances. Moreover, in reviewing the cases to which the petitioner refers, the Commissioner finds that one case was decided during the year 1930, and several others were decided during the period from 1940 to 1952, under previous rules for certification adopted by the State Board of Education and by previous Boards of Examiners. It is the opinion of the Commissioner that the present Board of Examiners is not bound by an interpretation of rules rendered by former Boards of Examiners;

otherwise, an error of the past could never be corrected and would continue to serve as a precedent.

Finally, we again note that R. S. 18:13–1 *supra*, has vested in the State Board of Examiners the authority to interpret the rules promulgated by the State Board of Education with regard to the issuance of teachers' and administrators' certificates. Therefore, any relaxation of the rules of certification, adopted by the State Board of Education, must be made either by the State Board of Examiners in its interpretation thereof, or through modification by the State Board of Education itself. It is not within the province of the Commissioner to order the State Board of Examiners to alter its interpretation of the rules, or to order the Board of Examiners to exercise differently the discretion vested in it. The Commissioner must limit his decision in this appeal to a review of the Board's action, as required by the authorities cited above.

The facts, the testimony and exhibits, as presented in this case, fail to convince the Commissioner that the State Board of Examiners acted illegally, unreasonably, or as a result of bias or prejudice, in refusing to grant the petitioner an administrator's certificate; therefore, the petition is dismissed.

October 16, 1956.

Affirmed by State Board of Education without written opinion December 5, 1957. Pending before Superior Court, Appellate Division.

V

WHERE PETITIONER RESIGNS POSITION, PETITION FOR REINSTATEMENT CONSIDERED MOOT

ROBERT M. RODGERS,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF ORANGE, ESSEX COUNTY,

Respondent.

For the Petitioner, Cassel R. Ruhlman.

For the Respondent, Edmond J. Dwyer.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner asks the Commissioner of Education to declare the action of the respondent, purporting to transfer him from the position of high school principal to the position of principal of one of its elementary schools to be void and of no effect; and to direct the respondent to reinstate him as principal of its high school.

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Essex County.

The facts in this case are: The petitioner has been employed by the respondent continuously since the year 1926, is under tenure pursuant to R. S. 18:13–16, and has been employed as high school principal since September, 1949. The respondent transferred petitioner from the position of high school principal to the principalship of an elementary school effective September 1, 1955, at no reduction in salary. The petitioner accepted the position of elementary principal under protest.

On August 16, 1956, the petitioner wrote the following letter to the Orange Board of Education:

August 16, 1956

"The Board of Education
"Colgate School
"Orange, New Jersey

"Gentlemen:

"This is my resignation from the Orange Public School system, to be effective September 1, 1956.

Very truly yours,

(Signed) Robert M. Rodgers

Robert M. Rodgers
26 Brooklake Road
Florham Park, New Jersey."

It appears to the Commissioner, therefore, that the question of reinstating the petitioner to his original position as principal of the high school is now moot, and, consequently, no decision on this case by the Commissioner is necessary.

In a similar situation, the State Board of Education in the case of *Worthy, et al*, vs. *Board of Education of the Township of Berkeley, Ocean County, 1938 S. L. D. at page 691*, said:

> "In the brief of the Petitioner-Respondents, it is suggested that the controversy is at an end because it is public knowledge that since the opening of the 1927-1928 school year the Berkeley Township Board of Education has provided for all of its children from the first to the seventh grades, inclusive, including the petitioners, in its own school building. We are informed to the same effect by a memorandum from the Commissioner, and at the argument before us, counsel for the Dover Township Board of Education admitted that such was the case. It, therefore, appears that the said Board is no longer required to furnish any school facilities to the petitioners so that no order that can now be made pursuant to our decision can have any effect. Consequently, this is a moot question and following the rule universally applied by appellate tribunals in this country, this Board, which, by direction of the School Law takes this case only as a judicial tribunal, should not in our opinion pass upon this appeal. The principle which must be applied is thus stated by the United States Supreme Court:
>
> 'The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract

propositions, or to declare principles of rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact when not appearing on the record, may be proved by extrinsic evidence.' *Hills v. Green, 159 U. S. 653.*

"The courts of New Jersey apply the same rule. (Freeholders of Essex v. Freeholders of Union, 49 N. J. L. 438)."

Accordingly, the petition is dismissed.

October 30, 1956.

VI

REGULATION REGARDING MATERNITY LEAVE NOT RETROACTIVE

DOROTHY WOLVERTON,

Petitioner,

vs.

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

Respondent.

For the Petitioner, Ruhlman & Ruhlman.
(Cassel Ruhlman, Jr. of Counsel)

For the Respondent, Edward W. Currie.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner, employed by respondent as a teacher under tenure, requests the Commissioner of Education to declare the action of the respondent in refusing to accept the petitioner's services on February 1, 1955, and in refusing to pay petitioner's salary from that date, to be void and of no effect; to direct the respondent to reinstate the petitioner as of February 1, 1955, and to pay her salary in full from February 1, 1955, to May 1, 1955, and, further, to direct respondent to pay her salary in full for a period of 34½ days commencing with May 1, 1955.

A hearing was held before the Assistant Commissioner in Charge of Controversies and Disputes in the office of the County Superintendent of Schools, Freehold, New Jersey.

The facts in this case are as follows:

On June 1, 1954, the respondent granted the petitioner a maternity leave of absence from September 1, 1954, to January 31, 1955. On June 21, 1954, the respondent adopted a resolution regulating maternity leaves of absence,

and requiring teachers who are three months' pregnant to apply for an eighteen-months' leave of absence without pay, such leave to terminate on the first of September or the first of February. On February 1, 1955, the petitioner tendered to the respondent her services as a teacher and continued to do so until May 1, 1955. The respondent refused to accept her services or to pay her during that period. On April 20, 1955, the respondent adopted a resolution to reinstate the petitioner as of May 1, 1955, and to pay her salary from that date. The petitioner's services were accepted by the respondent from May 2 to May 13, 1955, for which services she received her regular salary. The petitioner was absent from her position as a teacher from May 16 to June 30, 1955, because of illness.

The respondent in its separate defenses claims that the resolution of June 21, 1954, was adopted before the petitioner's maternity leave began and, therefore, modified the leave which was granted to the petitioner and that, accordingly, the petitioner was not entitled to return to her position during the school year of 1954-1955. The respondent further claims: that the petitioner is estopped to deny that the resolution of June 21, 1954, applied to her by reason of her having knowledge of it and of her failure to give the board timely notice of her intended claim that the resolution did not apply to her, which notice would have enabled the board to avoid other commitments; that the petitioner was not physically able to return to her position as a teacher and to perform her duties as such on February 1, 1955, or at any time between that date and the end of the school year 1954-1955, and that any illness which the petitioner may have suffered between May 16, 1955, and June 30, 1955, was so connected with her maternity that the petitioner is not entitled to be paid her salary for that period.

The petitioner argues that the respondent granted to her a specific leave of absence without pay to terminate on January 31, 1955, and, therefore, the respondent is bound by that agreement; that the respondent's rule of June 21, 1955, was adopted twenty days after her leave of absence was granted and can have no effect on the leave granted to the petitioner. The petitioner further states that in the case of *Prince* vs. *Kenilworth*, 1938 School Law Decisions, 579, it was held that boards of education have statutory authority to make rules for the conduct of schools, but such rules should be prospective and not *ex post facto*.

The respondent argues that: at the time this general regulation was adopted, the petitioner was completing the 1953-1954 school year which ended June 30, 1954; that her leave did not commence until September 1, 1954, some months after the general regulation was adopted; that the board by its action on June 1, 1954, merely gave the petitioner an exemption from her obligations to render services to the board; and that it was subject to reasonable modification by the board of education at any time for the benefit of the schools.

The Commissioner held in the *Prince* vs. *Kenilworth* case *supra*, at 580:

> "While a reasonable rule passed prior to the asking of the leave would probably be binding upon the teacher, the legal effect of a rule passed during a teacher's absence is questionable. Boards have statutory authority to make rules for the conduct of schools, but such rules should be prospective and not *ex post facto*. The Board did not notify appellant of fixed rule but merely informed her that it had granted a leave for a time for which no request had been made."

The testimony fails to support the claim of the respondent that the petitioner was physically unable to return to her duties on February 1, 1955. Dr. Morris Weiss, testifying on behalf of the petitioner, stated that he examined her on February 1, 1955, found her to be in excellent physical condition and advised her to resume her usual realm of activities.

It is the opinion of the Commissioner that the petitioner had a right to return to work on February 1, even though subsequent to granting her maternity leave on June 1, 1954, the board passed a general regulation concerning maternity leaves, which regulation required eighteen months leave of absence without pay. This regulation was not expressly made applicable to teachers who had already been granted maternity leaves, and such retroactive effect should not be implied.

A statute should not have a retrospective operation unless the words therein are so clear, strong and imperative that no other meaning can be annexed to them. *Lascari* vs. *Board of Education of Lodi, 36 N. J. Super. 426; Nichols* vs. *Board of Education of Jersey City, 9 N. J. 241.* The same principle should apply to rules and regulations adopted by a board of education under R. S. 18:13–5, since they have the force and effect of law. *78 C. J. S. 908.*

It seems clear that a board of education has authority to make a regulation retroactive if this can be done without working any inequity upon those affected. *Templeton* vs. *Board of Education, 102 N. E. 2d 751; 345 Ill. App. 395.* It also seems clear that all teachers' contracts and the tenure statutes must be read accordingly, i. e. in the light of this power of the board of education under section 18:13–5 of the Revised Statutes. However, for a regulation to have retrospective effect, it must clearly so provide, and such effect should not work an inequity upon persons affected by the regulation.

Here, if the board had intended the regulation to apply to the petitioner, it should have so notified her in time for her to make her plans accordingly, including her employment elsewhere, on February 1, 1955. Since there is no evidence that the board ever gave the petitioner such notice until January, 1955, the Commissioner feels that applying the regulation to the petitioner here would be unreasonable and arbitrary as well as not in accord with the regulation itself, and should, therefore, be enjoined.

The petitioner, after resuming her teaching duties on May 2, 1955, was absent because of personal illness from May 17 to the end of the school year, for which time she did not receive her salary. The petitioner claims that she is entitled to 34½ days of sick leave with pay for the following reasons:

Chapter 142 of the Laws of 1942 provided that any teacher employed in the public schools should be entitled to ten days' sick leave with pay during any school year and that any unused portion up to a maximum of five days per year could be accumulated for the future with the permission of the local board of education. This statute was amended in 1952 by Chapters 188 and 237, which continued the provision for the accumulation of more than five days of sick leave with the approval of the local board of education.

Section 18:13–23.8, which was Chapter 188 of the Laws of 1954, reads:

> "All persons holding any office, position or employment in all school districts, regional school districts or county vocational schools of the State who are steadily employed by the board of education or who are protected in their office, position or employment under the provisions of

sections 18:13–16 to 18:13–19 of the Revised Statutes or under any other law shall be allowed sick leave with full pay for a minimum of 10 school days in any school year. If any such person requires in any school year less than the specified number of days of sick leave with full pay allowed, all days of such leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years."

On January 17, 1955, the respondent adopted the following rule:

"1. Each teacher is to be credited with any sick leave he or she has accumulated (up to 30 days) prior to July 1, 1954.

e.g. Teacher 2 years in system may be entitled to 5 days.
Teacher 3 years in system may be entitled to 10 days.
Teacher 4 years in system may be entitled to 15 days.
Teacher 5 years in system may be entitled to 20 days.
Teacher 6 years in system may be entitled to 25 days.
Teacher 7 years in system may be entitled to 30 days.

"2. In case of absence because of illness, in excess of those days for which full pay is to be allowed, the teacher shall receive the difference between his day's pay and that paid to the substitute. This provision is limited to a maximum period of 3 months. Any time allowed beyond the 3 month period will be at the direction of the Board of Education."

The records of the respondent show that the petitioner had accumulated 24½ days sick leave prior to the beginning of the school year 1954-1955.

The respondent argues that the illness of the petitioner between May 16 and June 30, 1955, was so connected with her maternity that the petitioner is not entitled to receive her salary. The preponderance of medical testimony clearly indicates that there was no relationship between the petitioner's maternity and her illness after May 16, 1955. The respondent claims that, since there were only 24 school days from May 16 to June 30, 1955, the petitioner cannot be allowed sick leave in excess of the number of working days.

It is the opinion of the Commissioner that the petitioner is entitled to sick leave as provided in section 18:13–23.8 *supra*, earned during the period from February 1 to May 13, 1955, in addition to the 24½ days of previously accumulated sick leave, and is, therefore, entitled to receive her salary for the period from May 16 to June 30. The respondent is authorized to deduct from the petitioner's sick leave the number of working days required of all members of the teaching staff for the period from May 16 to June 30, 1955.

For the reasons stated above, the Matawan Township Board of Education is hereby directed to pay the petitioner, Mrs. Dorothy Wolverton, her salary from February 1, 1955, to May 1, 1955, and from May 16 to June 30, 1955, and is authorized to deduct from her accumulated sick leave the number of working days required of all members of the teaching staff from May 16 to June 30, 1955.

October 30, 1956.

Affirmed by State Board of Education without written opinion March 6, 1957.

VII

IN THE MATTER OF THE TRANSPORTATION OF PUPILS RESIDING IN CONSTITUENT DISTRICTS ATTENDING A PRIVATE SCHOOL OPERATED OTHER THAN FOR PROFIT IN CLASSES BELOW THE GRADE LEVEL FOR WHICH THE CENTRAL REGIONAL HIGH SCHOOL DISTRICT OF OCEAN COUNTY WAS ORGANIZED

February 4, 1957.

Mr. Floyd Mease, President
Central Regional High School District of Ocean County
Ocean Gate, New Jersey

Dear Mr. Mease:

This Department has discussed with the Deputy Attorney General assigned to this Department the question as to whether or not the Central Regional High School District of Ocean County would be required or permitted under section 18:14–8 of the Revised Statutes to transport pupils of a grade lower than those for which the regional district was organized to a private school operated other than for profit.

We are of the opinion that a regional board of education is not permitted to furnish transportation to any children who are not eligible to attend the schools maintained by the regional board of education for the following reasons:

1. Regional school districts are formed under R. S. 18:8–1 et seq. for certain prescribed purposes as specified in the proposal submitted to the voters for the creation of such districts. When formed, a regional board of education is a body corporate (R. S. 18:8–9) authorized to carry out the purposes for which the regional district is specifically authorized. (18:8–14.)

2. A regional board of education must provide suitable facilities and accommodations for the instruction of those pupils with whose education the board is chargeable. (N. J. S. A. 18:8–14.1.)

3. The duty to furnish school bus transportation arises as a part of the board's obligation to provide suitable facilities convenient of access. R. S. 18:14–8, so far as here pertinent provides as follows:

   "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school other than a public school, except such school as is operated for profit in whole or in part.

   "Whenever any school district provides any transportation for the public school children to and from school, transportation from any point in any such established route to any other point in such established route, shall be supplied to the school children residing in such school district in going to and from school, other than public school except such school as is operated for profit in whole or in part."

Reading the foregoing language in light of the other sections above cited, we are of the opinion that the obligation of a regional board of education to transport pupils to public or private schools under section 18:14–8 is limited to the children eligible to attend the schools operated by the regional school board. The term "school children" as used in that section means children for whose education the particular board is chargeable. The moneys appropriated for a regional board of education are expendable only for the education of pupils under the jurisdiction of that board and it is obvious, therefore, that such board is not authorized to expend money for the education or transportation of children for whose education that particular board is not responsible. Since private school children can be transported at public expense only as incident to the transportation of pupils to the public schools (*Everson* vs. *Board of Education of Ewing Township*, 133 N. J. L. 350) and since the regional board is not authorized to transport public school pupils in grades other than those for which the board was organized, it follows that private school children in grades not established in the regional district are likewise ineligible for transportation by the regional board to and from school.

On May 4, 1954, the following letter was sent by the Commissioner to each constituent board of education, approving the establishment of a regional junior-senior high school for your district:

"May 4, 1954

"Mr. Ralph D. Speier
Secretary
Board of Education
Borough of Seaside Heights
Seaside Heights, New Jersey

"Dear Mr. Speier:

"Having studied and investigated the proposal made for a regional junior-senior high school for the districts of the Boroughs of Seaside Park, Seaside Heights, Island Heights, Ocean Gate and the Townships of Lacey, and Berkeley, and having been informed that each of the above named boards of education has already gone on record by resolution favoring the project, I herewith approve the project for the establishment of such a junior-senior high school in Ocean County and the submission of the question to the voters of the school district of the Borough of Seaside Heights under the terms of section 18:8–1 of the Revised Statutes.

"I further approve that the amounts to be raised for annual or special appropriations for the proposed junior-senior high school pursuant to sub-section three of section 18:8–17 of the Revised Statutes (Chapter 90, Laws of 1953 as amended by Chapter 13, Laws of 1954) are to be apportioned upon the basis of average daily attendance of the districts during the preceding school year.

Very truly yours,

/s/ FREDERICK M. RAUBINGER
Commissioner of Education

"Similar letter to:

Mrs. Elizabeth A. Miller, Secretary, Board of Education, Borough of Seaside Park, Seaside Park, N. J.

Mr. W. Watson Doyle, Secretary, Board of Education, Borough of Island Heights, Island Heights, N. J.

Mrs. Jessie Morton, Secretary, Board of Education of the Borough of Ocean Gate, Ocean Gate, N. J.

Mr. Lloyd R. Applegate, Secretary, Board of Education, Lacey Township, Forked River, N. J.

Mr. Jesse Foster, Secretary, Board of Education, Berkeley Township, Lanoka Harbor, N. J.

"I hereby certify that this is a correct copy of the letter sent by the Commissioner of Education, Dr. Frederick M. Raubinger, to the above-named boards of education under date of May 4, 1954."

The above letter clearly indicates that the Central Regional High School District was organized for the purpose of providing a junior-senior high school. This would include grades seven through twelve.

It is the opinion of the Commissioner, for the reasons above stated, that the Central Regional High School District is neither required nor permitted to provide any transportation to public schools or to private schools operated other than for profit, as provided in section 18:14–8, except to those pupils who are eligible to attend the schools of the regional district.

Very truly yours,

/s/ FREDERICK M. RAUBINGER
Commissioner of Education

Affirmed by the State Board of Education without written opinion September 11, 1957.

VIII

POSITION OF MATRON NOT THAT OF SCHOOL CUSTODIAN OR JANITOR

VIRGINIA E. CORRADO,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF HOBOKEN, HUDSON COUNTY,

Respondent.

For the Petitioner, Mr. Nathan Zeichner.

For the Respondent, Mr. William J. Hanley.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner asks the Commissioner to reinstate her to the postion of matron in the public schools with full pay from the date of her dismissal. The petitioner claims that her position as matron was that of a custodian or janitorial employee and, therefore, she could only be dismissed subject to the provisions of section 18:5–66.1, that there were no reasons given for her dismissal, that no charges were brought against her, that no complaint was filed against her, that she was not given a hearing, and that she believes she was dismissed for political affiliations.

The respondent claims that the petitioner was not employed as a janitor, janitor-engineer, custodian or janitorial employee within the purview of section 18:5–66.1 and that the petitioner was appointed by resolution of the respondent Board of Education, which appointment did not constitute a contract between the petitioner and the respondent and that, therefore, the respondent is not compelled to continue such employment after notice of termination.

The facts in this case appear to be as follows:

1. On November 17, 1952, the respondent passed the following resolution, appointing the petitioner as a matron in the schools of the respondent's district:

> "RESOLVED, That Virginia Corrado be and hereby is appointed as a Matron with compensation at the rate of $2200 per annum, payable in semi-monthly installments, effective as of November 17, 1952."

2. The petitioner's duties were assigned to her by the Superintendent of Schools of the district and included the following: keeping cleanliness and generally maintaining discipline in and around the girls' room.

3. Matrons were not required to perform any duties during the months of July and August and were paid in the same manner as certified personnel of the district.

4. Matrons in the employ of the respondent Board of Education were not members of the Teachers' Pension and Annuity Fund.

5. The petitioner was dismissed by the respondent Board of Education on September 19, 1955, by the following resolution:

> "The Board of Education of the School District of the City of Hoboken in Stated Session on Monday evening, September 19, 1955, among other things, adopted a Resolution terminating your services as Matron, effective September 19, 1955."

6. The petitioner was not informed as to why she was discharged, was not given a hearing, and charges were not filed against her.

7. Elizabeth Boccio was appointed as matron subsequent to the appointment of the petitioner.

The petitioner argues that her duties as a matron were those of a custodian or janitorial employee, and, therefore, that the respondent can only dismiss her subject to the provisions of sections 18:5–66.1 and 18:5–67 which provide as follows:

> "18:5–66.1. The board of education of any school district may reduce the number of janitors, janitor-engineers, custodians or janitorial employees, in any such district, subject to the following restrictions and conditions. No such reduction shall be made by reason of residence, age, sex, race, religion or political affiliation; but when any such janitor, janitor-engineer, custodian or janitorial employee under tenure is dismissed, the janitor, janitor-engineer, custodian or janitorial employee, having the least number of years of service to his credit shall be dismissed in preference to those having longer terms of service; and any janitor, janitor-engineer, custodian or janitorial employee so dismissed shall be and remain upon a preferred eligible list in the order of years of service for re-employment whenever vacancies occur, and shall be re-employed by the board of education causing such dismissal in such order, and upon re-employment shall be given full recognition for previous years of service in his respective positions and employments.
>
> "18:5–67. Except as provided by section 18:5–66.1 of this title, no public school janitor in any school district shall be discharged, dismissed or suspended, nor shall his pay or compensation be decreased, except upon sworn complaint for cause, and upon a hearing had before the board of education. Upon the filing of such complaint, a copy thereof, certified by the secretary or district clerk as a true copy, shall be served upon such janitor at least five days before the hearing, and at such hearing such janitor shall have the right to be represented by counsel. If upon such hearing it shall appear that the person charged is guilty of the neglect, misbehavior or other offense set forth in the complaint, the board may discharge, dismiss or suspend such janitor or reduce his pay or compensation, but not otherwise."

The Superintendent of Schools testified that a matron was under his supervision, that the duties of a matron's position were "supervision of children in and about the toilet facilities in order to keep discipline and to keep the youngsters from doing untold accidents either to the building or to themselves, general supervision over disciplinary matters in the area basically of toilet facilities," and that the duties of janitors in the respondent's schools included looking after the cleanliness and physical being of the school buildings, keeping them clean and tidy and in minor repair. The Business Manager of

the Hoboken Board of Education testified that he was responsible for the supervision of all janitorial employees and that matrons were under the supervision of the Superintendent of Schools. This fact was further supported by the testimony of the former Business Manager, who had served for thirty-eight years.

The petitioner testified that her duties included keeping cleanliness in the girls' bathrooms, seeing that nothing was destroyed, protecting the walls from being marked, and supervising both boys and girls upon entering and leaving the building and between classes to see that they did not hurt or damage the school property.

The petitioner further testified that she never used a broom or mop, never did any painting and never performed any duties of a similar nature. The respondent argues that the duties of a matron are not those of a janitor, janitor-engineer, custodian or janitorial employee as referred to in section 18:5–66.1, supra, and that, therefore, the respondent was within its rights in dismissing the petitioner.

The petitioner relies entirely upon the case of *Roff* vs. *Passaic County*, decided by the Supreme Court of New Jersey on October 17, 1932, 162 Atl. Rep. 720, wherein the court held that a matron was a jail keeper and entitled to the same compensation as court attendants. The respondent in turn argues that the *Roff* case is not controlling because the duties of matrons in county jails are defined by law and because the facts in that case are not germane to the issues under consideration.

Both the present and former secretary of the respondent Board testified that all janitorial employees of the respondent were members of the Teachers' Pension and Annuity Fund, in accordance with the provisions of section 18:13–112.4, which reads in part:

> "In addition to the above mentioned persons defined as teachers, there shall also come under the provisions of this article, for pension and annuity purposes, and subject to the same provisions as apply to any janitor, assistant janitor, janitress, engineer, fireman, or any janitorial employees of a board of education of any school district. . . ."

The testimony further reveals that matrons have never been considered eligible for membership by the respondent Board of Education in the Teachers' Pension and Annuity Fund, but have been enrolled in the Hudson County Board of Education Employees' Retirement Fund.

The facts and testimony in this case convince the Commissioner that the duties performed by the petitioner were not those of a janitor, janitor-engineer or janitorial employee as referred to in section 18:5–66.1 of the Revised Statutes, *supra*. "Janitor" is defined in Words and Phrases, Permanent Edition, as follows:

> "A janitor is understood to be a person employed to take charge of rooms or buildings, to see that they are kept clean and in order, to lock and unlock them, and generally to care for them."

These duties ordinarily include such operations as sweeping, washing and similar tasks, none of which were performed by the petitioner. The respondent Board of Education has never considered matrons as janitorial employees

and, likewise, did not consider the petitioner as a janitorial employee. The Commissioner finds no error in the adoption of these views by the respondent Board.

For the foregoing reasons, the petitioner was not protected in her employment by the provisions of sections 18:5–66.1 and 18:5–67, *supra*, and the petition must, therefore, be dismissed.

February 8, 1957.

IX

VETERAN ENTITLED TO CREDIT FOR SERVICE IN ARMED FORCES PRIOR TO BECOMING A TEACHER IN ESTABLISHING PROPER PLACE ON STATE MINIMUM SALARY SCHEDULE

DOMINICK F. COLANGELO,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CAMDEN,

Respondent.

For the Petitioner, Cassel R. Ruhlman, Jr.

For the Respondent, Alfred R. Pierce.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks the Commissioner to order the respondent Board of Education to grant full credit for the period which he served in the military service with the United States and to establish his salary pursuant to Chapter 249 of the Laws of 1954.

This case is presented on a stipulation of facts and briefs of counsel.

The stipulated facts are as follows:

1. Appellant is presently in his third year of employment as a teacher in a publicly owned and operated school, all of said employment having been by the respondent.
2. Appellant served in the active military service of the United States from May 12, 1943, to April 28, 1946.
3. Appellant's salary from respondent for the year 1954-1955 was $3100.
4. Respondent has established appellant's salary for the school year 1955-1956 at $3300.
5. Appellant was not a teacher before entering military service, his first employment as a teacher having commenced on September 1, 1953.

The issue involved is whether a teacher who served in the military service of the United States in time of war or emergency before becoming a teacher is entitled to the benefits of section 6, Chapter 249, P. L. 1954. Section 6 of Chapter 249 of the Laws of 1954, provides as follows:

> "Every teacher who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of

this State, including active service in 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, 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, shall be entitled to any employment or adjustment increment to which he would have been entitled if he had been employed for the same period of time in some publicly owned and operated college, school, or institution of learning in this or any other state or territory of the United States, except that the period of such service shall not be credited toward more than 4 employment or adjustment increments.

"Nothing contained in this section shall be construed to reduce the number of employment or adjustment increments to which any teacher may be entitled under the terms of any law, or regulation, or action of any employing board or officer, of this State, relating to leaves of absence."

The petitioner argues that the above section sets forth two tests which must be met to entitle a person to its benefits; that is, a person must (1) be a teacher, and (2) have served in the active military service after July 1, 1940.

The petitioner claims that he has met both of these tests—that he is a teacher, as defined in the act, and that he has served in the military service, as required. The petitioner claims that he is, therefore, entitled to the increments to which he would have been entitled had he been employed for the same period of time in some publicly owned and operated college or institution of learning in this or any other State or territory of the United States. Specifically, the petitioner claims that meeting these two tests entitles him to credit for the period spent in military service in determining his proper place on the salary schedule established by the act in question, and to an adjustment increment as well as an employment increment until he reaches that place, and that, because his salary for the school year 1954-1955 was $3100, he is entitled to have added thereto an employment increment of $150 and an adjustment increment of $150 in computing his salary for the school year 1955-1956.

The respondent argues that the petitioner is not entitled to extra compensation for the period of time spent in the military service because he was not a teacher at the time of said military service and was not, thereby, losing something to which he would have been entitled. The respondent further contends that section 6 of Chapter 249 of the Laws of 1954, is for the benefit of teachers who enter the military service and who, by reason of such military service, might otherwise lose the increments and adjustments to which they would have been entitled had they continued teaching. The respondent further contends that it is clearly the intent of the statute to protect teachers by making available to them means whereby they may continue to have their increments or adjustments for the time that they were in the military service, so that, upon return from military service, a teacher may be in a position on the salary schedule comparable to that of similarly circumstanced teachers who did not enter military service. The respondent also argues that granting the petitioner's claim would constitute a veteran's

bonus for time spent in the military service, regardless of whether the veteran had been a teacher prior to such military service, and that if so construed, the law would be invalid as "private, special and discriminatory."

The petitioner, in his reply brief, argues that the statute in question does not provide for the payment of a bonus to the petitioner or to any other qualified person, but that the statute merely establishes a minimum schedule of salaries which must be paid to all teachers in the public schools throughout this State in return for services which they perform. The petitioner further argues that the statute in question is not open to construction or interpretation. To support this contention, the petitioner cites the following excerpts in which the Supreme Court stated:

> "In every case involving the interpretation of a statute, it is the function of the court to ascertain the intention of the Legislature from the plain meaning of the statute and to apply it to the facts as it finds them. *Carley v. Liberty Hat Mfg. Co., 81 N. J. L. 502, 507 (E. & A. 1910).* A clear and unambiguous statute is not open to construction or interpretation, and to do so in a case where not required is to do violence to the doctrine of the separation of powers. Such a statute is clear in its meaning and no one need look beyond the literal dictates of the words and phrases used for the true intent and purpose in its creation." *Watt v. Mayor and Council of Borough of Franklin, 21 N. J. 274, at 277. (Supreme Court, 1956).*
>
> "Where the wording of a statute is clear and explicit, we are not permitted to indulge in any interpretation other than that called for by the express words set forth." *Duke Power Co. v. Patten, 20 N. J. 42, at 49, (Supreme Court, 1955).*

The petitioner claims that the words of the section of the statute in question are clear, unambiguous and explicit, and that there can be no doubt as to their meaning or their application; and that, therefore, the statute is not open to construction or interpretation, but must be applied as written.

The respondent asserts that if the statute says what the petitioner claims it says, then the provision upon which the petitioner relies is special legislation and is, therefore, contrary to the Constitution of the State of New Jersey. The petitioner, in turn, argues that it is not special legislation, since it embraces all those who have served in the requisite branches of military service and who are or may become teachers in the public schools of this State.

The Commissioner of Education is without authority to declare the act in question unconstitutional. It is the duty of State agencies and administrative bodies to accept a legislative act as constitutional until such time as it is declared unconstitutional by a qualified judicial body. *Brock* vs. *Newark, 1949-1950 School Law Decisions, 61.*

The petitioner further argues that the rules of statutory construction require that statutes be construed according to express intentions and, in addition to other precedents, cites the following in support of his arguments:

> "The purpose of statutory construction is to bring the operation of a statute within the apparent intention of the Legislature." *Sperry & Hutchinson Co. v. Margetto, 15 N. J. 203 (Supreme Court 1954.)*

"We must construe a statute as written, hence a statute should not be construed to permit its purpose to be defeated by evasion, *Grogan v. DeSapio, 11 N. J. 308 (1953)* and we must enforce the legislative will as written and not according to some unexpressed intention." *Hoffman v. Hock, 8 N. J. 397.*

The petitioner invites attention to the fact that the statute in question defines a teacher as

"Any full time member of the professional staff of any district or regional board of education or any board of education of a county vocational school, the qualifications for whose office, position or employment are such as to require him to hold an appropriate certificate issued by the State Board of Examiners in full force and effect in this State and who holds a valid permanent, limited or provisional certificate appropriate to his office, position or employment."

He also points out that section six of the statute in question provides that a qualified person shall be entitled to any employment or adjustment increment to which he would have been entitled if he had been employed for the same period of time in some publicly owned and operated college, school or institution of learning in this or any other state or territory of the United States. The petitioner argues that, therefore, it was not the intention that a person must be a "teacher" as defined in the statute before entering into the required military service, for he is to be given the same credit by the way of increments as if he had been employed in any other State, in which instance, the above definition of a teacher would not be applicable.

The petitioner makes further reference to the rule of construction:

"The four things to be discerned and considered in construing a statute are what was the common law before the enactment of the statute, what was the mischief and defect for which the common law did not provide, what was the remedy that the legislature resolved to cure the mischief and defect, and what is the true reason of the remedy." *Magierowski v. Buckley, 39 N. J. Super. 534 (App. Div. 1956).*

He argues that the law, before the enactment of the statute in question, merely provided for a minimum salary to be paid all teachers in the State, that the statute in question provided for a minimum salary schedule which must be paid to all teachers employed in the State, and that one inequity which the Legislature sought to cure by the enactment of the statute in question was that a teacher who had served in the military services would be penalized for the time spent in military services to the extent that, salarywise, he would lag behind his compatriots in the teaching profession.

The petitioner says further that the remedy which the Legislature employed to cure this inequity was the inclusion of section six in the statute here under consideration, whereby a person, who has served or who hereafter shall serve in the requisite military service and who is or may become a teacher, has an opportunity to catch up with his compatriots who did not serve in such military service. The Commissioner is in agreement with this assertion. The language of the statute under consideration seems clearly intended to effectuate this purpose.

The Commissioner cannot agree with the respondent's contention that to grant credit for the period of time spent in the military service prior to employment as a teacher constitutes a veteran's bonus. Neither can the Commissioner agree with the contention that it was the intent of the Legislature to restrict the benefits of the law to those persons who might be teachers prior to entering military service. On the contrary, it is the opinion of the Commissioner that the Legislature intended section 6, Chapter 249, *supra*, to apply to persons who had served in the military service and who are teachers, whether they become teachers before or after entering into such military service. Accordingly, the petition is granted and the respondent Board of Education is hereby directed to adjust the salary of the petitioner in accordance with the provisions of Chapter 249, P. L. 1954.

February 20, 1957.

Affirmed by the State Board of Education without written opinion October 2, 1957.

X

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

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 13, 1957, for the election of members to the Board of Education of the Township of Mount Laurel:

John E. Mears, Jr.	168 votes
Harvey E. Jones, Jr.	145 votes
John Crawford	95 votes
Robert E. Sherfesee, Jr.	95 votes
Frank E. Mull	1 vote
Elsie Burger	1 vote

Robert A. Sherfesee, Jr., a candidate for election for the three-year term, petitioned the Commissioner for a recount of the ballots cast because of the tie vote announced between John Crawford and Robert A. Sherfesee, Jr.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Monday, February 25, 1957, at 9:30 A. M. in the office of the County Superintendent of Schools of Burlington County, Mount Holly, New Jersey.

The following shows the results of the recount:

John E. Mears, Jr.	168 votes
Harvey E. Jones, Jr.	145 votes
Robert A. Sherfesee, Jr.	96 votes
John Crawford	94 votes
Frank E. Mull	1 vote
Elsie Burger	1 vote

The Commissioner finds and determines that John E. Mears, Jr., Harvey E. Jones, Jr. and Robert A. Sherfesee, Jr. were elected to the Board of Education of the Township of Mount Laurel, Burlington County, for a term of three years.

February 26, 1957.

XI

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

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 13, 1957, for the election of members to the Board of Education of the Township of Evesham, Burlington County:

Three-Year Term

Charles A. Munro	250 votes
Robert K. Little	214 votes
Harry H. Blank	122 votes
J. Norton McClelland	163 votes
John Traino	164 votes
George Wright	1 vote
George Richer	1 vote

Two-Year Term

Alfred H. Fegeley	152 votes
Richard L. Rice	153 votes

The petitioner, J. Norton McClelland, requested a recount of the ballots cast on the grounds that there were several questionable ballots and the election resulted in the election of John Traino by one vote over those received by the petitioner.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Monday, February 25, 1957, at 10:30 A. M. in the office of the County Superintendent of Schools of Burlington County, Mount Holly, New Jersey.

At the end of the recount, 5 ballots were set aside because they contained votes for 4 instead of 3 candidates for the three-year term. These ballots, however, contained valid votes for candidates for the two-year term. Two ballots were voided. One of these had no cross (×), plus (+), or check mark (√) in the places or squares at the left of the names of the candidates, but contained a check mark (√) at the extreme right of the names of the candidates. The other ballot had check marks (√) in the squares opposite the names of three candidates with the word "yes" written in the margin of the ballot to the left of the check marks.

The following is the result of the recount of the ballots:

Three-Year Term

Charles A. Munro	248 votes
Robert K. Little	213 votes
John Traino	164 votes
J. Morton McClelland	161 votes
Harry H. Blank	122 votes
George Wright	1 vote
George Richer	1 vote

Two-Year Term

Richard L. Rice	152 votes
Alfred H. Fegeley	151 votes

The Commissioner finds and determines that Charles A. Munro, Robert K. Little and John Traino were duly elected for the three-year term, and that Richard L. Rice was duly elected for the two-year term as members of the Board of Education of the Township of Evesham, Burlington County.

February 26, 1957.

XII

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF LAWRENCE IN THE COUNTY OF MERCER.

For the Petitioner, Mr. David Kelsey and Mr. John Barry.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 13, 1957, for the election of members of the Board of Education of the Township of Lawrence, County of Mercer, for the full term of three years:

Curtiss S. Hitchcock	402 votes
Hugh Samson	326 votes
Russell S. Edmonds	477 votes
James H. Smith	498 votes
Walter S. Shelmet	401 votes

The petitioner, Walter A. Shelmet, requested a recount of the ballots cast on the grounds that: There was a difference of only one vote between those cast for him and for Curtiss S. Hitchcock, certain ballots were improperly counted or rejected, and that there may have been error in counting the ballots.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Tuesday, February 26, 1957, at 9:30 A. M. in the office of the County Superintendent of Schools of Mercer County, Trenton, New Jersey.

At the end of the recount fifteen ballots were voided by agreement for the following reasons:

11 ballots contained no cross (×), plus (+) or check mark (√) in the squares to the left of the names of the candidates and, therefore, could not be counted.

2 ballots were voted for 5 candidates when instructions called for voting for 3. Therefore, this ballot could not be counted.

1 ballot was voted for 4 candidates when instructions called for voting for 3. Therefore, this ballot could not be counted.

1 ballot contained no votes for any candidates.

Two ballots were referred to the Commissioner for further consideration. After consultation with the attorney for the petitioner, it was agreed that these ballots should be voided and that the Commissioner not be asked to rule upon them, because, if they were counted, there would be 2 additional votes for the petitioner and would not affect the results of the recount.

The following is the result of the recount:

	Curtiss S. Hitchcock	Hugh Samson	Russell S. Edmonds	James H. Smith	Walter A. Shelmet
Districts 1, 4, 7	148	110	150	112	47
Districts 2, 5, 9, 10	123	123	181	215	216
Districts 3, 6, 8	130	88	144	167	141
Absentee Ballots	0	2	2	1	1
TOTALS	401	323	477	495	405

The Commissioner finds and determines that James H. Smith, Russell S. Edmonds and Walter A. Shelmet were duly elected to membership on the Board of Education of the Township of Lawrence, County of Mercer, for a term of three years.

February 28, 1957.

XIII

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

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 13, 1957, for the election of members to the Board of Education of the Borough of National Park, County of Gloucester, for the full term of three years:

Melvin Banks	222 votes
Joseph Molineaux	205 votes
Herbert White	212 votes
Eleanor Benson	211 votes
William Barger	211 votes
George Percival	198 votes

The petitioner, William Barger, requested a recount of the ballots cast because of a tie vote which existed between those cast for him and for Eleanor Benson.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Thursday, February 28, 1957, in the office of the County Superintendent of Schools of Gloucester County, Woodbury, New Jersey.

At the end of the recount sixteen ballots were voided by agreement for the following reasons:

5 ballots contained votes for 6 persons.

3 ballots contained votes for 4 persons.

5 ballots had no cross (×), plus (+) or check mark (√) in the square to the left of the name, but had a (×), plus (+) or check (√) to the right of the names.

2 ballots contained no cross (×), plus (+) or check mark (√) in the square to the left of the name, but had the word "no" written to the right of the names.

1 ballot had a check mark (√) to the left of the name. However, the word "yes" appeared after the names of three candidates and the word "no" appeared after the names of two.

Therefore, none of the ballots above described could be counted.

The result of the recount is, as follows:

Melvin Banks	222 votes
Herbert White	212 votes
Eleanor Benson	211 votes
William Barger	211 votes
Joseph Molineaux	205 votes
George Percival	197 votes

The Commissioner finds and determines that Melvin Banks and Herbert White were duly elected to membership on the Board of Education of the Borough of National Park, County of Gloucester for a term of three years, and that there is a tie vote between Eleanor Benson and William Barger. Therefore, there was a failure to elect a third person to serve on the Board of Education. Pursuant to section 18:4–7, which reads in part as follows:

"A county superintendent of schools may: . . .

d. Appoint members of the board of education for a new township, incorporated town, or borough school district and for any school district under his supervision which shall fail to elect members at the regular time or in case of a vacancy in the membership of the board of education which occurs by reason of the removal of a member for failure to have the qualifications required by section 18:7–11 of the Revised Statutes or as the result of a recount or contested election or which is not filled within sixty-five days of the occurence of the vacancy. Such appointees shall serve only until the organization meeting of the board of education after the next election in the district for members of the board of education."

The County Superintendent of Schools of Gloucester County is authorized to appoint a person to serve as a member of the Board of Education of the Borough of National Park until the organization meeting of the Board in February, 1958.

March 1, 1957.

XIV

COMMISSIONER WILL NOT SUBSTITUTE HIS JUDGMENT FOR THAT OF LOCAL BOARD IN DETERMINING SITE OF LOCAL SCHOOL

LEONA K. NOTO,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF LOPATCONG, IN THE COUNTY OF WARREN.

Respondent.

For Petitioner, Arthur Alexander.

For Respondent, Wayne Dumont, Jr.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner asks the Commissioner to set aside the special election held in the respondent's district on February 29, 1956, wherein the voters adopted a proposal authorizing a bond issue for the purchase of land located on New Jersey Route No. 24 in Lopatcong Township, and the contruction of a school building thereon.

A hearing was held by the Assistant Commissioner of Education in the Warren County Court House, at which 1034 pages of testimony were taken. The facts in this case, as determined by stipulation and review of the testimony, are as follows:

1. On December 13, 1955, the respondent Board of Education appeared before the Commissioner of Education, in accordance with the provisions of R. S. 18:5–86, to request approval to submit to the voters a proposal to construct and equip a ten-room school building at a cost not to exceed $275,000, to acquire 18 acres of land at a cost not to exceed $25,000, and to issue bonds in the amount of $300,000. This proposal was approved by the Commissioner of Education and by the Division of Local Government, in accordance with the provisions of R. S. 18:5–86.

2. The proposal was submitted to the voters of Lopatcong Township on February 29, 1956, along with a proposal to repeal a previous bond issue voted October 23, 1951, authorizing an addition to the Morris Park School in the amount of $68,000.

3. The results of the election were as follows:

For the adoption of the proposal	295
Against the adoption of the proposal	169
Ballots void	94
Ballots spoiled	1

4. Voters were not checked against the Signature Copy Register Book when they voted. A check of the poll list against the Signature Copy Registers, obtained from the office of the County Board of Election, by a group of four persons assigned by the Assistant Commissioner with the approval of both counsel, revealed that four persons, who were not properly registered, were allowed to vote.
5. Richard R. Hamlen, President of the respondent Board of Education, wrote and caused to be mimeographed a statement regarding the proposal; copies of the statement were distributed to the voters during and after school hours on February 28, 1956, by a teacher and pupils of the Lopatcong School.
6. A licensed airport is located on land adjacent to the property proposed to be purchased by the respondent.
7. Katherine Hamlen, wife of Richard R. Hamlen, is employed as a teacher by the respondent Board of Education.

The petitioner claims that the election was illegal and void in the first instance because the Board of Education violated its position of trust in that it did not make a frank and open disclosure to the Commissioner of Education prior to obtaining his consent to the proposal, or to the Township Committee and the voters prior to the election in the following particulars:

(a) that there was a licensed airport located adjacent to the land to be purchased,
(b) that there was a duly licensed tavern three doors from the proposed tract,
(c) that the tract was the fourth most preferred site selected by an impartial expert,
(d) that the school would be located on New Jersey Route No. 24, one of the most highly traveled main highways in Warren County,
(e) that the Delaware, Lackawana and Western Railroad operates a line directly across New Jersey Route No. 24,
(f) that the proposed site was not located near the center of the present population and probable school population,
(g) that the proposed site of 18 acres was excessive in size and cost,
(h) that the purchase of the proposed site was wasteful, extravagant and a breach of fiduciary duty and trust,
(i) that the president of the Board chose the site because his father-in-law owned property in the immediate vicinity.

Counsel for the petitioner cites in his brief the following cases for the proposition that a board holds a position of public trust. *Rankin* vs. *Board of Education, 135 N. J. L. 299, 303 (E. & A. 1947); Cullum* vs. *Board of Education of the Township of North Bergen, 27 Super. 243, 248 (App. Div. 1950) aff. 15 N. J. 285 (1954).* He contends that the members of the respondent Board of Education are guilty of abuse of discretion and breach of trust and that their conduct constituted a fraud on the statutes empowering them to act.

Counsel for the respondent, in his reply brief, points out that, in the cases used by the petitioner to support his contention, the facts are vastly different from the instant case because of the fact that decisions of the public bodies in those cases were not supported and approved by the voters.

The respondent further claims that not only was there no testimony at the hearing to support the contention of the petitioner that the Board of Education acted arbitrarily, fraudulently or corruptly, but that the testimony of six of the nine members present at the hearing was completely to the contrary, since they testified that they had worked hard and diligently, inspecting several prospective school sites and reviewing carefully the many details connected with the Board's decision to construct a new school. To support his contention, he notes that Richard R. Hamlen, President of the Respondent Board of Education, testified that he and other members had sought the advice and suggestion of their constituents in the township before arriving at the decision to build a new school rather than to enlarge existing facilities, that he appointed advisory committees, that the Board of Education authorized the use of professional help and advice, and that Board members who testified indicated that their decisions concerning the various prospective sites for the school building were unanimous.

In support of his argument that the Board of Education acted openly and in good faith, the respondent pointed out that members of the Board attended a meeting of the Township Committee, that the Township Committee passed a resolution that evening indicating no objection to the proposed construction of a new school by the Board of Education, that the testimony further shows that at least three public meetings were held for the purpose of explaining the proposal to the voters, and that the proposal was thoroughly reviewed in the press.

The respondent further claims that the operation of the airport over the past several years has been a known and obvious fact to the residents of Lopatcong Township, and that the actual distance of the tavern from the proposed school is 600 feet, whereas section 33:1–76 of the Revised Statutes provides:

> ". . . No license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public school house or private school house not operated for pecuniary profit. . . . Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

In response to the petitioner's contention that the site chosen was the fourth most preferred, the respondent relies upon the testimony of members of the Board of Education to the effect that other sites under consideration were unanimously rejected because of excessive price, inaccessibility, accumulation of surface water, and prospective construction of a high-tension line.

The Commissioner, after reviewing the briefs of counsel and the voluminous testimony, much of the latter of which appears to be not germane to the issues involved, is of the opinion that the respondent Board of Education did not violate its public trust. The record of the hearing before the Commissioner, at which approval to extend the credit of the district was requested,

discloses that mention was made of an airport adjacent to the land to be acquired. Members of the Board of Education have testified that the Board had considered all four suggested sites and had arrived unanimously at the decision to purchase this property as the one most likely to serve the present and future needs of the whole community. It seems obvious that people living in the district must have known that the proposed site is located on New Jersey Route No. 24. In view of the trend of population growth in New Jersey and the probable need to extend facilities in the future, the area of 18 acres, although ample, does not appear to be excessive. The tavern mentioned by the petitioner as being "three doors" from the proposed site, is in reality 600 feet from the prospective site of the school—three times the distance required by statute.

The petitioner claims that the election was illegal and void in the second instance because the ballot itself was illegal and void by reason of the fact that

A. the proposition as submitted to the voters was not clear in that there were four proposals:

1. To purchase land
2. To erect a new school
3. To issue bonds in the amount of $300,000
4. To repeal the bond issue approved in August, 1951, for an addition to a school building,

B. the voters should have been given an opportunity to vote separately on these proposals,

C. the character of the ballot was an unreasonable exercise of the board's statutory power and in outright violation of section 18:7–32 of the Revised Statutes, which provides in part as follows:

> ". . . all questions to be voted upon at the annual school election or any other proposition or question that may be required shall be placed upon the ballot immediately following the names of the candidates for election to the board of education and such questions and all questions to be voted upon at any special election to authorize the issuance of bonds or other evidences of indebtedness shall be arranged in such manner that the voter may indicate his choice in voting for or against the proposition in substantially the following form:

YES NO	QUESTION TO BE VOTED ON

. . ."

D. the ballot presented to the voters, instead of the squares, contained parallelograms of approximately 6 inches in length and ¾ inches in width and, therefore, was not in conformity with the prescribed form.

E. confusion was caused by a lengthy description of the property, containing approximately 34 lines. In support of his criticism of the ballot,

counsel for the petitioner cites the cases of *Cadien* vs. *Board of Education of Cliffside Park, 2 N. J. Misc. 109 (Sup. Ct. 1924); Gray* vs. *Taylor, 227 U. S. 51, 57, 57 L. Ed. 413, 33 S. Ct. 199; and Sharrock* vs. *Keansburg, 15 N. J. Super. 11 (App. Div., 1951).*

The petitioner contends that the Board of Education failed in its public duty in this important matter, involving the expenditures of a large sum of money, by putting into the hands of the voters ballots which would mislead or deceive them, and cites the case of *Seidler* vs. *Freeholders of Hudson County, 45 N. J. L. 462.*

The respondent contends that the rapid growth of the population in the township and the consequent increase in school pupils made it necessary for the Board of Education to abandon its plan for the enlargement of the Morris Park School between the elections of 1951 and 1956. The respondent further claims that to accomplish this purpose it was necessary to erase the previously granted authority to create a debt in the principal amount of $68,000, and to direct the combination of the erasure of that authority with that of the new proposal. The respondent cites the case of *Kenilworth* vs. *Raubinger, 15 N. J. 581, at 584, 590; 105 A. Ed. 837 at 841:*

> "Moreover, there was ample showing here that the proposal is an integrated whole, carefully developed by the regional board as best designated to meet the future needs of the district. The separation of the projects and the rejection of either might well have resulted in frustration of the whole. There is in these circumstances, nothing to suggest an unreasonable exercise of the board's statutory power."

In the matter of the illegality of the ballot, the statute clearly provides that more than one proposal may be voted as one question. Such a ballot was upheld in the case of *Kenilworth* vs. *Raubinger, supra.* As for the petitioner's claim that 94 ballots were voided as a result of the voters' confusion over the ballot, it can be said that, if all 94 ballots had been considered as "no" votes, the proposal would still have been carried. Furthermore, the form of the ballot was in substantial conformity with that specifically prescribed by R. S. 18:7–32.

The petitioner claims that the election was illegal and void in the third instance because the Board of Education was not legally constituted. The basis of this claim is that Robert R. Hamlen, President of the Board of Education, is indirectly interested in a contract with the Board by reason of the fact that his wife, Katherine A. Hamlen, is employed by the Board as a teacher, and, therefore, this indirect interest is in violation of section 18:7–11 of the Revised Statutes which reads in part as follows:

> "A member of the board shall be a citizen and resident of the territory contained in the district, and shall have been such for at least three years immediately preceding his becoming a member of the board. He shall be able to read and write. He shall not be interested directly or indirectly in any contract with or claim against the board. . . ."

In contradiction of this assertion by the petitioner, the respondent contends that Katherine A. Hamlen was employed by the Board for several years prior to the election of Richard R. Hamlen to membership on the Board of Education, and that, therefore, Richard Hamlen's membership on the Board is not a violation of section 18:7–11 *supra.*

In the matter of the proper organization of the Board of Education, it was held in the case of *Nichols and Walton* vs. *Board of Education of the Borough of Pemberton, 1938 S. L. D. 48*, that a board member is not interested directly or indirectly in a contract between his wife and the board of education.

The petitioner claims that the election was illegal and void in the fourth instance because the respondent Board of Education violated the provisions of section 18:14–17.1 of the Revised Statutes, which reads as follows:

> "No printed, written, multigraphed or any other kind of matter, which, in any way, in any part thereof, promotes, favors or opposes the candidacy of any candidate for election at any annual election pursuant to the provisions of article three of chapter seven of Title 18 of the Revised Statutes, or at any general or municipal or school election, whenever any question shall be thereafter submitted pursuant to sections 18:6–3 and 18:7–3 of the Revised Statutes, or which, in any way, in any part thereof, promotes, favors, or opposes the adoption of any bond issue proposal or other public question submitted at any general or municipal or school election shall be given to any public school pupil in any public school building, or on the grounds thereof, for the purpose of having such pupil take such matter to his home or to distribute it to any person or persons outside the school building or the grounds thereof. Nor shall officials or employees of public schools request or direct such pupils to engage in activities which promote, favor, or oppose any bond issue proposal or other public question submitted at any general or municipal or school election."

The petitioner here refers to the fact that Richard R. Hamlen prepared and mimeographed a letter favoring the adoption of the proposal which was distributed by a teacher and school pupils, and claims that the information in this letter was false and influenced the voters. The petitioner cites the following cases: *Citizens Public Fund* vs. *Parsippany-Troy Hills, 13 N. J. 172 (1953)*, *Pressy* vs. *Hillsborough Township, 37 N. J. Super. 486, 492 (App. Div. 1955)*.

The respondent admits that the statute was violated in the distribution of these letters; however, the respondent points out that the facts in the case of *Citizens Public Fund* vs. *Parsippany-Troy Hills, supra,* are completely different from the matter under consideration in that, in the former, the booklet prepared urged that people vote "yes" on the proposal and was prepared with public funds. The respondent claims that, in Mr. Hamlen's letter, there was no exhortation for the people to vote "yes" and that there was no expenditure of public funds. Richard R. Hamlen testified the letters were distributed voluntarily by the principal and by eighth grade male students of the Delaware Park School, that there was no compulsion for anyone to disseminate the letter, and that the distribution was made without cost to the Board of Education. The Commissioner cannot condone such a practice, even if no public funds were used in the preparation and distribution of this letter. On the other hand, the Supreme Court has held in the case of *Citizens Public Fund* vs. *Parsippany-Troy Hills, supra*, that an election would not be voided in spite of the fact that the public funds had been spent in the preparation and distribution of a brochure favoring a bond issue.

The Commissioner believes that the question of the location of a school in any school district is the responbility of the local board of education and will not substitute his judgment for that of a local board in determining the site. The Commissioner also believes that the residents of Lopatcong Township have observed the activity of the airport over the years and should, threfore, be in position to determine whether a school for their children should be located adjacent to it.

For these reasons, the petition is dismissed.

March 18, 1957.

Affirmed by State Board of Education without written opinion October 2, 1957.

XV

BOARD OF EDUCATION MUST ACCEPT BID OF LOWEST RESPONSIBLE BIDDER

PENN DAIRIES, INC.,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF DELAWARE, CAMDEN COUNTY,

Respondent.

For the Petitioner, Plone & Tomar.
(Mr. David Seliger, of Counsel)

For the Respondent, Edward H. Flemming.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case requests that a contract between the respondent and Abbotts Dairies, Inc., a corporation of the State of Maryland, for supplying ice cream and milk to the Delaware Township schools be declared null and void and that the Board of Education of Delaware Township be ordered to enter into a contract with the petitioner for supplying ice cream.

The facts in this case, as asserted in the petition, and as submitted in the answer of the respondent are:

1. The respondent advertised publicly and sent notices to contractors soliciting bids for supplying milk and ice cream to the Delaware Township schools, which advertisement and notice provided that said bids were to be filed with respondent on Monday evening, September 10, 1956, at eight o'clock P. M.
2. The petitioner submitted a bid which conformed in all manner to the requirements of the respondent and which was the lowest bid submitted at the required time for supplying ice cream to the Delaware Township schools.

3. The respondent thereafter awarded the contract for supplying ice cream to Abbotts Dairies, Inc., whose bid was higher than that of the petitioner.

The matter of Penn Dairies' being a responsible bidder has not been questioned by the respondent.

Section 18:7–64 of the Revised Statutes provides that:

"The board shall, prior to the beginning of each school year, cause advertisement to be made for proposals for furnishing supplies required in the schools and by the board during the ensuing year. If other and further supplies are required during the year, they shall be purchased in like manner; but the board may at any time authorize the purchase of supplies to an amount not exceeding five hundred dollars ($500) without advertisement.

"Textbooks and kindergarten supplies may be purchased without advertisement."

The petitioner and the respondent have stipulated that

"1. The primary question to be decided by the Commissioner of Education is whether or not, under the law, if the amount involved is over five hundred ($500.00) dollars, the Respondent was required to advertise for bids for ice cream which is to be resold to students by a School District.

"2. If the Commissioner decides in the affirmative, then both parties agree that the Petitioner, having met the specifications set forth in the proposal, and having been the low bidder, was entitled to have been awarded the contract."

The controversy in this case arises over the interpretation and application of the word "supplies." The respondent asserts that the ice cream under consideration is resold to students in the school cafeteria. In its answer, the Board holds that food which the Board of Education ". . . buys to resell does not come under the classification of supplies and, therefore, is not within the purview of N. J. S. 18:7–64." The respondent argues that the supplies mentioned in section 18:7–64 are only ". . . those which are purchased for educational use within a school system and are ultimately paid for by the taxpayers of the district." To support this position, he refers to N. J. S. A. 18:12–1, which reads in part that, "Textbooks and school supplies shall be furnished free of cost for use by all pupils of the public schools," and states that, because this section, as enacted in Chapter 1, P. L. 1903, S. S., was part of the same chapter of the statute now known as 18:7–64, it can be adduced that supplies not purchased for educational use or not furnished free to pupils are not subject to the statute in question.

It is the opinion of the Commissioner that if the Legislature had intended to exclude certain supplies from the scope of section 18:7–64, either because they are not to be used in the instruction of pupils or because they may be resold to pupils, it would have specifically so provided. It is significant that the statute does specifically exclude textbooks and kindergarten supplies. Common logic would dictate, then, that regular elementary and high school supplies are not excluded. Furthermore, the Commissioner believes that if

the Legislature had intended to exempt any or all cafeteria supplies from the provisions of the 1903 law, it would have done so at the time of the enactment of N. J. S. A. 18:11–14, by which boards of education are authorized to install and operate cafeterias for public school pupils and to ". . . provide such other equipment, supplies and services as in its judgment will aid in the preservation and promotion of the health of the pupils and it may also install, equip, supply and operate cafeterias or other agencies for dispensing food to public school pupils without profit to the district."

Any definition of the word "supplies" which the Commissioner has been able to find is based on the nature, sort, class or physical attributes of products and not on the question of whether or not the products are subsequently to be placed on sale. Black's Law Dictionary defines the word as:

> "Means of provision or relief; stores; available aggregate of things needed or demanded in amount sufficient for a given use or purpose; accumulated stores reserved for distribution; sufficiency for use or need; a quantity of something supplied or on hand." 4th Ed. (1951), p. 1608.

Another definition, similar in context, is to be found in *Conner* vs. *Littlefield*, 15 S. W. 217, 79 Tex. 76, wherein the court said,

> "An ordinary, non-technical word should be taken in its most usual and ordinary sense as applied to the subject-matter to which it relates, unless there is something in the context which shows that it was intended that a different meaning should be attached. 'Supplies,' in the plural, has a fairly well defined meaning; that is to say, such stores of food, etc., as are kept on hand for daily use."

Furthermore, it is the public policy of the State, as expressed in the competitive bidding statutes, to promote economy and avoid favoritism in the award of public contracts. *A. C. Schultes & Sons* vs. *Haddon Township*, 8 N. J. 103, 83 A. 2d. 896 (1951); *Waszen* vs. *City of Atlantic City*, *1 N. J.* 272, 63 A. 2d. 255 (1949).

For the above reasons, it is the opinion of the Commissioner that ice cream which is purchased by a Board of Education to be resold to pupils must be purchased according to N. J. S. A. 18:7–64. The Board of Education of Delaware Township is therefore ordered to cancel its contract with Abbotts Dairies, Inc., and to award a contract to Penn Dairies, Inc., by reason of the latter company's being the lowest responsible bidder on the supplies in question.

May 10, 1957.

XVI

AUTHORITY OF COMMISSIONER OF EDUCATION IS RESTRICTED TO CONTROVERSIES AND DISPUTES ARISING UNDER THE SCHOOL LAW.

GUIDO BARATELLI,

Petitioner.

vs.

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

Respondent.

For the Petitioner, William A. Massa.

For the Respondent, Robert H. Doherty.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks that the Commissioner order the respondent to reassign him to the duties and title of Assistant Director of Recreation of the Board of Education of Jersey City in accordance with section 38:16–1 of the Revised Statutes, commonly known as the Veterans' Tenure Act. Petitioner also requests that he be awarded ". . . the sum of $20,000.00 as compensation for loss of his property rights. . . ."

The facts in this case appear to be as follows:

1. Guido Baratelli was employed by the Jersey City Board of Education in 1940 as recreational instructor.
2. He was appointed to the position of Assistant to Louis Lepis, the Manager of Recreation, in 1947.
3. Louis Lepis was appointed Director of Recreation in November, 1951. and, at about the same time, two or more other men were appointed to positions of Assistant Directors of Recreation.
4. Petitioner was not appointed to a position of Assistant Director of Recreation, but, in January of 1952, was reassigned at no reduction in salary to a specific playground with duties similar to those of a recreational instructor.

Appointment of employees to the positions mentioned above is made pursuant to section 18:5–45 of the Revised Statutes, which states in part that:

> ". . . The board shall appoint such supervisors, instructors, teachers. custodians, and employees as it shall think necessary for the proper maintenance, control, and management of such public playgrounds and recreation places, and shall fix their compensation and terms of employment."

The positions which the petitioner has held and the one to which he seeks appointment do not require any appropriate certificate issued by the State Board of Examiners, nor do they fall within any category protected by the tenure provisions of the school laws.

Because this case involves no controversy arising under the school laws or under any rule or regulation of the Commissioner or of the State Board of Education, it is the opinion of the Commissioner that he does not have jurisdiction. Section 18:3–14 of the Revised Statutes states that

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

In the case of *Reilly* vs. *Board of Education of the City of Camden*, 127 N. J. L. 490, it was held that, ". . . the authority of the Commissioner of Education is restricted by N. J. S. A. 18:3–14 to 'controversies and disputes arising under the school laws'."

The petition is therefore dismissed.

May 10, 1957.

XVII

In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of North Brunswick in the County of Middlesex.

For the Petitioner, Gross & Weissberger.
(Mr. Ernest Gross, of Counsel)

For Nicholas Friday, Mr. C. John Stroumtsos.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 13, 1957, for the election of members of the Board of Education of the Townhip of North Brunswick, County of Middlesex, for the full term of three years:

Nicholas Friday	396 votes
Mary Sokoloff	417 votes
Harold S. Deiches	391 votes
John Bono	416 votes

The petitioner, Harold Deiches, requested a recount of the ballots on the grounds that: Only one person was officially tallying the votes in some of the polling places, that there was confusion and possible errors in tallying, that erasures appeared on tally sheets and that changes were made in the tally sheets from time to time during the counting of the votes. A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Friday, March 22, 1957, in the office of the County Superintendent of Schools of Middlesex County.

At the end of the recount, two ballots were referred to the Commissioner for determination and twelve other ballots which were also set aside during the recount were either counted or voided by agreement of counsel. On

March 26, 1957, the following letter was sent to the Commissioner by Mr. Ernest Gross of Messrs. Gross & Weissberger, counsel for petitioner: "As a result of the recount on Friday, March 22, 1957, for the North Brunswick Township Board of Education. Mr. Harold S. Deiches, whom I represent, was one vote behind Nicholas Friday, and 2 ballots were challenged and left to the Commissioner for determination.

"I have discussed this matter with Mr. Deiches and thereafter I discussed the matter with C. John Stroumtsos, who represented Mr. Friday at the recount, and Mr. Stroumtsos and I have agreed that the 2 ballots which were referred to the Commissioner, should, by agreement, be treated as invalid so that as a result it would leave Mr. Friday leading by one vote.

A copy of this letter is being sent to Mr. Stroumtsos."

The following is the result of the recount:

Nicholas Friday	390 votes
Mary Sokoloff	412 votes
Harold S. Deiches	389 votes
Joan Bono	411 votes

In the opinion of the Commissioner it is not necessary to determine the validity of the ballots which counsel agreed should be treated as invalid, since, even if these ballots were counted, they would not change the result of the election. Accordingly, Mary Sokoloff, Joan Bono and Nicholas Friday were duly elected to membership on the Board of Education of the Township of North Brunswick, County of Middlesex, for a term of three years.

May 16, 1957.

XVIII

SCHOOL TAXES APPORTIONED BY COMMISSIONER AS A RESULT OF ANNEXATION OF PORTION OF SCHOOL DISTRICT

IN THE MATTER OF APPLICATION FOR APPORTIONMENT OF SCHOOL TAXES IN THE TOWNSHIPS OF WILLINGBORO AND WESTAMPTON AND THE SCHOOL DISTRICT OF RANCOCAS VALLEY REGIONAL HIGH SCHOOL.

For the Township of Westampton and Rancocas Valley Regional High School, Bayard Allen, Esq.

For the Township of Willingboro, Sidney W. Bookbinder, Esq.

DECISION OF THE COMMISSIONER OF EDUCATION

Pursuant to Chapter 204 of the Laws of 1956, the school districts of Westampton, Rancocas Valley Regional High School and Willingboro requested the Commissioner of Education to determine the apportionment of school taxes to be made as a result of the annexation on July 10, 1956, of a section of the Township of Willingboro to the Township of Westampton, as provided in Chapter 129 of the Laws of 1956.

Chapter 204, P. L. 1956, provides as follows:

"1. When a municipality or part of a municipality has heretofore been annexed or shall be hereafter annexed to another municipality or municipalities and the school taxes for the school year during which such annexation was or shall be effected have been or shall have been levied and collected by the municipality or municipalities as constituted prior to such annexation and paid to the board of education in such municipality or regional board of education comprising in part said municipality, the school tax for the said school year shall be apportioned by the Commissioner of Education after a hearing upon notice to the municipalities and boards of education to be affected, and, in making any such apportionment, the Commissioner of Education shall take into consideration the number of pupils, the tax ratables and the effect of the transfer resulting from such annexation upon the educational program of the school district. The commissioner shall direct the board of education or the regional board of education, as the case may be, of the municipality from which the said transfer was made to pay to the board of education or regional board of education of the municipality or municipalities to which the annexation was made, such sums as he shall determine to be payable under this act. Any board of education or regional board of education aggrieved by any such order of the commissioner shall be entitled to have such order and the determination of the Commissioner of Education, upon which any such order shall be made, reviewed by the State Board of Education, upon an appeal to it, and upon any such review, the State Board of Education may affirm, reverse or modify the order and determination appealed from and may make any determination and order that should have been made by the Commissioner of Education.

"2. This act shall be applicable to any school year which included all or any part of the calendar year 1956, as well as to subsequent school years."

A hearing was held in Trenton by the Assistant Commissioner of Education in charge of controversies and disputes, at which hearing the following facts were determined:

1. A section of the Township of Willingboro was annexed to the Township of Westampton effective July 10, 1956. In the area transferred from the Township of Willingboro to the Township of Westampton, 31 pupils in classes from kindergarten through eighth grade and 13 pupils in grades nine through twelve are residents. The 31 pupils from kindergarten through eighth grade were transferred to the Westampton elementary schools in September, 1956. Thirteen pupils in grades nine through twelve were transferred to the Rancocas Valley Regional High School in September, 1956 since the Township of Westampton is a constituent district of the Rancocas Valley Regional High School district.

2. The assessment record shows that the property transfer from Willingboro to Westampton was assessed at $55,700.

3. The tax rate for school purposes in the Township of Willingboro for 1956 was $7.6573.

4. The amount of school taxes collected by the Township of Willingboro for the school year 1956-57 from the area in question was $4,265.12.

5. The estimated cost of education in the Township of Willingboro per pupil in the average daily enrollment for the year 1956-57 was $289.49. The estimated cost of education in the Township of Westampton per pupil in average daily enrollment for the same period was $313.47.

6. The Assistant Commissioner asked the school district of Westampton and Rancocas Valley Regional High School to submit an estimate of the additional cost to the respective districts occasioned by the transfer of these pupils. In compliance with this request, the regional district estimated that the additional cost to the district was $2,841.67 or $218.35 per pupil. This did not include any estimate of the instructional cost per pupil since they were assigned to regularly scheduled classes.

The school district of Westampton stated that it was necessary for them to employ an additional teacher as a result of the 31 additional pupils. They further stated that the additional teacher made it possible for them to separate the seventh and eighth grade classes rather than have a combined class as had been originally planned. This, admittedly, improved the educational program of the district.

Westampton estimated that the total additional cost for the school year would be $5,532.90, which included an item of $1,550.00 for transportation. In reviewing this estimated cost, it was the opinion of the Commissioner that three-fourths of the transportation aid would be reimbursed by State Aid, making a total net additional cost to the district of $4,370.40.

In reviewing the effect upon the educational program as a result of the annexation, the Commissioner finds that pupils were assigned to the regularly scheduled classes in both Westampton and Rancocas Valley Regional High School, which districts were able to assign these pupils without impairing the educational program of the district. The Westampton Board of Education, however, called to the attention of the Commissioner the fact that the 31 additional pupils, who were not included in the original and now completed building plans of the district, would necessitate an additional classroom in the near future.

In reviewing the budget of the school districts, the Commissioner finds that Willingboro raised by local taxes for the school year 1956-57 about $155.00 per pupil. Westampton raised about $195.00 per pupil. The school district of Westampton will receive $2,220.55 additional in current expense aid during the year 1957-58 as a result of the 31 additional pupils now attending Westampton schools and $493.83 additional building aid for these pupils. The Rancocas Valley Regional High School district will receive an additional $1,826.39 in current expense aid during the year 1957-58 as a result of the 13 additional pupils, and $271.70 additional in building aid.

After reviewing all the facts as determined at the hearing and in accordance with the provisions of Chapter 204 of the Laws of 1956, the Commissioner is of the opinion that the educational program of the school districts involved were not seriously affected by the transfer of these pupils; that the amount of taxes collected by the Township of Willingboro for school pupils for the section annexed to Westampton and added to the additional amount of State Aid to be received by the school district of Westampton and Rancocas Valley Regional High School district will cover the additional cost of the

pupils transferred to the respective districts. Furthermore, the school district of Willingboro collected more per average pupil from the district as a whole than the amount collected per pupil in the section transferred to the Township of Westampton. Accordingly, the school district of Willingboro can provide adequate educational facilities for the pupils of the Township without the use of the funds collected for school purposes from the section transferred to Westampton.

Pursuant to the provisions of Chapter 204 of the Laws of 1956, the Commissioner hereby directs the board of education of the Township of Willingboro to pay to the Township of Westampton and Rancocas Valley Regional High School district the school taxes collected by the Township of Willingboro for school purposes from the section transferred to Westampton for the school year 1956-57 in the amount of $3,004.96 to the Township of Westampton and $1,260.16 to the Rancocas Valley Regional High School district.

May 27, 1957.

XIX

JANET E. KLASTORIN,

Petitioner.

vs.

THE BOARD OF EDUCATION OF THE TOWNSHIP OF SCOTCH PLAINS, IN THE COUNTY OF UNION,

Respondent.

For the Respondent, William M. Beard.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case charges that the Board of Education of the Township of Scotch Plains has been administering public funds on an inequitable basis to the extent that it has been providing, on the basis of hazardous conditions, transportation to pupils in some areas not remote from the schools they attend, while denying transportation to pupils in other areas which are comparable in remoteness and hazardous conditions. The petitioner further charges that the respondent board of education has traditionally had no firm and objective policy concerning the transportation of pupils other than those for whose transportation State aid is available under rules established by the State Board of Education.

At a hearing held by the Assistant Commissioner in Charge of Controversies and Disputes, the respondent agreed to the following:

> "It is stipulated that the transportation policy of this Board of Education has been inconsistent relative to distance or traffic hazards and thereby was discriminatory in these respects."

In the Memorandum of Law submitted March 18, 1957, the respondent states that on November 15, 1956, the Board of Education of the Township of Scotch Plains adopted a transportation policy, to be effective January 2,

1957, based on grade level and distance from school. This policy is not a part of the present controversy and therefore will not be commented upon by the Commissioner.

Section 18:14–8 of the Revised Statutes provides in part that:

> "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part."

The word "remote" has been interpreted by the State Board of Education, for purposes of State aid, to be two miles from an elementary school and two and one-half miles from a high school. Local boards of education in some instances have determined "remote" to be a shorter distance and have provided transportation within this shorter distance wholly at local expense, subject to the approval of the contracts as provided in the statutes and subject to the rules and regulations of the State Board of Education.

In the case of *Piell, et al.* vs. *Union Township Board of Education*, 1938 School Law Decisions, page 748, it was stated that

> ". . . the Commissioner and this Board have held that the local board is the best judge of the circumstances of remoteness under the statute, and that neither the Commissioner nor the State Board should interfere where there appears to have been no bias or prejudice on the part of the local board and the county superintendent."

In the present controversy, it is quite apparent that the respondent board of education has not acted without bias or prejudice. The Board of Education of the Township of Scotch Plains is, therefore, directed to adopt at a regular meeting of the board and thereupon to execute a transportation policy which is just and equitable for the pupils of its district. The statement of policy shall be made available to the superintendent of schools and all others who have the responsibility of administering policies of the board of education so that the citizens of the community may have full knowledge of the policy as adopted.

It is further ordered that the Board of Education submit a copy of this policy to the county superintendent of schools for his use in approving all transportation contracts in accordance with R. S. 18:14–10.

The petitioner has also charged individual members of the respondent Board with misappropriation of public funds. Because this charge is criminal in nature, it is not within the jurisdiction of the Commissioner. The petitioner also claims the respondent violated the Law Against Discrimination (N. J. S. A. 18:25–1 et seq.), but the Commissioner has no jurisdiction at the present time to consider such claim. The Law Against Discrimination applies only to discrimination on account of race, creed, color, national origin or ancestry, or liability for service in the Armed Forces. Any person who claims to have been discriminated against under that law may file a complaint with the Division Against Discrimination, whereupon the Commissioner can take jurisdiction of the matter.

The Commissioner has carefully reviewed the other contentions made by the petitioner in this proceeding and finds them to be either without merit or unnecessary to determine in view of the order hereinbefore made.

June 4, 1957.

XX

DECISIONS OF THE STATE BOARD OF EDUCATION AND SUPERIOR COURT RENDERED ON DECISIONS OF THE COMMISSIONER AND STATE BOARD OF EDUCATION PRINTED IN 1955-1956 BULLETIN

ESTELLE LABA, et al.,*
Appellants-Cross-Respondents,

vs.

THE BOARD OF EDUCATION OF NEWARK IN THE COUNTY OF ESSEX,
Respondent-Cross-Appellant.

Argued December 17, 1956; decided February 4, 1957.

Mr. John O. Bigelow and Mr. Emil Oxfeld argued the cause for the Appellants (Mr. Richard F. Green, attorney for Perry Zimmerman; Messrs. Rothbard, Harris & Oxfeld, attorneys for Estelle Laba).

Mr. Jacob Fox argued the cause for the Respondent.

Mr. David D. Furman, Deputy Attorney General, argued the cause for the State Commissioner of Education (Mr. Grover C. Richman, Jr., Attorney General of New Jersey, attorney).

The opinion of the Court was delivered by Jacobs, J.

The Newark Board of Education dismissed three teachers (Mrs. Laba, Dr. Lowenstein and Mr. Zimmerman) after they had pleaded the Fifth Amendment during a hearing before a subcommittee of the House Un-American Activities Committee. On appeal, the State Commissioner of Education determined that the dismissals were contrary to the recent ruling of the United States Supreme Court in *Slochower* vs. *Board of Education*, 350 U. S. 551, 100 L. Ed. 692 (1956) *rehearing denied*, 351 U. S. 944, 100 L. Ed. 1470 (1956); however, he did not order reinstatement of the teachers but remanded the proceedings to enable full and fair inquiry as to their continued competence and fitness to teach in the Newark public school system. Without awaiting such inquiry or review by the State Board of Education (*R. S.* 18:2–4; *R. S.* 18:3–15) and without obtaining court leave (*R. R.* 4:88–8(b)) the teachers appealed to the Appellate Division and the Newark Board cross-appealed. In view of its public importance we have certified the matter on our own motion (*R. R.* 1:10–1(a)) and have by-passed preliminary procedural points. See *Appeal of Pennsylvania Railroad Co.*, 20 N. J. 398 (1956); *Waldor* vs. *Untermann*, 10 N. J. Super. 188 (App. Div. 1950).

* Appeal to State Board of Education Withdrawn.

Dr. Lowenstein received his B.A. degree from Rutgers University in 1928, his M.A. from the University of Pennsylvania in 1929 and his Ph.D. from Johns Hopkins University in 1934. He has taught in the public school system of Newark since 1935 except for three years when he was in military service and one year when he was an exchange teacher at a boys' normal school in southern France. Mrs. Laba received her B.A. from New York University in 1935 and has taught in the public school system of Newark during every year since 1935 except for several years when she was employed at a hospital on a research grant. Both Dr. Lowenstein and Mrs. Laba duly acquired tenure protection under the New Jersey School Laws. See *R. S.* 18:13–16; *R. S.* 18:13–17. Mr. Zimmerman received his B.S. from State Teachers College at Newark in 1940 and thereafter received his M.A. from New York University. He began teaching in the public school system of Newark in 1952 and had not acquired tenure protection when he was dismissed by the Board. However, in view of the terms of *R. S.* 18:13–11, all of the parties and the State Commissioner have, for present purposes, not differentiated his case from the others. When dismissed by the Board, Dr. Lowenstein was teaching languages at Barringer High School, Mrs. Laba was teaching biology at Central High School and Mr. Zimmerman was teaching arithmetic at Dayton Street Public School.

In May 1955 a subcommittee of the House Un-American Activities Committee conducted hearings at Newark. Representative Clyde Doyle presided and pointed out that the Committee had been charged by Congress with the responsibility of investigating (1) the extent, character and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda which is instigated from foreign countries or has a domestic origin, and attacks our form of government as guaranteed by the Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation. The Committee's power to conduct such investigatory hearings in aid of the Congressional legislative function is now beyond question. See *Quinn* vs. *United States* 349 U. S. 155, 160, 99 L. Ed. 964, 971 (1955); *Barenblatt* vs. *United States*, ... F. 2d ... (D. C. Cir. 1957). *Cf. Eggers* vs. *Kenny*, 15 N. J. 107, 114 (1954). Dr. Lowenstein, Mrs. Laba and Mr. Zimmerman were called to testify before the subcommittee and they all appeared on May 19, 1955. They answered preliminary inquiries but then declined, generally after conferring with their counsel, to answer particular questions which bore, *inter alia*, on present and past membership in, or association with, the Communist Party. In one form or other their refusals were rested on the Fifth Amendment of the United States Constitution; their refusals were for the most part honored by the subcommittee and, in any event, they were never cited for contempt. See *Byse, Teachers and the Fifth Amendment*, 102 *U. Pa. L. Rev.* 871 (1954); *Finkelhor and Stockdale, The Professor and The Fifth Amendment*, 16 *U. Pitt. L. Rev.* 344 (1955). On the same day the Superintendent of Schools of the City of Newark suspended them (*R S.* 18:6–42) and four days later he preferred charges which referred to their refusal to testify before the House subcommittee and alleged that such conduct constituted just cause for dismissal under *R. S.* 18:13–17. A hearing on the charges was held before the Board of Education of Newark and a fair reading of the transcript indicates that the single issue under consideration was whether the refusal to testify before the House subcommittee,

in itself, constituted just cause for dismissal under *R. S.* 18:13–17 which provides that teachers under tenure shall not be dismissed "except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause." Counsel for the Board repeatedly pointed out during the hearing that the sole charge was that the teachers had refused to talk when they should have, that they thereby lost their usefulness and fitness as teachers, and that that was "the only issue." At one point he remarked that the teachers were charged with having "refused to talk at a certain place"; that it would be no defense for them to assert that they were good teachers and were not Communists; that it would, however, be a defense if they established that the record of their refusals to testify was wrong; and that none of them could "offer any evidence on that except I did or didn't refuse to testify. The rest of it is argument." During the hearing the teachers did offer to answer one, though only one, question which was apparently designed to elicit that they were not then Communists; the offer was declined.

At the conclusion of the hearing the Board, by a vote of five to four, sustained the charges against the teachers and dismissed them as of May 19, 1955. They appealed to the State Commissioner of Education in accordance with *R. S.* 18:3–14. The State Commissioner took no additional testimony but he did have a complete transcript of the proceedings before the Board. A hearing was held on September 15, 1955 before the Assistant Commissioner. All counsel argued and briefs were filed by the parties as well as various amici curiae. On May 9, 1956 the State Commissioner filed his formal decision which remanded the matter for further proceedings before the Board. He noted that the evidence before the Board had consisted of little more than the transcript of the House subcommittee hearing; that no other inquiry whatever had been made as to the "fitness" of the teachers; that "no evidence was adduced as to what the appellants' affiliations were in fact, or as to their reasons or justifications for exercising their constitutional privileges"; and that the Board had "rested its decision squarely on the proposition that in a Congressional inquiry into Communism and subversion generally, where a witness is questioned as to his affiliations and associations, his invoking the privilege against self-incrimination is *per se* conduct unbecoming a teacher and just cause for his dismissal under *R. S.* 18:13–17." He then recognized that the Board's action would fly directly in the face of the Supreme Court's decision in the *Slochower* case which, though it was rendered after the Board had taken its action, was fully binding upon him as it is upon us. Accordingly he set aside the Board's decision though, in view of the acknowledged need for keeping sensitive areas, such as the public school systems, wholly free from subversive elments which seek the overthrowal of our free society, he did not order immediate reinstatement of the teachers but remanded the proceedings for appropriate inquiry by the supervisory school authorities of Newark. See *Thorp* vs. *Bd. of Trustees of Schools for Industrial Ed.*, 6 N. J. 498, 513 (1951), *judgment vacated as moot*, 342 U. S. 803, 96 L. Ed. 608 (1951), where this Court sustained the constitutionality of New Jersey's statutory requirement that public school teachers take a prescribed oath of allegiance which disavows membership in or affiliation with organizations (such as the Communist Party) which advocate governmental changes by force or violence. See *Dennis* vs. *United States*, 341 U. S. 494, 95 L. Ed. 1137 (1951). *Compare Garner* vs. *Los Angeles Board*, 341 U. S. 716, 95 L. Ed. 1317 (1951) *with Wieman* vs.

Updegraff, 344 U. S. 183, 97 L. Ed. 216 (1952). In the *Thorp* case, *supra*, Justice Heher had the following to say for all members of this Court:

> "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 qualifications. The apprehended danger is real and abiding. We have long had evidences 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 the 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."

In his decision, the State Commissioner suggested that, consistent with *Slochower* and the earlier Supreme Court opinions in *Adler* vs. *Board of Education*, 342 U. S. 485, 96 L. Ed. 517 (1952) and *Garner* vs. *Los Angeles Board*, *supra*, there were open to the Board the following courses or a combination thereof: (1) it could conduct "its own inquiry into alleged subversive activities or affiliations of the appellants"; refusal to answer in such inquiry would constitute just cause for dismissal *(cf. Thorp* vs. *Bd. of Trustees of Schools for Industrial Ed., supra);* and (2) it could itself investigate the refusal of the appellants to testify before the House subcommittee "going into such factors as the subject matter of the questions. the remoteness of the period to which they are directed, the existence of justification for exercising of the privilege, and the reason or reasons why the appellants made the plea"; it was the State Commissioner's view, as indicated in his brief before this Court, that if such second line of inquiry disclosed that their refusals to answer before the House subcommittee were patently "frivolous or contumacious" there would likewise be just cause for dismissal. *Cf. Slochower* vs. *Board of Education*, *supra*, 350 U. S. at 558, 100 L. Ed. at 700. Although the State Commissioner did not mention them, reference may appropriately be made to the paths suggested in earlier statements by outstanding educators throughout the country. Thus the American Association of University Professors had expressed the view that invoking the Fifth Amendment was not "in and of itself" justifiable cause for dismissal but cautioned that its stand was not to be construed as advising or generally approving such action by teachers under investigation. The Association of American Universities had voiced the opinion that "invocation of the Fifth

Amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position and lays upon his university an obligation to re-examine his qualifications for membership in its society." And in 1953 the Association of American Law Schools' Committee on Academic Freedom and Tenure* had prepared a comprehensive report on the subject; it took the position that a faculty member could not rightly be dismissed "solely because he refused on Fifth Amendment grounds to answer the questions of a legislative committee"; it stressed, however, that a faculty member is not justified in withholding information in any interview or hearing conducted by his own academic institution and made the following comments which bear on the particular lines of inquiry suggested by the State Commissioner:

> "Whether a faculty member who has refused to answer a legislative question may be found unfit for his post can be determined only by an investigation of all the relevant circumstances, including the individual's entire record as a teacher and scholar and the reasons which prompted his refusal to testify. If the reasons involve a desire to conceal continuing illegal or immoral conspiratorial activity of the faculty member or of others, an adverse judgment may of course be reached. If the reasons lay in confusion or fear produced by the investigation, they may have little bearing upon the faculty member's fitness; if they involved sincere ethical or political principles, their bearing will hardly be adverse. If the witness's refusal to testify resulted from a decision to withhold evidence of his past or present illegal conduct, the question of his fitness turns upon the justifiability of his decision, upon whether the conduct continues, and upon the relevance of that conduct to his academic duties. A good-faith reliance upon the constitutional privilege to remain silent is not misconduct, but contumaciousness toward a legislative committee is and may be weighed in the balance." *Association of American Law Schools, Proceedings* 111 (1953).

Cf. Association of American Law Schools, Proceedings 115 (1954); *Id., Proceedings* 119 (1955); *Id., Program and Reports of Committees* 41 (1956); *Academic Freedom and Tenure in the Quest for National Security*, 42 *AAUP Bulletin* 49 (Spring 1956).

The Fifth Amendment contains the now well-known constitutional privilege (or right) that no person shall be compelled in any criminal case to be a witness against himself. Its origin, history and current application have been extensively dealt with elsewhere. See 8 *Wigmore, Evidence* §§ 2250-2284 (3d ed. 1940); *Morgan, The Privilege Against Self-Incrimination*, 34 *Minn.*

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* The Committee was composed of the following distinguished legal scholars: Dean and Professor Jefferson D. Fordham, University of Pennsylvania; Professor Lon L. Fuller, Harvard University; Professor Walter Gellhorn, Columbia University; Professor Paul G. Kauper, University of Michigan; Professor Douglas B. Maggs, Duke University; Professor Rollin M. Perkins, University of California at Los Angeles; Professor Don W. Sears, University of Colorado; Professor R. Dale Vliet, University of Oklahoma; Professor Ralph F. Fuchs, Indiana University, Chairman. Although the Committee's report was recommitted, the ensuing Committee's report which was adopted in 1954, adhered to the position that a faculty member's invocation of the Fifth Amendment would not "in and of itself" constitute ground for dismissal but was sufficient to call for a general fitness inquiry by his educational institution. *Association of American Law Schools, Proceedings* 44 (1953); *Id., Proceedings* 20, 115 (1954).

L. Rev. 1 (1949); *Clapp, Privilege Against Self-Incrimination,* 10 Rutgers *L. Rev.* 541 (1956). *Cf. Williams, Problems of the Fifth Amendment,* 24 *Fordham L. Rev.* 19 (1955); *Claflin, The 1956 Ross Essay—The Self-Incrimination Clause,* 42 *ABAJ* 935 (1956). Although some have traced the privilege to the twelfth century and the inquisitorial practices of the Ecclesiastical Courts its significant beginnings in the common law may be said to have occurred in the seventeenth century. It had been customary to make the accused person give evidence against himself and there are frightening descriptions of the torturous methods which were actually used. In 1637 "Freeborn John" Lilburn was brought before the Star Chamber for having imported heretical books but refused to take the oath to answer. He was sentenced to be whipped and pilloried and the sentence was actually carried out. Thereafter in 1641 the House of Commons declared that the sentence was "illegal, and most unjust, and against the liberty of the subject" and ordered that Lilburn be paid a large indemnity. After this occurrence the privilege became entrenched as a vital part of the English common law, was carried over into Colonial American law, was included in the 1776 Virginia Declaration of Rights, and was embodied in the 1791 Bill of Rights of the United States Constitution as an individual safeguard against oppression and harassment by the newly created federal government. In *Twining* vs. *New Jersey,* 211 U. S. 78, 91, 53 L. Ed. 97, 103 (1908), Justice Moody pointed out that the privilege was then regarded "as now, as a privilege of great value, a protection to the innocent, though a shelter to the guilty, and a safeguard against heedless, unfounded, or typrannical prosecutions."

Throughout the years the privilege has survived though it has been by no means free from intermittent attacks. In his article on the subject Judge Clapp cites many of the earlier criticisms by Bentham, Pound, Terry and others. A current atttack may be found in *Baker, Self Incrimination: Is the Privilege an Anachronism,* 42 *ABAJ* 633 (1956). *Cf. Pittman, The Fifth Amendment: Yesterday, Today and Tomorrow,* 42 *ABAJ* 509 (1956). In *Palko* vs. *Connecticut,* 302 U. S. 319, 325, 82 L. Ed. 288, 292 (1937), Justice Cardozo acknowledged that, with suitable protection against physical and mental torture, justice may be done under systems (such as prevail in other parts of the world) which contain no immunity from compulsory self-incrimination and he noted that "there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope or destroy it altogether." But there are at least equally competent and sincere students who firmly believe otherwise and their views have found favor in recent opinions of the United States Supreme Court. See *Quinn* vs. *United States, supra; Ullmann* vs. *United States.* 350 U. S. 422, 426, 100 L. Ed. 511, 518 (1956); *Slochower* vs. *Board of Education, supra; cf. State* vs. *Fary,* 19 N. J. 431, 434 (1955). In his recent addresses, *The Fifth Amendment Today* (1955), Dean Griswold has forcefully suggested that "the privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized"; he has pointed out that it may be invoked not alone by the culpable but also by conscientious men who are innocent although honestly in fear of the risk of prosecution; and he has urged that if the privilege is to remain effective against the inquisitional dangers which it has sought to curb, it must be given comprehensive rather than narrow application. In the *Quinn* case Chief Justice Warren approvingly cited Dean Griswold's discussions and noted that the self-incrimination clause

of the Fifth Amendment is entitled to a liberal construction in favor of the right it was intended to secure. In the *Ullmann* case Justice Frankfurter quoted Griswold and stressed that since the Fifth Amendment represented an important advance in the development of our liberties it is not to be interpreted in a hostile or niggardly spirit. And in the *Slochower* case Justice Clark likewise cited Dean Griswold and vigorously rejected the notion that only the guilty use the Fifth Amendment; in the course of his opinion for a majority of the Court he said (350 U. S. at 557, 100 L. Ed. at 700):

> "At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment. The right of an accused person to refuse to testify, which had been in England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment, and it has been recognized as 'one of the most valuable prerogatives of the citizen.' *Brown v. Walker*, 161 US 591, 610, 40 L ed 819, 825, 16 S Ct 644. We have reaffirmed our faith in this principle recently in *Quinn v. United States*, 349 US 155, 99 L ed 964, 75 S Ct 668. In *Ullmann v. United States*, 350 US 422, 100 L ed 511, 76 S Ct 497, decided last month, we scored the assumption that those who claim this privilege are either criminals or perjurers. The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. As we pointed out in *Ullmann*, a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances. See *Griswold, The Fifth Amendment Today* (1955)."

In *Slochower* an associate professor at Brooklyn College, an institution maintained by the City of New York, had appeared before the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate and had refused to answer questions concerning his Communist Party membership during 1940 and 1941 on the ground that his answers might tend to incriminate him. Shortly thereafter he was suspended from his position at the College and it was later declared vacant under Section 903 of the New York City Charter. That Section provided that if any City employee refused to answer questions on the ground that his answers may tend to incriminate him, then his employment would terminate. The New York Court of Appeals sustained Slochower's automatic dismissal and he appealed asserting violation of the Due Process and Privileges and Immunities Clauses of the Fourteenth Amendment. The Supreme Court sustained his claim under the Due Process Clause and adopted or reaffirmed the following principles: A state or its governmental subdivisions may not, without violating the Due Process Clause, dismiss a public employee pursuant to a statute which is patently discriminatory or arbitrary—thus it may not exclude persons from public employment solely on the basis of organizational memberships without regard to knowledge of their unlawful nature. *Wieman* vs. *Updegraff*, *supra*. It may, however, dismiss public employees who, after notice and hearing, are found to advocate the overthrow of government by unlawful means or who are unable to explain satisfactorily membership in organizations found to have that aim. *Adler* vs. *Board of Education*, *supra*. Similarly it may inquire of public employees as to matters which relate to

their continued fitness to serve as public employees including past and present membership in the Communist Party and associated organizations and may discharge employees who fail to disclose pertinent information which the supervising authorities may require. *Garner* vs. *Los Angeles Board, supra.* But it may not infer guilt and discharge public employees solely (and without regard to other circumstances) because they exercised their constitutional privilege under the Fifth Amendment before a Congressional investigating committee. See 350 U. S. 558, 559, 100 L. Ed. 700, 701. *Cf. McKay, Constitutional Law,* 31 *N. Y. U. L. Rev.* 1358, 1359 (1956); *Note, The Supreme Court 1955 Term,* 70 *Harv. L. Rev.* 83, 120-123 (1956); *Note,* 31 *St. John's L. Rev.* 78, 91 (1956); *Note,* 41 *Minn. L. Rev.* 128 (1956); *Note,* 10 *Vand. L. Rev.* 139 (1956); *Note,* 35 *N. C. L. Rev.* 90 (1956); *Note,* 16 *Md. L. Rev.* 259 (1956); *Note,* 25 *Fordham L. Rev.* 526 (1956); *Note,* 54 *Mich. L. Rev.* 126 (1955). See *Board of Public Education School Dist.* vs. *Beilan,* 386 Pa. 82, 125 A. 2d 327, 332 (1956). *Cf. Kutcher* vs. *Housing Authority of City of Newark,* 20 N. J. 181, 188 (1955). But *cf. Annot., Assertion of immunity as ground for removing or discharging public officer or employee* 44 A. L. R. 2d 789 (1955); *Faxon* vs. *School Committee of Boston,* 331 Mass. 531, 120 N. E. 2d 772 (1954); *Davis* vs. *University of Kansas,* 129 F. Supp. 716 (W. D. Mo. 1955).

The Board seeks to distinguish *Slochower* on the ground that no hearing was there afforded to the professor whereas here the teachers did have a hearing before the Board. But the hearing required by the Due Process Clause, must be, as the Court's opinion in *Slochower* indicates, a fair and meaningful one (*cf. Handlon* vs. *Town of Belleville,* 4 N. J. 99 (1950)) which does not turn, as did the hearing in the instant matter, exclusively on the single factual issue of whether the teachers did actually plead the Fifth Amendment before the Congressional subcommittee. The fact that they did was never disputed. As in *Slochower* there was realistically no "opportunity to explain"; no consideration was given to the controlling general issue of whether in the light of all the pertinent circumstances the individuals involved were fit to continue in the public school system; no weight was given to "such factors as the subject matter of the questions, remoteness of the period" to which they were directed or "justification for exercise of the privilege"; and it mattered not "whether the plea resulted from mistake, inadvertence or legal advice conscientiously given, whether wisly or unwisely." See 350 U. S. at 558, 100 L. Ed. at 700. The State Commissioner properly found that the Board rested its decision on the invalid proposition that the teachers' invocation of the Fifth Amendment before the Congressional Committee constituted "*per se* conduct unbecoming a teacher and just cause for his dismissal under *R. S.* 18:13–17." We are satisfied that in the light of the holding in *Slochower,* the proceedings were properly remanded for further inquiry (without reinstatement of the teachers in the interim) and the Board has no just or reasonable basis for complaining about his action. See *San Francisco Board of Education* vs. *Mass,* ..... Cal. 2d ....., ... P. 2d ..... (December 21, 1956) where the California Supreme Court, in fulfillment of *Slochower,* recently set aside a local board of education's dismissal of a teacher, made after a hearing which was confined to the issue of whether he had in fact pleaded the Fifth Amendment, and remanded the proceeding for a full inquiry before the Board.

We come now to the several points advanced by the individual teachers in support of their contention that the State Commissioner should not have remanded the proceedings but should have taken final action reinstating them. *R. S.* 18:3–14 provides that the State Commissioner shall decide all controversies and disputes under the School Laws; that the facts shall, if required by the Commissioner, be made known to him by the parties by written statements verified by oath; and that his decision shall be binding "until a decision thereon is given by the state board on appeal." While the statutory language leaves much to be desired it sufficiently evidences the legislative purpose to set up a comprehensive system of internal appeals with broad powers vested in the administrative tribunals to insure that controversies are justly disposed of in accordance with the School Laws. Absent specific legislative direction, the administrative tribunals may mould their own procedures so long as they operate fairly and conform with due process principles. See *F. C. C.* vs. *Pottsville Broadcasting Co.*, 309 U. S. 134, 143, 84 L. Ed. 656, 662 (1940); *Handlon* vs. *Town of Belleville, supra.* Within the statutory phraseology, an appeal from a determination by a local board of education may readily be permitted to follow a course comparable to the ordinary appeal in our judicial structure. Thus where the original record before the Board is wholly adequate the State Commissioner may, after hearing, determine the matter without additional testimony; where further evidence is necessary he may have the record supplemented. See *Schwarzrock* vs. *Bd. of Education of Bayonne*, 90 N. J. L. 370 (Sup. Ct. 1917); *R. R.* 4:88–9. In reaching his determination he must, of course, give due weight to the nature of the findings below, although his primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated. *Cf. Boult* vs. *Board of Education of Passaic,* 136 N. J. 521 (E. & A. 1948); *Viemeister* vs. *Bd. of Education of Prospect Park*, 5 N. J. Super. 215 (App. Div. 1949). Where he reasonably concludes that his responsibility will best be discharged, not by an immediate final decision, but by a remand for further inquiry before the Board, we know of no rational basis for precluding him from taking such action.

The inherent procedural power to remand in the interests of justice has long been applied in the courts. See *Ford Motor Co.* vs. *National Labor Relations Board*, 305 U. S. 364, 373, 83 L. Ed. 221, 229 (1939); *Grant* vs. *Grant Casket Co.*, 137 N. J. L. 463, 465 (Sup. Ct. 1948), *aff'd*, 2 N. J. 15 (1949). Since the creation of our new judicial structure under the 1947 Constitution, court procedures have become more flexible and we have displayed consistent recognition that they must always conform with good sense and justice; in appropriate instances this Court has not hesitated to remand for further inquiry in the court below even though strict adherence to the procedural niceties might well have dictated another course. See *Devlin* vs. *Surgent*, 18 N. J. 148, 153 (1955); *Vacca* vs. *Stika*, 21 N. J. 471, 475 (1956). Similarly this Court has acknowledged that if administrative tribunals are to be permitted to function effectively they likewise must have broad powers to adjust their procedures in furtherance of their proper objectives. See *Handlon* vs. *Town of Belleville, supra; Air-Way Branches, Inc.* vs. *Board of Review*, 10 N. J. 609, 614 (1952); *In re Plainfield-Union Water Co.*, 14 N. J. 296, 305 (1954). In the *Handlon* case we held that the power to reconsider "may be invoked by administrative agencies to serve the essential ends of justice and the policy of the law"; and in the *Air-Way* case we

referred to the "enlightened view" that administrative agencies may advance the interests of justice by exercising the powers comparable to those possessed by courts, "of reopening their determinations for further consideration and disposition." See *Forkosch, Administrative Law* 486 (1956); *Davis, Administrative Law* 323 (1951).

The State Commissioner acted well within his authority in remanding the proceedings to the Board for further inquiry and, if necessary, for the amendment and supplementation of the charges against the teachers. The power to amend and supplement is widely applied in the courts (*R. R.* 4:15) and may be given even broader scope in this administrative proceeding where the traditional judicial problems of limitations and new causes of action have no bearing whatever. See *Gudnestad* vs. *Seaboard Coal Dock Co.*, 15 N. J. 210, 223 (1954). *Cf. Welsh* vs. *Bd. of Ed. of Tewksbury Tp.*, 7 N. J. Super. 141 (App. Div. 1950). And we find no error in the State Commissioner's refusal to order reinstatement of the teachers pending further inquiry and determination. While the individual interests concerned are of great importance, society's interest is also of great importance and undoubtedly the State Commissioner balanced them conscientiously in reaching his conclusion that the public interest will best be served by a remand for further proceedings without interim reinstatement. On the record before us we cannot say that he erred in his judgment or exceeded his authority. We find nothing of merit in the teachers' point that the further inquiry called for by the State Commissioner should be held before him rather than the Newark school authorities. There is no substantial reason to believe that the local personnel is not sufficiently equipped to conduct a fair and impartial inquiry or that it will fail to do so in compliance with the principles expressed by the State Commissioner and this Court. The School Laws contemplate that where the general issue of fitness is presented the original determination should be made locally with ample safeguards on review before the State school authorities and the courts. See *Russo* vs. *Meyner*, 22 N. J. 156, 168 (1956). In the instant matter there has never been any suitable inquiry and determination at the local level and the State Commissioner, soundly believing that there should be, took the appropriate action.

An attack is made on the sufficiency of the statutory standard which will necessarily guide the Newark Board. It is found in *R. S.* 18:13–17 which provides that tenure teachers shall be dismissed only for "inefficiency, incapacity, conduct unbecoming a teacher or other just cause." It has been in our statutes for almost fifty years (*L.* 1909, c. 243) and is comparable to the standards embodied in the school tenure enactments of most of the other states. It is, of course, general in terms but measured by common understanding it fairly and adequately conveys its meaning to all concerned. See *Jordan* vs. *De George*, 341 U. S. 223, 95 L. Ed. 886 (1951); *Kovacs* vs. *Cooper*, 336 U. S. 77, 93 L. Ed. 513 (1949); *Ward* vs. *Scott*, 11 N. J. 117 (1952); *Berardi* vs. *Rutter*, 42 N. J. Super. 39 (App. Div. 1956); *State* vs. *Wheeler Auto Driving School, Inc.*, 17 N. J. Super. 488 (App. Div. 1952). In the *Berardi* case (now on appeal in this Court) the Appellate Division cited many of the statutes and cases which permit removal of public employees for just cause. See *Haight* vs. *Love*, 39 N. J. L. 14, 22 (Sup. Ct. 1876), *aff'd*, 39 N. J. L. 476 (1877); *Brokaw* vs. *Burk*, 89 N. J. L. 132, 135 (Sup. Ct. 1916); Heher, J. in *Russo* vs. *Meyner*, *supra* 22 N. J. at 179. And

in the *Ward* case we referred to the many statutory standards, both federal and state, which have been constitutionally upheld though at least as general in terms. See *Schierstead* vs. *City of Brigantine*, 20 N. J. 164, 169 (1955); *Metropolitan Motors* vs. *State*, 39 N. J. Super. 208, 213 (App. Div. 1956). The courts have found little difficulty in reaching a commonsensible application of *R. S.* 18:13–17. Thus in *Smith* vs. *Carty*, 120 N. J. L. 335 (E. & A. 1938) a school teacher was found to be unfit to teach in the Paterson school system because she had obtained a loan through actual fraud and misrepresentation; the Court of Errors and Appeals sustained her dismissal upon the finding that the evidence supported the determination of the school authorities that she had been guilty of conduct unbecoming a teacher. In *Harrison* vs. *State Board of Education*, 134 N. J. L. 502 (Sup. Ct. 1946) the court found that the prosecutrix had evinced resentment of supervision and had repeatedly displayed "a willful refusal of submission" to the authority of her superiors; it sustained her dismissal for insubordination constituting just cause within *R. S.* 18:13–17. Similarly in *Cheeseman* vs. *Gloucester City*, 1 N. J. Misc. 318 (Sup. Ct. 1923) the dismissal of a teacher was sustained for insubordination in refusing to obey an order of transfer. On the other hand in *School Dist. Wildwood* vs. *State Board of Education*, 116 N. J. L. 572 (Sup. Ct. 1936) there was a summary rejection of the contention that marriage by a teacher may constitute just cause for her dismissal; the court accepted the State Board's position that the statutory reference to other just cause implies "a dereliction by the teacher, which may be the subject matter of a charge against her." *Cf. Redcay* vs. *State Board of Education*, 130 N. J. L. 369 (Sup. Ct. 1943), *aff'd*, 131 N. J. L. 326 (E. & A. 1944).

The very recent decision of the Pennsylvania Supreme Court in *Board of Public Education School Dist.* vs. *Beilan*, *supra*, dealt with the dismissal of Mr. Beilan, a teacher in the School District of Philadelphia, who was protected under a state statute against dismissal for reasons other than "incompetency" etc. Mr. Beilan had refused to answer questions which were propounded during a private interview with his school superintendent. Thereafter the local Board of Education conducted a hearing, which was also private at Mr. Beilan's request, and at the conclusion he was dismissed "for refusal to answer pertinent questions bearing directly upon his fitness as a teacher and, therefore, his competency." See 125 A. 2d at 329. The Pennsylvania Supreme Court sustained his dismissal pointing out that, unlike *Slochower*, it was in nowise based upon a refusal to answer during a hearing before a Congressional Committee but was based on a finding that he had refused to answer questions relating to his fitness during an interview with his administrative superior. In the course of his opinion for the court Justice Chidsey, after pointing out that incompetency as a cause for dismissal should be given a broad meaning, said:

> "Certainly a teacher who refuses to respond to a pertinent inquiry relative to his fitness to teach is not competent within the broad reach of that term, whether the inquiry concerns loyalty or any other proper subject of inquiry. Frankness and cooperation with an administrative superior bear directly upon a teacher's competency. They are as essential in one occupying a post of public trust and civic responsibility as academic qualifications. Can it be seriously argued that where the superintendent of schools has trustworthy information indicating that a teacher has an incurable communicable disease or that he is a peddler of narcotics, or,

as here, that he may entertain Communistic ideologies which could be transmitted to the youth in his care, that no inquiry can be made as to the fact that the teacher is not required to respond. As well stated in the brief of counsel for the appellant: '* * * The State Constitution requires the General Assembly to maintain a thorough and efficient system of public schools [P. S. Const. art. 10, §1]. The School Code is the legislative implementation of this Constiutional duty. The rights and duties of a Superintendent have grown with custom and with professional usage. Many of his duties are imposed on him by tradition. It is one of his duties under the School Code to make sure that the teaching staff is competent, and therefore to weed out professionally unfit teachers. This is a continuing process that the Superintendent carries on. The Superintendent has the power and the duty, whenever the facts indicate the need, to inquire into and reevaluate the fitness of a teacher.' Unquestionably there is a reciprocal duty on the part of the teacher to fully and frankly cooperate. He may not block such proper inquiry by secretiveness or concealment."

In the report of the Committee on Academic Freedom and Tenure (*Association of American Law Schools, Proceedings* 97 (1953)) the point is made that an investigation of a teacher by his administrative superior is not a traditional adversary proceeding and that a faculty member is not justified in withholding relevant information which is sought during the course thereof. And in response to a contention that the local school superintendent was not the authorized superior to make the initial inquiry the court in the *Beilan* case aptly said:

"Appellee also contends that the Superintendent was not authorized to make the inquiry. There is no more important branch of government than the administration of our public school system. It is a continuing process of education for the maintenance of our democracy. The right of a superintendent of schools to reevaluate a teacher's fitness to be retained in his position is inherent and need not be expressly authorized by statute or local rule or regulation. In a private school the refusal to respond to a pertinent inquiry as to a teacher's fitness made by the superintendent or head of the institution would certainly not be tolerated, but would result in the teacher's discharge. A public school should not be placed in an inferior position in this regard. While the tenure provisions of the School Code protect teachers in their positions from political or other arbitrary interferences, they were not intended to insulate them from proper inquiry as to their fitness and their discharge for failure to cooperate with their superiors in authority to the detriment of the efficient administration of the public school system. The School Code expressly provides that incompetence shall be a cause for dismissal and under the broad meaning properly ascribed to that term, appellee rendered himself incompetent as a member of the school organization."

In the instant matter the State Commissioner suggested courses of inquiry which, after consideration of all the pertinent circumstances, may either satisfy the local school authorities that one, two or all of the individual teachers are fit to continue to teach in the Newark School System or may indicate the need for further prosecution under *R. S.* 18:13–17 of the present charges, as amended and supplemented. In the light of our controlling

legislation it is clear that in this State any person who is now a member of the Communist Party or who is now subject to its ideologies and disciplines is unfit to teach in our public schools and should be dismissed under *R. S.* 18:13–17. See *R. S.* 18:13–9.1; *R. S.* 18:13–9.2; *Thorp* vs. *Bd. of Trustees of Schools for Industrial Ed., supra.* The matter may no longer be viewed simply as one of academic freedom of thought and expression for it has actually become one of self-preservation; we are convinced that Communism is an alien concept which is dedicated to the overthrowal of our form of government, by force if necessary, and seeks to deprive us of the very basic constitutional liberties which we all hold so dear; recent world happenings furnish further evidence of the futility of its solemn promises and the barbarism of its deliberate actions. We have no doubt that in examining into their continued fitness to teach the Newark school authorities may interrogate the appellant school teachers with respect to their present and past association with the Communist Party and affiliated organizations and are entitled to frank and full disclosures. Orderly procedure dictates that the preliminary inquiry on the subject be made fairly and conscientiously by the local school superintendent (*R. S.* 18:4–7; *R. S.* 18:4–10; *R. S.* 18:6–38); his interrogation may also include questions about the teachers' conduct before the House subcommittee although this inquiry should not be used as a means of undoing the acknowledged constitutional protection of the Fifth Amendment but should be fairly limited and directed towards ascertaining whether the refusals to answer were patently contumacious or frivolous rather than in good faith. See *Association of American Law Schools, Report of the Committee on Academic Freedom and Tenure, Proceedings* 113 (1953); *Byse, supra* at 881. See also *In re Levy*, 255 N. Y. 223, 174 N. E. 461 (1931); *In re Grae*, 282 N. Y. 428, 26 N. E. 2d 963 (1940). *Cf. Sheiner* vs. *State*, ...Fla....., 82 So. 2d 657 (1955); *In re Holland*, 377 Ill. 346, 36 N. E. 2d 543 (1941). If after the inquiry it appears that the teachers are now members of the Communist Party or are now subject to its ideologies and disciplines *(Thorp* vs. *Bd. of Trustees of Schools for Industrial Ed., supra)* or that they have willfully refused to answer pertinent questions fairly submitted by their administrative superiors *(Board of Public Education School Dist.* vs. *Beilan, supra)* or that they have contumaciously or frivolously refused to answer before the House subcommittee *(In re Levy, supra; In re Grae, supra)* then there would seem to be ample basis for Board action within the broad and valid statutory standard embodied in *R. S.* 18:13–17.

The final question requiring our attention relates to the effect of various New Jersey statutory provisions on the further inquiry by the Newark School Superintendent and the Board of Education. Unlike substantially all other states, New Jersey's Constitution contains no express provision embodying the privilege against self-incrimination although it has always been part of our common law and has been dealt with from time to time in legislative enactments. *State* vs. *Fary, supra*, 19 N. J. at 435; *State* vs. *Toscano*, 13 N. J. 418, 423 (1953); *In re Pillo*, 11 N. J. 8, 16 (1952); *In re Vince*, 2 N. J. 443, 449 (1949); *Bianchi* vs. *Hoffman*, 36 N. J. Super. 435, 438 (App. Div. 1955). Subject to the requirements of Due Process, there would appear to be nothing in either our Federal or State Constitution which prohibits our Legislature from curbing the scope of the privilege. See *Twining* vs. *New Jersey, supra; Adamson* vs. *California*, 332 U. S. 46, 91 L. Ed. 1903 (1947). But *cf. Clapp, supra* at 570 n. 116. The first State enactment of any perti-

nence was contained in an 1849 supplement to the act concerning practice in the courts of law. This represented the first inroad into the now quaint common law notion that because of their interest parties should not be permitted to testify; it set forth that a party shall testify when called by the adverse party, but had a proviso that no party shall be compelled to testify "where the action is brought to recover a penalty or to enforce a forfeiture." *L.* 1849, p. 265. Three years later the statute was extended to most suits in the Court of Chancery. *L.* 1852, c. 119, p. 257. In 1855 a report of law commissioners was submitted to the Legislature and pursuant thereto a comprehensive act concerning evidence was adopted. *L.* 1855, c. 236, p. 668. It extended somewhat the right of a party to testify, set forth that interest shall not disqualify a witness from testifying and directed that a witness shall not be excused from answering material questions provided "the answers will not expose him to a criminal prosecution or penalty, or to a forfeiture of his estate." In 1871 the Legislature provided that an indicted person shall be admitted to testify at his trial "if he shall offer himself" as a witness in his own behalf. *L.* 1871, c. 40, p. 12. There were later revisions culminating in the 1951 revision of the statutes relating to the administration of civil and criminal justice; in particular, reference has been made on the teachers' behalf to *N. J. S.* 2A:81–5, *N. J. S.* 2A:81–6 and *N. J. S.* 2A:81–8.

N. J. S. 2A:81–8, which provides that on the trial of an indictment the defendant shall be admitted to testify if he offers himself as a witness, has no real bearing here. *N. J. S.* 2A:81–6 provides that "in all civil actions in any court of record" a party shall give evidence when called by the adverse party "but no party shall be compelled to be sworn or give evidence in any action brought to recover a penalty or to enforce a forfeiture." Its express terms would seem to indicate its inapplicability in the instant matter. However, *N. J. S.* 2A:81–5 does provide more comprehensively that "no witness shall be compelled to answer any question if the answer will expose him to a criminal prosecution or penalty or to a forfeiture of his estate"; we shall assume that this provision applies fully to proceedings before administrative tribunals as well as judicial tribunals. See *State* vs. *Rixon*, 130 Minn. 573, 231 N. W. 217, 68 A. L. R. 1501 (1930); *Hirshfield* vs. *Henley*, 228 N. Y. 346, 127 N. E. 252 (1920). *Cf. Commonwealth* vs. *Prince*, 313 Mass. 223, 46 N. E. 2d 755 (1943), *aff'd*, 321 U. S. 158, 88 L. Ed. 645 (1944). Nevertheless we are satisfied that a public school teacher may not, during an inquiry as to his continued fitness to teach, decline to answer pertinent questions in reliance on *N. J. S.* 2A:81–5 without incurring the danger of a resulting dismissal under *R. S.* 18:13–17. We incline to reject the teachers' contention that a public school teacher's tenure is "a property right—a part of his estate" and that dismissal of a teacher because of misconduct is a forfeiture of his estate within the meaning of *N. J. S.* 2A:81–5. In England, public offices were incorporeal hereditaments and the subjects of vested or private interests but in the United States, and particularly in our State, they were never viewed as being held by grant or contract and individuals have never had any vested or property rights in them. See *Stuhr* vs. *Curran*, 44 N. J. L. 181 (E. & A. 1882). *Cf. De Marco* vs. *Bd. of Chosen Freeholders of Bergen County*, 21 N. J. 136, 141 (1956). In *Phelps* vs. *State Board of Education*, 115 N. J. L. 310, 314 (Sup. Ct. 1935), *aff'd*. 116 N. J. L. 412 (E. & A. 1936), *aff'd*, 300 U. S. 319, 81 L. Ed. 674 (1937) Justice Parker pointed out that the status of tenure teachers was "in essence

dependent on a statute, like that of the incumbent of a statutory office, which the legislature at will may abolish, or whose emoluments it may change." *Cf. Thorp* vs. *Bd. of Trustees of Schools for Industrial Ed., supra,* 6 N. J. at 506. See *Annot., Teachers' tenure statutes,* 127 A. L. R. 1298, 1326 (1940); *Emerson and Haber, Political and Civil Rights in the United States* 878 (1952). In *Pfitzinger* vs. *United States Civil Service Commission,* 96 F. Supp. 1, 3 (D. N. J. 1951), *aff'd,* 192 F. 2d 934 (3d Cir. 1951) the court suggested that a federal employee who is called before the Civil Service Commission to account for alleged improper political activity may not assert that he is privileged to refuse to answer because of the danger of the loss of his employment; it described removal from his position as a "remedial sanction" and noted that "the imposition of such a remedial sanction, although it may be of serious consequence to the person affected, may not be regarded as a forfeiture of a right" but only as "the withholding of a privilege." See also *Application of Delehanty,* 202 Misc. 40, 115 N. Y. S. 2d 610 (Sup. Ct. 1952), *aff'd,* 280 App. Div. 542, 115 N. Y. S. 2d 614 (1st Dep't. 1952), *aff'd,* 304 N. Y. 727, 108 N. E. 2d 46 (1952).

Assuming that a teacher's loss of tenure may properly be viewed as a forfeiture of his estate, we still find nothing in the history, purpose or terms of *N. J. S.* 2A:81–5 which suggests that it was designed to protect a teacher against dismissal under *R. S.* 18:13–17 where he has refused to answer pertinent questions submitted by his administrative superiors. In the instant matter the teachers' conduct before the Congressional subcommittee reasonably calls for a fitness inquiry during which the teachers have a duty of cooperation and an affirmative burden in the establishment of their fitness. If they choose to remain silent under the protection of *N. J. S.* 2A:81–5 they must do so with full realization that their administrative superiors may justifiably conclude that they are no longer fit to teach. See *Board of Public Education School Dist.* vs. *Beilan, supra, Cf. Brownell, Immunity from Prosecution versus Privilege against Self-Incrimination,* 28 *Tul. L. Rev.* 1, 11 (1953); *Orloff* vs. *Willoughby,* 345 U. S. 83, 97 L. Ed. 842 (1953). As the court indicated in the *Beilan* case *supra,* no private institution of learning would hesitate to proceed expeditiously and reasonably against a teacher who refused to answer pertinent questions during the course of a fitness inquiry and the public interest clearly requires that similar authority be afforded to our public institutions of learning; we find nothing in our statutes which may fairly be construed as evidencing any legislative denial of such power. Indeed any doubts as to the wishes of our Legislature have largely been dissipated by the tenor of its recent enactments. See e. g., *L.* 1949, c. 23, p. 70 (*R. S.* 18:13–9.1, 9.2); *L.* 1953, c. 259, p. 1759 (*N. J. S.* 2A:81–17.1, 17.2). *Cf. L.* 1950, c. 210, p. 510 (*R. S.* 40:69A–167). The 1953 statute provides that any public employee who refuses, on grounds of self-incrimination, to testify on matters relating to his employment before any body of the State which has the right to inquire under oath into such matters shall forfeit his employment and his right of tenure or pension, provided the inquiry relates to a matter which occurred or arose within the preceding five years. It does not of course restrict the pre-existing power of a supervisory school authority to conduct an inquiry into the continued fitness of a teacher but seemingly has the additional effect that if, during the course of such an inquiry, there is a refusal to answer which falls within all of the pertinent terms of the statute, then dismissal is mandatory. We

consider it clear that a teacher's fitness inquiry is one which would relate to his employment within the meaning of the 1953 enactment. See *Shlakman* vs. *Board of Higher Education*, 282 App. Div. 718, 122 N. Y. S. 2d 286 (1953), *aff'd sub nom., Daniman* vs. *Board of Education*, 306 N. Y. 532, 119 N. E. 2d 373 (1954), *amended*, 307 N. Y. 806, 121 N. E. 2d 629 (1954), *rev'd sub nom., Slochower* vs. *Board of Education, supra.*

The greatness of the United States has in no small measure been due to the basic freedoms of inquiry and expression which educational institutions at all levels have nurtured and defended so faithfully. The traditions of academic freedom and tenure have been twin bulwarks in the maintenance of strong and indpendent faculty staffs and it is vital in these times that they not be permitted to wither or decay because of inertia or fear. On the other hand, present world conditions being what they are, it is equally vital that every educational institution rid itself of any faculty member who may justly be deemed no longer competent or fit to teach because of his subversive membership and activity. In recent days many thoughtful and highly respected educators have taken the position that, while the assertion by a faculty member of his constitutional privilege before a Congressional Committee does not constitute an admission of guilt or justify automatic dismissal. it does call for a full and conscientious inquiry as to whether he is qualified to continue in the discharge of his teaching responsibilities at a place dedicated to the advancement of democratic ideals. The like attitude of New Jersey's Commissioner of Education in the instant matter appears to us to be wholly consonant with our organic laws and the public interest and entirely fair to the individuals concerned. Accordingly, his action is in all respects:

Affirmed.

JOHN F. X. LANDRIGAN

vs.

BOARD OF EDUCATION OF THE CITY OF BAYONNE

Affirmed by State Board of Education without written opinion September 14, 1956.

SHIRLEY T. SELTZER

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,

Affirmed by State Board of Education without written opinion September 14, 1956.