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Affidavit for Writ of Certiorari.

(Filed December 9th, 1924.)

New Jersey Supreme Court

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

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v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,
Defendants.

On Applica-
tion for
Certiorari.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

Augusta Oliver, being duly sworn, on her oath
deposes and says:

I am the owner of the lands and premises known
as No. 124 West 25th Street, in the City of Ba-
yonne, County of Hudson and State of New Jer-
sey, and a freeholder and taxpayer in said city.

30

That Bert Daly, Harry Hosford, W. Homer Ax-
ford, Robert J. Talbot and Patrick J. O'Connell,
constitute the Board of Commissioners of the said
City of Bayonne, said Robert J. Talbot being the
Mayor of said City and Director of the Depart-
ment of Public Affairs thereof; Harry Hosford be-
ing the Director of the Department of Revenue
and Finance thereof; Bert Daly being Director
of the Department of Public Safety thereof; W.

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Affidavit for Writ of Certiorari.

Homer Axford being Director of the Department of Streets and Public Improvements thereof, and Patrick J. O'Connell being Director of the Department of Parks and Public Property thereof; and that the said Board of Commissioners of the City of Bayonne were elected to their said offices in May, 1923, and assumed the performance of their duties as such Commissioners on May 15, 1923; that the said City of Bayonne is governed by the so-called Commission Government or Walsh Act pursuant to which they were elected as such commissioners.

That preceding the said Commissioners in office, the Board of Commissioners of said City of Bayonne, elected pursuant to the same Act, consisted of said Bert Daly, W. Homer Axford, John P. Smith, John O. Devlin and Robert J. Talbot, and that shortly before the said present commissioners of the City of Bayonne assumed office as aforesaid, their predecessors by resolution appointed eleven (11) new firemen and forty-three (43) new policemen, and that upon the assumption of their duties by the aforesaid present commissioners they did, for the purposes of economy, and because unnecessary, adopt a resolution discharging such new appointees. That the said resolution was thereafter certiorated to the Supreme Court of the State of New Jersey, and the said resolution was set aside because the said new commissioners had assumed to act in the premises before their term of office actually commenced.

That shortly after the entry of judgment upon said certiorari, the aforesaid present commissioners of the City of Bayonne again passed a resolution rescinding the appointment of the said new policemen and firemen for reasons of economy and

Affidavit for Writ of Certiorari.

because such additional policemen and firemen were unnecessary, which said new resolution was likewise certioraried to the Supreme Court of the State of New Jersey, and is presently pending on review.

That between the time of the adoption of the first rescinding resolution on May 15, 1923, and the adoption of the new resolution on May 20, 1924, and on May 27, 1924, the said newly appointed policemen and firemen performed no service, and that on or about Nov. 16, 1924, and while the said resolution dispensing with said policemen and firemen was still pending on review, the said Bert Daly, as Director of the Department of Public Safety of the City of Bayonne, with the consent and approval of said Harry Hosford and W. Homer Axford, and against the protest of said Robert J. Talbot and Patrick J. O'Connell, directed the said new policemen and firemen to proceed with the performance of services in the police and fire departments respectively in said City.

That it has been the immemorial practice in the City of Bayonne for the Mayor thereof, and subsequently by the Directors of Public Affairs, to countersign all warrants for the payment of salaries to policemen, firemen and other employees of said City, together with the City Clerk and Comptroller of said City, and it is likewise the practice and custom in said City that the Mayor thereof and Director of the Department of Public Affairs have jurisdiction of the City Clerk's Office, Law Department, Board of Health, Public Welfare, Weights and Measures, Child Hygiene, Overseer of the Poor, Storekeeper, and all other matters of public concern and welfare.

Affidavit for Writ of Certiorari.

That on or about Nov. 28, 1924, there was sent by the said Bert Daly to said Robert J. Talbot, Mayor and Director of the Department of Public Affairs, a payroll check which included amounts to be paid to said new policemen and firemen, and in addition thereto a sum to one Thomas Heaney, who it is claimed was appointed by the said Bert Daly in addition to the men theretofore attempted to be appointed, and thereafter dispensed with by said rescinding resolutions, for the signature of said Robert J. Talbot, Mayor, and that said Robert J. Talbot thereupon refused to sign same for the reason that the services of said men were unnecessary, and that economy in the said administration precluded the expenditure of said sums, all as had been previously determined by resolutions of the Board of Commissioners as aforesaid.

That at a meeting of the said Board of Commissioners, held on Dec. 2, 1924, the said Board, over the protest of said Robert J. Talbot and Patrick J. O'Connell, passed a resolution dispensing with the necessity of the countersignature of said Mayor, and authorizing the countersignature of the Director of Revenue and Finance alone upon warrants for the disbursement of the city's funds, a copy of which said resolution is hereunto annexed and marked "Schedule A." That in fact, prior to the adoption of said resolution, warrants had been drawn as I am authoritively informed and verily believe upon direction of said Bert Daly for the payment of the moneys alleged to be due to said new policemen and firemen, amounting in all to the sum of about \$31,000.00, and that immediately upon the adoption of said resolution the same were signed by the Director of Revenue and Finance, Harry Hosford, and paid out.

Affidavit for Writ of Certiorari.

I am advised that the payment of the said moneys and the adoption of the said resolution for the purpose of facilitating the payment thereof, are unlawful and constitute a contempt of the authority of this court, in that pending the determination by this court of the question of the validity of said rescinding resolutions of May 20, 1924 and May 27, 1924, the said Bert Daly, Harry Hosford and W. Homer Axford thereby attempted to circumvent the effect of the said resolutions, and the stay attendant upon the allowance of the writ of certiorari, and the probable determination of this court thereon. 10

That in and by the said resolution "Schedule A", the Director of Revenue and Finance of the City of Bayonne is attempted to be vested with absolute power to employ and pay persons at will, and constitutes a deprivation of the authority and power of the Mayor and Director of the Department of Public Affairs, and of a duty appropriate to his department; that the payment and disbursement of said sum of approximately \$31,000.00 as aforesaid is entirely unwarranted and unnecessary, and was so determined by the previous resolutions of the said Board of Commissioners, and the said Bert Daly, W. Homer Axford and Harry Hosford threaten to continue to make such further disbursements to said new policemen and firemen, and other officers, agents and servants which they may employ in positions and offices created and to be created by them for political purposes only, and for which there is no necessity or requirement, and contrary to the resolutions of the said Board of Commissioners now pending on review before the Supreme Court of New Jersey as aforesaid, and that deponent as a taxpayer of 20 30 40

Affidavit for Writ of Certiorari.

the said City of Bayonne will be greatly injured and will suffer loss thereby.

10 That as part of a scheme and contrivance of said Bert Daly, Harry Hosford and W. Homer Axford, for political purposes as aforesaid, and at the same meeting of the Board of Commissioners of the City of Bayonne, on December 2, 1924, passed a resolution of which a copy is hereunto annexed and marked "Schedule B," wherein and whereby the said Board of Commissioners of the said City of Bayonne attempted to deprive the Mayor and Director of Public Affairs of the said City of Bayonne, of all the powers and duties proper and appropriate to his Department, and vest in him only jurisdiction over the Free Public Library in Bayonne, but also reserving to the Board of Commissioners of said City the appointment, removal and discharge of all officers and employees in and about the said Free Public Library, which said resolution deponent is informed and verily believes is illegal, and deprives Robert J. Talbot, Director of the Department of Public Affairs, of the powers, duties and authority appropriate to his department.

20
30 That at the same meeting of the said Board of Commissioners, and for like purposes as aforesaid, the said Bert Daly, Harry Hosford, and W. Homer Axford, adopted a resolution, a copy of which is hereunto annexed and marked "Schedule C," wherein and whereby Patrick J. O'Connell, Director of the Department of Parks and Public Property is deprived of the power and authority of appointment, removal and discharge of all officers, employees and workmen in his department, and such power is reserved to the Board of Commissioners.

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Affidavit for Writ of Certiorari.

Deponent is advised that said resolution is illegal, and tends to deprive the said Director of the Department of Parks and Public Property of the authority, power and duties vested and imposed upon him by law.

That at the same meeting of the Board of Commissioners of the City of Bayonne, on Dec. 2, 1924, and for like purposes, as aforesaid, said Bert Daly, Harry Hosford and W. Homer Axford adopted resolutions of which copies are hereunto annexed and marked "Schedule D," "Schedule E" and "Schedule F," all of which said resolutions are part and parcel of the aforesaid scheme, and are unreasonable, illegal and void. 10

That your petitioner is advised that the Free Public Library of the City of Bayonne is or should be subject to the jurisdiction of a Board of Library Trustees, as required by law. 20

WHEREFORE your petitioner prays that a writ of certiorari may issue out of this court, commanding the Board of Commissioners of the City of Bayonne to certify unto this court all of the said resolutions of the said Board of Commissioners of the City of Bayonne, and all of their proceedings thereon, and that a writ of certiorari issue out of and under the seal of this court for such purpose. 30

AUGUSTA OLIVER.

Sworn and subscribed to before me }
this 4th day of December, 1924. }

Leo Blumberg,
Attorney at Law of N. J.

Annexed hereto are copies of resolutions, Exhibits Nos. 4, 5, 6, 7, 8 and 9 which are printed on pages 43 to 52 to avoid duplication. 40

Rule to Show Cause.

(Filed December 9th, 1924.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,

20

Defendants.

On Applica-
tion for
Certiorari.

Upon reading and filing the affidavit of Augusta Oliver, a freeholder and taxpayer of the City of Bayonne, from which sufficient reason appears therefor; it is on this 8th day of December, 1924;

30 ORDERED, that Bert Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, Board of Commissioners of the City of Bayonne, and the City of Bayonne, show cause before this court, at the State House in the City of Trenton, on the 6th day of January, 1925, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why a writ of certiorari should not issue out of this court, directed to the said defendants, and commanding them to certify unto this court, the resolutions adopted by the Board of Commissioners of the

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Rule to Show Cause.

City of Bayonne on December 2nd, 1924, and more particularly referred to in the said affidavit of Augusta Oliver, and all their proceedings thereon and touching and appertaining thereto; and it is

FURTHER ORDERED, that in the meantime, and until the further order of this court, in the premises, the said defendants and each of them do desist and refrain from taking any further proceedings or action under, upon or pursuant to said resolutions or either of them; and it is

FURTHER ORDERED, that service of a copy of this rule, certified to be a true copy, by the attorneys of the prosecutors, within three days from the date hereof, together with a copy of the affidavit of said Augusta Oliver, certified in like manner, shall be deemed good and sufficient service for all purposes; and it is

FURTHER ORDERED, that either party may take depositions, proofs and evidence, to be used upon the return of this rule, upon two (2) days' notice by each of said parties to the other.

JAMES F. MINTURN,
J. S. C.

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Order Vacating Stay.

(Filed December 15th, 1924.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
20 OF BAYONNE,
Defendants.

On Applica-
tion for Rule
Vacating
Stay, etc.

This matter being opened to the Court by James
Benny, attorney for the defendants, and in the
presence of Isaac Gross, of Gross and Gross, at-
torneys of the prosecutors, and it appearing to
the court that the stay contained in the rule to
show cause made in the above entitled cause on
30 the 8th day of December, 1924, which stay is in
the words following:

“that in the meantime, and until the fur-
ther order of this Court in the premises, the
said defendants and each of them do desist
and refrain from taking any further proceed-
ings or action under, upon or pursuant to
said resolutions, or either of them,”

was inadvertently made and issued,

Order Vacating Stay.

It is thereupon on this 13th day of December, in the year A. D. 1924, ordered that the said stay so made and contained in the said rule to show cause made in the above entitled cause, on the 8th day of December, 1924, be and the same is hereby vacated and set aside.

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AND IT IS FURTHER ORDERED, that a copy hereof, certified to be a true copy by the attorney of the defendants, be served on the attorneys of the prosecutors.

JAMES F. MINTURN,
J. S. C.

A true copy,
EDWARD J. KELLEHER,
Clerk.

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Entered Dec. 15, 1924,
On motion of
JAMES BENNY.

30

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Depositions.

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,
20 Defendants.

On Applica-
tion for
Certiorari.

15 Exchange Place, Jersey City, N. J.

January 5, 1925. 3 P. M.

30 TESTIMONY taken in the above entitled action
before me GEORGE A. WARDELL, a Supreme Court
Examiner, at my office, 15 Exchange Place, Jersey
City, this 5th day of January, 1925, at 3 o'clock
in the afternoon in pursuance of notice given
therein and in the presence of

ISAAC GROSS, Esq., of Gross & Gross, Attor-
neys for the Prosecutors.

JAMES BENNY, Esq., Attorney for the De-
fendants.

GEORGE A. WARDELL,
Supreme Court Examiner.

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Depositions.

NEW JERSEY SUPREME COURT.

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,
Defendants.

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On Applica-
tion for
Certiorari.
Depositions.

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DEPOSITIONS of William P. Lee, a witness pro-
duced on behalf of the defendants, and being ex-
amined by Mr. James Benny, attorney of the City
of Bayonne, in the presence of Isaac Gross after
being first duly sworn on his oath, deposes and
says:

I am the Clerk of the City of Bayonne; I was
such clerk on April 23rd, 1915, and as such clerk
I have in my custody the minutes of the proceed-
ings of the Board of Commissioners of the City of
Bayonne, and of all the records, papers and pro-
ceedings of the said Board of Commissioners.

30

The City of Bayonne at an election held on the
9th day of March, 1915, adopted the provisions of
Chapter 221 of the Laws of 1911, commonly
known as the Walsh or Commission Government
Act, and on April 13th, 1915, the following Com-
missioners were elected by the electors of the City
of Bayonne, viz.: Matthew T. Cronin, Hugh H.

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Depositions.

Mara, Pierre P. Garven, Henry Wilson and Horace Roberson.

10 On April 21, 1915, the aforesaid Commissioners organized and passed resolutions designating Pierre P. Garven as Mayor, who by virtue of said office, became the Director of the Department of Public Affairs and designated Matthew T. Cronin to be Director of the Department of Revenue and Finance, Henry Wilson to be Director of the Department of Public Safety, Hugh H. Mara to be Director of the Department of Streets and Public Improvements, and Horace Roberson to be Director of the Department of Parks and Public Property.

20 At a meeting of the said Board of Commissioners held on the 23rd day of April, 1915, said Commissioners determined, by resolution, the powers and duties to be performed by each of the aforesaid departments, and assigned such powers and duties to the appropriate departments, as will more fully appear by a copy of said resolution, certified to by me, and marked Exhibit 1 on the part of the defendants.

30 The term of office for which each and every of the said Commissioners who determined and distributed the said powers by resolution passed on April 23rd, 1915, were elected, expired on the 20th day of May, 1919.

On May 13th, 1919, the following Commissioners were elected for the term of four years, viz.: W. Homer Axford, Bert Daly, John P. Smith, John O. Devlin and Robert J. Talbot.

40 On May 20th, 1919, the said Commissioners organized and resolutions were passed designating W. Homer Axford as Mayor, who, by virtue of said office became the Director of the Department

Depositions.

of Public Affairs, and designating Bert Daly to be Director of the Department of Revenue and Finance, Robert J. Talbot to be Director of the Department of Public Safety, John O. Devlin to be Director of the Department of Streets and Public Improvements, and John P. Smith to be Director of the Department of Parks and Public Property. 10

On November 25th, 1919, Commissioner John O. Devlin by resolution of said Board of Commissioners, was designated as Director of the Department of Public Safety in the place and stead of Commissioner Robert J. Talbot, who was thereupon designated as Director of the Department of Parks and Public Property, as will fully appear by a copy of said resolution certified to by me, marked Exhibit 2 on the part of the defendants. 20

The term of office of the said Commissioners who were elected on May 13th, 1919, expired on May 15th, 1923.

On May 8th, 1923, the following Commissioners were elected, viz.: Robert J. Talbot, Harry Hosford, Patrick J. O'Connell, W. Homer Axford and Bert Daly.

On May 15th, 1923, the said Commissioners organized and resolutions were passed by said Commissioners designating Robert J. Talbot as Mayor, who, by virtue of said office, became the Director of the Department of Public Affairs, and designating Harry Hosford to be Director of the Department of Revenue and Finance, Patrick J. O'Connell to be Director of the Department of Public Safety, W. Homer Axford to be Director of the Department of Streets and Public Improve- 30

Depositions.

ments, and Bert Daly to be Director of the Department of Parks and Public Property.

10 At a meeting of said Board of Commissioners held on the 7th day of October, 1924, Commissioner Bert Daly by resolution was designated as Director of the Department of Public Safety in the place and stead of Commissioner Patrick J. O'Connell, and the said Patrick J. O'Connell was thereupon designated as Director of the Department of Parks and Public Property, as will more fully appear by a copy of said resolution certified to by me, marked Exhibit No. 3 on the part of the defendants.

20 The Board of Commissioners elected May 13, 1919, did not make any determination, assignment or distribution of the powers and duties to be performed by each of the departments to which the said Commissioners were assigned to directors, and did not assign any powers and duties to any of the said departments.

30 The Board of Commissioners, elected May 8, 1923, being the present Commissioners of the City of Bayonne, did not make any determination, assignment or distribution of the powers and duties to be performed by each of the departments to which the said Commissioners were assigned as Directors, and did not assign any powers and duties to any of the said departments, until the 2nd day of December, 1924, when the said Board of Commissioners by the vote of a majority of the whole Board of Commissioners passed the resolutions, copies of which are annexed to the affidavits and rule to show cause why a writ of certiorari should not issue in the above entitled cause, and marked Exhibits 4, 5, 6, 7 and 8 on the part of
40 the defendants, respectively, which was served on

Depositions.

the defendant, the City of Bayonne, and copies of which have been certified by me, marked Exhibits 4, 5, 6, 7 and 8 respectively, as aforesaid.

Prior to the adoption on December 2, 1924, of the resolutions designating the Director of Revenue and Finance as the officer to issue, countersign and audit all warrants for the disbursements of money, a copy of which resolution is also annexed to said affidavits and rule to show cause why a writ of certiorari should not issue in the above entitled cause, the governing body of the City of Bayonne had not designated the officer or officers to issue, countersign and audit warrants for the disbursing of money, but on said 2nd day of December, 1924, the said Board of Commissioners, which is the governing body of the City of Bayonne, did by the vote of a majority of the whole number of said Board of Commissioners pass the said resolution designating the Director of Revenue and Finance as the officer to issue, countersign and audit all warrants for the disbursement of money, a certified copy of which is hereto annexed and marked Exhibit 9 on the part of the defendants.

WILLIAM P. LEE.

Taken, sworn and subscribed before me }
this 5th day of January, 1925. }

GEORGE A. WARDELL,
Supreme Court Examiner.

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Depositions.

NEW JERSEY SUPREME COURT.

10	AUGUSTA OLIVER, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Prosecutors,	}	On Applica- tion for Certiorari.
20	<i>v.</i> BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Board of Commissioners of the City of Bayonne, and the CITY OF BAYONNE, Defendants.		

DEPOSITIONS of Bert Daly, a witness produced on behalf of the defendants, and being examined by Mr. James Benny, attorney of the City of Bayonne, in the presence of Isaac Gross, after being first duly sworn on his oath, deposes and says:

I am a member of the Board of Commissioners of the City of Bayonne; I was first elected such Commissioner on the 13th day of May, 1919; that the term for which I was then elected expired on May 13th, 1923. On May 8th, 1923, I was again elected as a member of the said Board of Commissioners for another term of four years; that the Commissioners elected on May 8th, 1923, are Robert J. Talbot, Harry Hosford, Patrick J. O'Connell, W. Homer Axford, and myself.

The said Commissioners organized as a board on May 15th, 1923, and resolutions were duly passed designating Robert J. Talbot, as Mayor, who, by virtue of said office became the Director

Depositions.

of the Department of Public Affairs, and Harry Hosford was designated to be Director of the Department of Revenue and Finance, Patrick J. O'Connell was designated to be Director of the Department of Public Safety, W. Homer Axford was designated to be the Director of the Department of Streets and Public Improvements, and I was designated to be the Director of the Department of Parks and Public Property. At the meeting of the said Board of Commissioners of the City of Bayonne, held on the 7th day of October, 1924, a resolution was duly passed designating me as the Director of the Department of Public Safety in the place and stead of Commissioner Patrick J. O'Connell, and the said Patrick J. O'Connell was thereupon designated as the Director of the Department of Parks and Public Property. Ever since the said 7th day of October, 1924, the date on which the said resolution was passed appointing me as Director of the Department of Public Safety, I have exercised the powers and duties of such Director. The minutes of the proceedings of the Board of Commissioners of the City of Bayonne, show that at the meeting of said Board held on the 23rd day of April, 1915, the then Commissioners determined by resolution the powers and duties to be performed by each of the respective departments in said City, and assigned such powers and duties to the appropriate departments. Among the powers so assigned, the following is the assignment of powers of the Department of Public Safety:

“The police department and all officers, policemen and employees therein, police headquarters, police stations and all property and appurtenances used in said police depart-

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Depositions.

10 ment, the fire department and all officers, firemen and employees therein, and all fire houses, and property, and appurtenances used in said department; the fire and police alarm system, and all property and appurtenances belonging thereto, and the employees therein; the health department, overseer of the poor, recorder's court, building inspector, and all licenses, other than licenses for the sale of intoxicating liquors, are assigned to the Department of Public Safety. He shall have charge of and supervision over all theatres, moving picture shows, opera houses, and other places of amusement, and shall have charge of the enforcement of all ordinances of the City."

20 The several departments acted under the assumption that these powers remained in full force until new or additional powers were assigned or distributed, or until said powers were changed or altered by the several boards of Commissioners. No new or additional powers were assigned by the said Commissioners until the 2nd day of December, 1924, as is hereinafter set forth. On the 16th day of November, 1924, after the said Board of Commissioners had designated me as Director of the Department of Public Safety, in the exercise of the powers assigned to the Director of
30 Public Safety, I appointed forty-four patrolmen and ten firemen, all of whom have been performing services as such patrolmen and firemen from the said 16th day of November, 1924 to date. On the 2nd day of December, 1924, the said Board of Commissioners of the City of Bayonne adopted resolutions distributing the executive, administrative, judicial and legislative authority, powers and duties to the several departments of the said

Depositions.

City, copies of which resolutions are annexed to affidavits made in this cause, on which the rule to show cause why a writ of certiorari should not be granted was made. Each and every of the persons so appointed by me on the 16th day of November, 1924, are the same persons named in writs of certiorari issued out of the Supreme Court on the 9th day of June, 1924 (with the exception of Thomas Heaney, who was not theretofore appointed) said Thomas Heaney not having sued out any writ of certiorari. The said writs of certiorari were sued out by each of the said persons, to test the right of the City of Bayonne to pass the resolutions of June 23, 1924, purporting to remove them and each of them from the office to which they had theretofore been appointed by the municipal authorities of the City of Bayonne, and not by any taxpayer of the City of Bayonne for the purpose of reviewing or testing the power or authority of the Commissioners of the City of Bayonne, or any of the municipal authorities of the said city to appoint such policemen and firemen. Commissioner Axford, the Director of the Department of Streets and Public Improvements, is a physician in active practice; Mayor Robert J. Talbot is a retired grocer; the total amount of the salaries of the new policemen and new firemen, at the date referred to in the affidavit of Augusta Oliver, one of the prosecutors, is \$4,725, and not \$31,000, as stated in her affidavit. The salaries of all the new policemen and new firemen are provided for in and by the budget and the tax ordinance for the year 1924. I deny that prior to the adoption of the resolution designating the Director of Revenue and Finance as the officer to issue,

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William P. Lee, for Defendants—Direct.

countersign and audit warrants, I directed that warrants be drawn for the payment of the moneys due to said new policemen and new firemen.

BERT DALY.

10 Sworn and subscribed to before me this }
5th day of January, 1925. }

GEORGE A. WARDELL,
Supreme Court Examiner.

WILLIAM P. LEE, a witness called on behalf of the defendants, having been first duly sworn by the Supreme Court Examiner, testified as follows:

20 *Direct examination by Mr. Benny:*

Q. Mr. Lee, you are clerk of the City of Bayonne? A. I am.

Q. And you have been such for how long? A. Since 1921, August, 1921.

Q. Were you present at a meeting of the Board of Commissioners held this morning at eleven o'clock? A. I was.

30 Q. And were there certain resolutions passed by the Board of Commissioners of the City of Bayonne at that meeting? A. Yes.

Q. I show you a resolution which you have certified, which certificate bears date January 5, 1925, and ask whether that is one of the resolutions that was passed this morning at the meeting of the Board of Commissioners? A. It is.

Mr. Benny: I ask that this be marked Exhibit A.

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William P. Lee, for Defendants—Direct.

Mr. Gross: I object to the admission or offer of this resolution on the ground that it is a resolution passed since the commencement of these proceedings, and further is calculated to destroy the subject matter under review.

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(The resolution referred to is received in evidence and marked Exhibit A on the part of the defendants.)

Q. I show you another resolution certified to by you as City Clerk, which certificate bears date January 5, 1925, and ask you whether that resolution was passed by the Board of Commissioners of the City of Bayonne at the meeting held this morning? A. It was.

20

Mr. Benny: I ask that it be admitted in evidence and marked Exhibit B.

Mr. Gross: I object to that on the same grounds as I objected to the offer of Exhibit A.

(The resolution referred to is received in evidence and marked Exhibit B on the part of the defendants.)

Mr. Benny: It is admitted that the City of Bayonne adopted the provisions of the Act known as the Commission Government or Walsh Act, and that at the first election held for Commissioners under said Act that the persons named in the deposition of Mr. Lee were elected, and that resolutions were passed appointing certain persons named in the depositions as heads of the respective departments named therein.

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William P. Lee, for Defendants—Cross.

10 It is also admitted that the respective persons were elected as set forth in the depositions of Mr. Lee as Commissioners of the City of Bayonne on the respective dates therein set forth, and that the several persons were appointed by the Board of Commissioners as Directors of the respective departments therein enumerated.

Cross examination by Mr. Gross:

Q. Mr. Lee, the City of Bayonne is a city of the second class is it not? A. Yes, sir.

20 Q. Mr. Lee, I call your attention to the resolution passed by the Board of Commissioners of the City of Bayonne on April 23, 1915, and certified to by you, and particularly to the first paragraph thereof in which it is said that the Director of Public Affairs shall be the chief executive officer and representative of the City, and shall sign all contracts, agreements and conveyances on behalf of the City and all warrants of the City Treasurer for the payment of money, and I ask you whether that is in fact contained in that resolution? A. That is contained in this resolution.

Q. Yes. A. Most decidedly; I certified to it.

30 Q. Both resolutions? A. Pardon me a minute, Mr. Gross, what did you ask me, if that is in fact contained in this resolution, what you just read to me?

Q. Yes. A. Certainly.

Q. By this resolution the powers and duties of the respective departments of the City are intended to be distributed among five commissioners, is that correct? A. Powers and duties?

Q. Yes. A. Yes; I take it so.

40 Q. In your deposition of today you say the

William P. Lee, for Defendants—Re-direct.

Board of Commissioners elected on May 13, 1919, did not make any determination, assignment or distribution of the powers and duties to be performed by each of the departments, you mean that no such assignment, determination or distribution of powers and duties were made by formal resolution, is that correct? A. Yes. 10

Q. You don't know whether or not the various commissions succeeding the commission which adopted this resolution of April 23, 1915 tacitly followed out the assignments therein set forth or not? A. I certainly do not, no sir; I don't know, as far as that is concerned, except what the record shows.

Q. And so that, when you further in your deposition of today, say, the Board of Commissioners elected May 8, 1923 being the present Commissioners of the City of Bayonne, did not make any determination, assignment or distribution of the powers and duties to be performed and so forth, you mean that no such assignment, determination or distribution was made by official resolution, is that correct? A. Yes, sir. 20

Q. And that is all you do mean? A. That is all I do mean, certainly. I am testifying from the record. If they had any tacit agreements I know nothing of them. 30

Mr. Gross: That is all.

Re-direct examination by Mr. Benny:

Q. Is not the resolution of April 23, 1915, the resolution which the first Commissioners elected after the adoption of the Commission Government or Walsh Act passed distributing the powers among the respective commissioners? A. It was. 40

Robert J. Talbot, for Prosecutors—Direct.

Q. Has there ever been any resolution passed by the Board of Commissioners of Bayonne distributing such powers until the resolution passed on December 2, 1924, since the first resolution?
A. No.

10 Q. I call your attention to the resolution passed on December 2, 1924, which has been offered in evidence, and ask you whether prior to the adoption of that resolution any officer was designated by the Commissioners of the City of Bayonne to issue, countersign and audit all warrants for the disbursement of money? A. Not that I know of, other than that may be contained in the original resolution; I don't recollect whether or not that is referred to in that or not.

20 Q. With the exception of the contents of the resolution you have spoken of is there any other resolution passed designating the officers to issue, countersign and audit all warrants for the disbursement of money? A. No, sir.

Mr. Benny: That is all.

The signature of the witness to the testimony is waived by consent of counsel.

30 ROBERT J. TALBOT, a witness called on behalf of the Prosecutors, having been first duly sworn by the Supreme Court Examiner, testified as follows:

Direct examination by Mr. Gross:

Q. You are Mayor of the City of Bayonne? A. Yes.

40 Q. And director of the Department of Public Affairs of that city, are you not? A. Yes.

Robert J. Talbot, for Prosecutors—Direct.

Q. How long have you been connected as a Director or Commissioner with the Government of the City of Bayonne? A. Since 1919, I think the first Commission—you mean since the other Commission—1919.

Q. And when were you elected to be Commissioner of the City of Bayonne? A. In May, I don't exactly know the date; it was in May, 1919. 10

Q. And have you since been re-elected Commissioner? A. Yes.

Q. When? A. In 1923; May 8th.

Q. Have you held various departments in the Commissions of the City of Bayonne? A. Yes.

Q. Of what departments have you been head since you were a Commissioner? A. Department of Public Safety, Department of Parks and now of Public Affairs. 20

Q. During all of the time of your encumbrancy as a Commissioner, did each department exercise certain powers and duties? A. Yes.

Q. And how were those powers and duties determined? A. Well, when we took office one was named Commissioner of Public Affairs, the other of Public Safety, Revenue, Finance and Parks and Public Buildings.

Q. How were the powers and duties of the respective departments determined? 30

Mr. Benny: That question is objected to on the ground that the record of the distribution of powers is the best evidence of how they were conferred.

A. We pursued and followed the same system that the previous administration had followed.

Q. You mean under this resolution of April 23, 1915, which was introduced by Mr. Cronin? A. 40

Robert J. Talbot, for Prosecutors—Direct.

Yes, and we have followed the same procedure since.

10 Q. Do you now, and have you during all the time of your incumbency as Commissioner of the City of Bayonne, countersigned all warrants and checks? A. Yes, since I have been in Public Affairs.

Q. Which Director or Commissioner countersigned all checks and warrants for the payment and distribution of money? A. Before this?

Q. Before December 2, 1924? A. I understand the Public Affairs.

Q. Since when have you been Director of Public Affairs or Mayor of the City of Bayonne? A. Since 1923.

20 Q. May, 1923? A. Yes.

Q. And after May, 1923 and up to December 2, 1924, who countersigned all warrants and checks for the disbursement of moneys of the City of Bayonne? A. I signed them. The Commissioner of Finance signed them, and I think the City Clerk and myself.

Q. You as Director of Public Affairs and Mayor? A. Yes.

30 Q. I call your attention to this resolution of December 2, 1924 whereby the Director of Revenue and Finance of the City is designated to sign all warrants for the disbursement of money, were you present at the meeting at which that was adopted? A. Yes.

Q. Will you relate the circumstances which led up to the adoption of that resolution?

Mr. Benny: The question is objected to on the ground that the record of the minutes of the meeting is the best evidence of

Robert J. Talbot, for Prosecutors—Cross.

the passage of the resolution and the circumstances surrounding its passage.

A. I refused to sign the pay checks of fifty-four police and firemen—the case was pending before the Supreme Court, that is why I refused to sign them, so they passed this resolution over my head and paid the police and firemen that day there irrespective of the court's action. 10

Q. By the court's action, you mean that the resolution which had previously been passed by the Commission dispensed with these policemen and firemen, or revoking the resolution appointing them, which was being reviewed by the Supreme Court on certiorari? A. Yes, sir.

Q. And you refused to sign these checks because of the fact that these men's services were dispensed with? A. Yes. 20

Q. And you awaited the outcome of the legal proceedings for review, is that correct? A. Yes, sir. I was going to be guided by the action of the Supreme Court.

Mr. Gross: That is all.

Cross-examination by Mr. Benny:

Q. Was there any resolution passed by the Board of Commissioners assigning the powers to the respective directors or respective departments between the date of the resolution passed on April 23, 1915, and the resolutions passed under date of December 2, 1924? A. Yes, there was a resolution designating each Commissioner to his department. 30

Robert J. Talbot, for Prosecutors—Cross.

Mr. Benny: I ask that the question be repeated by the stenographer.

Q. (Repeated by the stenographer.) What is your answer? A. I make the same answer.

10 Q. Do you mean that resolutions were passed appointing the respective Commissioners as Directors of the respective departments of the city? A. Yes.

Q. Was there any resolution passed by the Commissioners distributing the powers among those departments after the resolution of April 23, 1915, before the resolution of December 2, 1924? A. There was no resolution placing the powers of each commissioner, but the resolution appointing the commissioner to fulfil the same as the other past administration had assigned the powers and it was not changed.

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Q. So that you acted upon the assumption that the resolution of April 23, 1915, was still in force? A. Yes.

Q. But, as a matter of fact there had not been any other resolution passed distributing the powers among the respective Directors of the Commission? A. No, until December 2nd, when it was changed for the purpose,—only political.

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Q. What action did the Supreme Court take that you referred to? A. Regarding the police and firemen?

Q. Yes. A. It was pending in the court, the decision that was to be brought up.

Q. My question is what action was taken by the Supreme Court that you referred to? A. We have been awaiting for the action.

Q. Do you mean the cases where the policemen sued out writs of certiorari to test the right of the

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Robert J. Talbot, for Prosecutors—Cross.

Board of Commissioners of the City of Bayonne to pass a resolution or resolutions rescinding the resolution by which they were appointed? A. I think there were certiorari proceedings, wasn't there, stopping them from action—from taking active part in their duties?

10

Q. I want to know what writs of certiorari you refer to in your answer to the questions asked you by Mr. Gross? A. The one that is pending in the court; it is on the record now.

Q. Don't you know that there are a great number of them? A. Do I know there are a great number of them?

Q. Yes. A. I know there are several.

Q. Don't you know that each policeman and fireman sued out a writ of certiorari to test the right of the Commissioners to revoke the resolution by which they were appointed? A. Yes. I understand that from Public Safety Commissioner O'Connell, I guess he handled it.

20

Q. Are those the writs of certiorari that you referred to in your direct examination in answer to the questions by Mr. Gross? A. Mr. Benny, I think you should know that because you handled all the legal end of it.

Q. Unfortunately I am not testifying and you are, and I have a right to ask you what you are referring to? A. Unfortunately I wasn't brought up in that matter; I think the Commissioner of Public Safety might answer that.

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Mr. Benny: I ask that the question be repeated by the stenographer.

Q. (Repeated by the stenographer.) I want an answer to it? A. Yes.

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Robert J. Talbot, for Prosecutors—Cross.

Q. So that there has not, as yet, been any action taken by the Supreme Court with reference to these writs of certiorari, so far as you know, has there? A. No.

10 Q. And the question that is before the Supreme Court is the right of the Commissioners of the City of Bayonne to revoke the resolutions by which the prosecutors of these respective writs were appointed? A. Yes.

Q. There are no cases pending at the suit of any taxpayer that you know of, is there, regarding the policemen and firemen? A. Yes, sir.

Q. What is there? A. There is no citizen,—yes, I think there is a citizen, Mrs. Oliver.

20 Q. You mean Mrs. Oliver who is the prosecutrix in the present case, do you not? A. Yes.

Q. Aside from the present case that you are now testifying in, do you know of any other suit in which a taxpayer has brought suit against the City of Bayonne involving the question of the appointment of policemen and firemen? A. I think there is.

30 Q. What is it? A. Oh, I am not positive unless I see the record, I think the records will show that, Mr. Benny, it is impossible for me to remember all this stuff. I think the records will show that there is.

Q. Do you mean to say that you think there is any suit pending brought by any taxpayer against the City of Bayonne involving the policemen and firemen? A. Oh, not a suit, to stop the proceedings, to stop the appointment of the policemen and firemen.

Q. What suit have you in mind that is instituted to stop the appointment of the policemen and

Robert J. Talbot, for Prosecutors—Cross.

firemen? A. I think there is a taxpayer objecting in certiorari proceedings against the payment of fifty-four policemen.

Q. What suit have you got in mind—what taxpayer have you got in mind? A. Well, I told you, you have the records to show that, I tell you I am not a dictionary or a memorandum book. 10

Q. Have you any such suit by a taxpayer in your mind? A. I have lots of things in my mind, Mr. Benny.

Mr. Benny: I ask that the question be repeated by the stenographer.

Q. (Repeated by the stenographer.) I would like to have an answer to that question? A. The City records will speak for itself. 20

Q. But you haven't any such suit in your mind at the present time? A. The records will speak for themselves.

Q. And if the records don't show that such a suit has been instituted then there is no suit pending, is that right? A. I can't answer that.

Q. Well, so far as you know is it right? A. I am not a judge of that.

Q. Do you know of any suit of that character that is pending? A. Well, as you are the legal counsel of the Commission, Mr. Benny, I will answer that question by asking you if you ought not to instruct me about that part of it, if there is any suit pending, because you have been taking up the legal end of it; that is my recollection. 30

Q. Since the witness has asked me that question I will say that there is no such suit pending and never has been.

Depositions.

Mr. Gross: Oh, I object to Mr. Benny testifying.

Mr. Benny: I will testify. That is all.

Mr. Gross: That is all.

Mr. Benny: I ask that I be sworn.

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JAMES BENNY, a witness produced on behalf of the defendants, having been first duly sworn by the Supreme Court Examiner, testified as follows:

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The witness: I am the City attorney of the City of Bayonne, and as such have charge of the litigation referred to by the witness, Honorable Robert J. Talbot, Mayor of the City of Bayonne. The only suits that are pending involving the appointment of policemen and firemen are those instituted by the policemen and firemen in which the question of the right of the Commissioners of the City of Bayonne to rescind the resolution or resolutions by which they were appointed as such policemen and firemen, and there is no suit pending by any taxpayer involving the appointment of a policeman or fireman, unless it can be said

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that the suit in which this testimony is being taken in which suit Augusta Oliver, Robert J. Talbot and Patrick J. O'Connell are Prosecutors and Bert Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, Board of Commissioners of the City of Bayonne and the City of Bayonne are defendants.

Mr. Benny: That is all.

Mr. Gross: That is all.

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The signatures of the witness are waived by consent of counsel for both sides.

Exhibit 1.

BY COMMISSIONER CRONIN:—

DEPARTMENT OF PUBLIC AFFAIRS.

RESOLVED, That the Director of the Department of Public Affairs, who is designated as Mayor, shall have and exercise all the powers and perform all the duties provided or prescribed by law or the ordinances of the City not in conflict with the provisions of this resolution. As such Director of the Department of Public Affairs, he shall have general supervision and oversight over all departments and officers of the City; he shall be the Chief Executive Officer and representative of the City; shall sign all contracts, agreements and conveyances on behalf of the City; and all warrants on the City Treasurer for the payment of money, and shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance, or by resolution of the Board of Commissioners. 10 20

The Mayor's Office, City Clerk's Office, Legal Department, Free Public Library, Superintendent of Weights and Measures, Storekeeper, Excise Inspector, and all licenses for the sale of intoxicating liquors, and all officers and employees of such offices, and all other officers and employees created by law or ordinances, and not otherwise assigned, are hereby assigned to the Department of Public Affairs. 30

DEPARTMENT OF REVENUE AND FINANCE.

The Director of the Department of Revenue and Finance shall have charge of and supervision over all accounts and finances of the City, and all officers, boards, or departments required to keep or 40

Exhibit 1.

make financial accounts, records or reports; he shall examine, or cause to be examined all financial records or accounts required to be kept in any of the offices, boards, or departments of the City; and shall cause proper financial accounts and records to be kept and proper reports to be made. In addition to the annual examination of the books and accounts of the City required by law, he shall from time to time, at his discretion, or at the request of the Board of Commissioners audit or cause to be audited, the accounts of other officers or employees who do or may receive or distribute money; he shall have charge and supervision over all printing by and for the City, other than legal or official printing required by law; he shall examine or cause to be examined and report to the Board of Commissioners upon all bills, accounts, payrolls and claims before they are acted upon or approved.

The City Treasurer, Collector of Revenue, Tax Assessor, Commissioners of Assessments for Street Improvements, Water Department, District Court and Sinking Fund Commissioner, their respective officers and all employees therein are hereby assigned to the Director of Revenue and Finance. Such Director shall cause to be collected all license fees, franchise taxes, rentals or other moneys which may be due or become due to the City. He shall report to the Board of Commissioners any failure to pay moneys due to the City with such recommendation in relation thereto as he may deem proper.

DEPARTMENT OF PUBLIC SAFETY.

The Police Department and all officers, policemen and employees therein, Police Headquarters,

Exhibit 1.

Police Stations and all property and apparatus used in said police department; the Fire Department and all officers, firemen and employees therein, and all firehouses and property and apparatus used in said department; the fire and police alarm system, and all property and apparatus belonging thereto, and the employees therein; the Health Department, Overseer of the Poor, Recorder's Court, Building Inspector, and all licenses other than licenses for the sale of intoxicating liquors, are assigned to the Department of Public Safety. He shall have charge of and supervision over all Theatres, Moving picture shows, Opera Houses and other places of amusement, and shall have charge of the enforcement of all ordinances of the City.

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DEPARTMENT OF STREETS AND PUBLIC
IMPROVEMENTS.

The Director of Streets and Public Improvement shall superintend and take charge of all public works, the cleaning of streets and public places, the entire erection, making and construction of all street improvements, sidewalks, sewers and other improvements, and of the repair thereof where not otherwise assigned. He shall approve the estimate of the City Engineer which may be made from time to time, of the cost of such work as the same progresses, and accept any work done or improvement made, when complete according to contract; and perform such other duties as may be provided or required by ordinance or resolution. He shall have charge of the issuing of all sewer and street opening permits. He shall have control and supervision over the

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Exhibit 1.

10 collection, removal and disposal of all garbage and ashes, and control and supervision of the public dumping ground and dumps except as otherwise assigned, he shall have supervision over all public service utilities and all persons or corporations rendering service to the City under any franchise, contract or grant made or granted by the City or State, and shall report to the Board of Commissioners, or other proper officer, any failure of such person or corporation to render services in accordance with or otherwise to observe the requirements or conditions of the franchise, contract or grant under which such public utility is operated.

20 The City Engineer and Surveyor; Street Commissioner, and all employees therein, street lighting and all public docks, are hereby assigned to the Department of Streets and Public Improvements.

DEPARTMENT OF PARKS AND PUBLIC PROPERTY.

30 The Director of Parks and Public Property shall have charge and supervision over all public parks, playgrounds and pleasure grounds in the City, and all officers and employees therein, and of all property belonging to the same, and shall have charge and supervision over the City Hall and other City property not otherwise assigned. He shall have charge of enforcing the provisions of law and ordinances relating to the improvement and care of the parks and planting and care of trees therein and upon the streets and avenues of the City. He shall have such assistance from the City Engineer as may be necessary in surveying, laying out improvements and otherwise improving the parks and playgrounds. He shall have supervision over

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Exhibit 1.

and direction of the lighting of public grounds and public buildings of the city.

PIERRE P. GARVEN

M. T. CRONIN

HUGH H. MARA

HENRY WILSON

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Adopted. Ayes—Commissioners Cronin, Mara, Roberson, Wilson and Mayor Garven. April 23, 1915.

I, WILLIAM P. LEE, City Clerk of the City of Bayonne, Do HEREBY CERTIFY, (Seal) that the foregoing is a true and correct copy of a Resolution adopted by the Board of Commissioners of the City of Bayonne at a meeting held April 23rd, 1915.

20

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the seal of the City of Bayonne this 2nd day of January, A. D. 1925.

W.M. P. LEE.

Exhibit 2.

30

By Mayor Axford:

WHEREAS, It appears to the Board of Commissioners of the City of Bayonne that the public service would be benefited by changing the designation of the Director of the Department of Public Safety;

BE IT RESOLVED, That John O. Devlin be and he is hereby appointed and designated as Director

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Exhibit 2.

of the Department of Public Safety in the place and stead of Robert J. Talbot, the present Director of the Department of Public Safety.

10 BE IT FURTHER RESOLVED, That John O. Devlin immediately assume the performance of all duties heretofore assumed and performed by said Robert J. Talbot as the Director of said Department of Public Safety; and

WHEREAS, It appears to the Board of Commissioners of the City of Bayonne that the public service would be benefited by changing the designation of the Department of Streets and Public Improvements;

20 BE IT RESOLVED, That John P. Smith be and he is hereby appointed and designated as Director of the Department of Streets and Public Improvements in the place and stead of John O. Devlin, the present Director of the Department of Streets and Public Improvements;

BE IT FURTHER RESOLVED, That John P. Smith immediately assume the performance of all duties theretofore assumed and performed by said John O. Devlin as the Director of said Department of Streets and Public Improvements; and

30 WHEREAS, It appears to the Board of Commissioners of the City of Bayonne that the Public Service would be benefited by changing the designation of the Department of Parks and Public Property;

BE IT RESOLVED, That Robert J. Talbot be and he is hereby appointed and designated as Director of the Department of Parks and Public Property in the place and stead of John P. Smith, the pres-

Exhibit 2.

ent Director of the Department of Parks and Public Property;

BE IT FURTHER RESOLVED, That Robert J. Talbot immediately assume the performance of all duties heretofore assumed and performed by said John P. Smith as Director of said Department of Parks and Public Property. 10

Adopted—November 25, 1919, Ayes—Commissioners Daly, Devlin, Smith and Mayor Axford. Nays—Commissioner Talbot.

I, William P. Lee, City Clerk of the City of Bayonne, DO HEREBY CERTIFY that the (Seal) foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne at a meeting held Nov. 25, 1919. 20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne this 2nd day of January, 1925, A. D.

WM. P. LEE,
City Clerk.

Exhibit 3.

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By Commissioner Axford:—

Whereas, It appears to the Board of Commissioners of the City of Bayonne that the public service would be benefited by changing the designation of the Director of the Department of Public Safety; therefore, be it

Resolved, That Bert Daly be and he is hereby appointed and designated as Director of the Department of Public Safety in the place and stead

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Exhibit 3.

of Patrick J. O'Connell, the present Director of the Department of Public Safety; and be it further

10 Resolved, that Bert Daly immediately assume the performance of all duties heretofore assumed and performed by said Patrick J. O'Connell as the Director of the Department of Public Safety; and

Whereas, it appears to the Board of Commissioners of the City of Bayonne that the public service would be benefited by changing the designation of the Director of the Department of Parks and Public Property; therefore, be it

20 Resolved, That Patrick J. O'Connell be and he is hereby appointed and designated as Director of the Department of Parks and Public Property in the place and stead of Bert Daly and present Director of the Department of Parks and Public Property; and be it further

Resolved, That Patrick J. O'Connell immediately assume the performance of all duties heretofore assumed and performed by said Bert Daly as the Director of the Department of Parks and Public Property.

30 Adopted—October 7, 1924. Ayes—Commissioners Hosford, Axford, and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

A TRUE COPY.

WILLIAM P. LEE.
City Clerk.

I, William P. Lee, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the (Seal) foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne at a meeting held Oct. 7, 1924.

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Exhibit 3.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne, this day of Jan. 2, 1925, A. D. 19

WM. P. LEE,
City Clerk.

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Exhibit 4.

By Commissioner Daly:—

RESOLVED, By the Board of Commissioners of the City of Bayonne that all the executive, administrative, judicial and legislative authority, powers and duties relating to the Free Public Library of Bayonne, be and the same hereby are assigned and distributed into the Department of Public Affairs; and the Director of the Department of Public Affairs hereby is vested with all the powers, rights and duties now or heretofore vested in or given by any statute, charter or ordinance relating to the Free Public Library of the City of Bayonne and shall perform all the duties now or heretofore imposed by law with respect thereto, except that the appointment, removal and discharge of all officers and employees in and about the said Free Public Library of the City of Bayonne, or in said Department of Public Affairs, hereby is expressly reserved and retained by the Board of Commissioners.

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Adopted—December 2, 1924. Ayes—Commissioners Hosford, Axford and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

I, William P. Lee, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the [SEAL] foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne at a meeting held Dec. 2, 1924.

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Exhibit 4.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne this day of Jan. 2, 1925, A. D. 19 .

WM. P. LEE.

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Exhibit 5.

By Commissioner Daly:

RESOLVED, By the Board of Commissioners of the City of Bayonne that all the executive, administrative, judicial and legislative authority, powers and duties relating to the Public Parks, Playgrounds and pleasure grounds in the City of Bayonne, and of all the Property belonging thereto be
 20 and the same hereby is assigned and distributed into the Department of Parks and Public Property; and the Director of the Department of Parks and Public Property hereby is vested with all the powers, authority, rights and duties now or heretofore vested in or given by any statute, charter or ordinance relating to the Public Parks, Playgrounds and Pleasure grounds in the City of Bayonne and of all the property belonging thereto, and shall perform all the duties now or here-
 30 tofore imposed by law with respect thereto, except that the appointment, removal and discharge of all officers, employees and workmen, in and about the said Public Parks, Playgrounds and pleasure grounds is hereby expressly reserved and retained by the Board of Commissioners; and be it further

RESOLVED, That the Director of Parks and Public Property shall have charge of enforcing the provisions of law and ordinances relating to the
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Exhibit 5.

improvement and care of the parks and planting and care of trees therein. He shall have such assistance from the City Engineer as may be necessary in surveying, laying out improvements and otherwise improving the parks and playgrounds.

Adopted—December 2, 1924. Ayes—Commissioners Hosford, Axford and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

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A TRUE COPY

WM. P. LEE,
City Clerk.

I, WILLIAM P. LEE, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the [SEAL] foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne, at a meeting held Dec. 2, 1924.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne, this day of Jan. 2, 1925, A. D. 19

WM. P. LEE,
City Clerk.

Exhibit 6.

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By Commissioner Daly:

RESOLVED, By the Board of Commissioners of the City of Bayonne, that all the executive, administrative, judicial and legislative authority, powers and duties relating to the City Treasurer, Comptroller, Auditor of Accounts, Collector of Revenue, Tax Assessor, Jitney Department, Water Department, Sinking Fund Commission,

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Exhibit 6.

Deputy Collector of Taxes, the Bayonne District Court, the Purchasing Agent, Janitor and Assistant Janitor at the City Hall, the City Hall Watchman, the Switchboard operator and City Hall Engineer, and the signing of all warrants on the
10 City Treasurer for the payment of money hereby are assigned and distributed into the Department of Revenue and Finance; and the Director of the Department of Revenue and Finance hereby is vested with all of the powers, authority, rights and duties now or heretofore vested in or given by any statute, charter or ordinance relating to the City Treasurer, Comptroller, Auditor of Accounts, Collector of Revenue, Tax Assessor, Jitney Department, Water Department, Sinking
20 Fund Commission, Deputy Collector of Taxes, the Bayonne District Court, the Purchasing Agent, Janitor and Assistant Janitor at the City Hall, the City Hall watchmen, the Switchboard Operator and City Hall Engineer, and the signing of all warrants on the City Treasurer for the payment of money, and shall perform all the duties now or heretofore imposed by law with respect thereto; and be it further

30 RESOLVED, that the Director of the Department of Revenue and Finance shall have charge of and supervision over all accounts and finances of the City, and all officers, boards or department, required to keep or make financial accounts, records or reports; accounts required to be kept in any of the offices, boards or departments of the City; and shall cause proper financial accounts and records to be kept and proper reports to be

Exhibit 6.

made. In addition to the annual examination of the books and accounts of the City required by law, he shall from time to time at his discretion, or at the request of the Board of Commissioners, audit or cause to be audited the accounts of other officers or employees who do or may receive or distribute money; he shall have charge and supervision over all printing by and for the City, other than legal or official printing required by law; he shall examine or cause to be examined and report to the Board of Commissioners upon all bills, accounts, payrolls and claims before they are acted upon or approved. Such Director shall cause to be collected all license fees, franchise taxes, rentals or other moneys which may be due or become due to the City. He shall report to the Board of Commissioners any failure to pay moneys due to the City with such recommendations in relation thereto as he may deem proper.

Adopted—December 2, 1924. Ayes—Commissioners Hosford, Axford and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

I, William P. Lee, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne, at a meeting held Dec-2-1924.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne this day of Jan. 2, 1925, A. D. 19

WM. P. LEE.

Exhibit 7.

By Commissioner Daly:—

RESOLVED, By the Board of Commissioners of
 the City of Bayonne that all the executive, admin-
 10 istrative, judicial and legislative authority, pow-
 ers and duties relating to the Department of
 Streets, the cleaning of streets and public places;
 the collection of garbage and ashes; the making,
 construction and regulation of all street improve-
 ments, sidewalks, sewers and other improvements
 pertaining to streets, in any manner and the re-
 pairing thereof, the lighting of streets and public
 places, the supervision and control of docks and
 wharves, the Building Department, Buildings,
 20 Districts and Restrictions; the Engineers and
 Surveyor's Department, Tree Department, Auto-
 mobile Repair Shop, Asphalt Plant, City Forester
 and all the employees and workmen in the said
 departments and shop, City Veterinarian, Bureau
 of Child Hygiene, Bureau of Child Welfare, Day
 Nursery and District Nurse, Commissioners of
 Assessments for Street Improvements, and all
 public work, be and the same hereby are assigned
 and distributed into the Department of Streets
 and Public Improvements; and the Director of
 30 the Department of Streets and Public Improve-
 ments hereby is vested with all the powers, au-
 thority, rights and duties now or heretofore vested
 in or given by any statute, charter or ordinance
 relating to the Department of Streets, the clean-
 ing of streets and public places; the collection of
 garbage and ashes; the making, construction and
 regulation of all street improvements, sidewalks,
 sewers and other improvements pertaining to
 streets, in any manner and the repairing thereof;
 40 the lighting of streets and public places; the su-

Exhibit 7.

pervision and control of docks and wharves; the Building Department; Buildings, Districts and Restrictions; the Engineers and Surveyor's Department; Tree Department, Automobile Repair Shop, Asphalt Plant, City Forester and all the employees and workmen in the said departments and shop, City Veterinarian, Bureau of Child Hygiene, Bureau of Child Welfare, Day Nursery and District Nurse; the Commissioners of Assessments for street improvements; and all public work, and shall perform all the duties now or heretofore imposed by law with respect thereto; and be it further

RESOLVED, That the Director of Streets and Public Improvements shall approve the estimates of the City Engineer, which may be made from time to time, of the cost of such work as the same progresses, and accept any work done or improvement made when completed according to contract; and perform such other duties as may be provided or required by ordinance or resolution. He shall have charge of the issuing of all sewer and street opening permits, and control and supervision of the public dumping grounds and dumps. Except as otherwise assigned, he shall have supervision over all public service utilities and all persons or corporations rendering service to the City under any franchise, contract or grant made or granted by the City or State, and shall report to the Board of Commissioners or other proper officer, any failure of such person or corporation to render services in accordance with, or otherwise to observe the requirements or conditions of the franchise, contract or grant under which such public utility is operated.

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Exhibit 7.

Adopted—December 2, 1924. Ayes—Commissioner Hosford, Axford and Daly, Nays—Commissioner O'Connell and Mayor Talbot.

10 I, WILLIAM P. LEE, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of
 (Seal) a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne at a meeting held Dec. 2, 1924.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne this day of Jan. 2, 1925, A. D. 19

WM. P. LEE,
City Clerk.

20

Exhibit 8.

BY COMMISSIONER DALY:

30 RESOLVED, By the Board of Commissioners of the City of Bayonne, that all the executive, administrative, judicial and legislative authority, powers and duties relating to the Police Department, Fire Department, Recorder's Court, Board of Health, Overseer of the Poor, Department of Weights and Measures, Linemen, all Public Buildings, the Electrical Bureau, the Storekeeper and Service Clerk, be and the same hereby are assigned and distributed into the Department of Public Safety; and the Director of the Department of Public Safety hereby is vested with all the powers, authority, rights and duties now or heretofore vested in or given by any statute, charter or ordinance relating to the Police Department,

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Exhibit 8.

Fire Department, Recorder's Court, Board of Health, Overseer of the Poor, Department of Weights and Measures, Linemen, All Public Buildings, the Electrical Bureau, the Storekeeper and Service Clerk, and shall perform all the duties now or heretofore imposed by law with respect thereto. 10

Adopted—December 2, 1924. Ayes—Commissioners Hosford, Axford, and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

I, WILLIAM P. LEE, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of a RESOLUTION adopted by the Board of Commissioners of the City of Bayonne at a meeting held Dec. 2, 1924. 20

(Seal)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne, this day of Jan. 2, 1925, A. D. 19

WM. P. LEE,
City Clerk.

Exhibit 9.

30

BY COMMISSIONER DALY:

RESOLVED, by the Board of Commissioners of the City of Bayonne, that we do hereby designate the Director of Revenue and Finance as the officer to issue, countersign and audit all warrants for the disbursement of money, and all such warrants shall hereafter be signed by the said Director of Revenue and Finance.

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Exhibit 9.

Adopted—December 2, 1924. Ayes—Commissioners Hosford, Axford and Daly. Nays—Commissioner O'Connell and Mayor Talbot.

10 I, William P. Lee, City Clerk of the City of Bayonne, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of
(Seal) a RESOLUTION ADOPTED by the Board of Commissioners of the City of Bayonne, at a meeting held Dec. 2, 1924.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Bayonne, this day of January 2, 1924, A. D. 19 .

WM. P. LEE,
City Clerk.

20

Exhibit A.

30 WHEREAS, Commissioner Patrick J. O'Connell at the last meeting of this board urged that a greater degree of harmony should prevail among its members during the year 1925, than was exhibited during the year 1924, and suggested as a means to that end, that the power of appointment, removal and discharge of all officers and employees in the "Department of Public Affairs" and in the "Department of Parks and Public Property" reserved and retained by this board in and by the resolutions assigning the powers to said departments respectively, be restored and assigned to them.

40 THEREFORE BE IT RESOLVED, that the resolution passed by this Board on the 2nd day of December, 1924, assigning and distributing into the De-

Exhibit A.

partment of Parks and Public Property the powers therein enumerated, be amended, by striking out and eliminating therefrom the following words "except that the appointment, removal and discharge of all officers, employees and workmen, in and about the said Public Parks, playgrounds and pleasure grounds, is hereby expressly reserved and retained by the Board of Commissioners" so that the said resolution as amended shall read and be as follows:

RESOLVED, By the Board of Commissioners of the City of Bayonne, that all the executive, administrative, judicial and legislative authority, powers and duties relating to the Public Parks, Playgrounds and pleasure grounds in the City of Bayonne, and of all the property belonging thereto be and the same hereby is assigned and distributed into the Department of Parks and Public Property; and the Director of the Department of Parks and Public Property hereby is vested with all the powers, authority, rights and duties now or heretofore vested in or given by any statute, charter or ordinance relating to the Public Parks, Playgrounds and pleasure grounds in the City of Bayonne, and of all the property belonging thereto, and shall perform all the duties now or heretofore imposed by law with respect thereto.

RESOLVED, that the Director of Parks and Public Property shall have charge of enforcing the provisions of law and ordinances relating to the improvement and care of the parks and planting and care of trees therein. He shall have such assistance from the City Engineer as may be necessary in surveying, laying out improvements and otherwise improving the parks and playgrounds.

Exhibit B.

Whereas, Commissioner Patrick J. O'Connell at the last meeting of this Board urged that a greater degree of harmony should prevail among its members during the year 1925, than was exhibited during the year 1924, and suggested as a means to that end, that the power of appointment, removal and discharge of all officers and employees in the "Department of Public Affairs" and in the Department of "Parks and Public Property" reserved and retained by this Board, in and by the resolutions assigning the powers to said departments respectively be restored and assigned to them.

Therefore be it Resolved, that the Resolution passed by this Board on the second day of December, 1924, assigning and distributing into the Department of Public Affairs the powers therein enumerated be amended by striking out and eliminating therefrom, the following words: "Except that the appointment, removal and discharge of all officers and employees in and about the said Free Public Library of the City of Bayonne, or in said Department of Public Affairs hereby is expressly reserved and retained by the Board of Commissioners" so that the said resolution as amended shall read and be as follows:

RESOLVED, By the Board of Commissioners of the City of Bayonne, that all the executive, administrative, judicial and legislative authority, powers and duties relating to the Free Public Library of Bayonne, be and the same hereby are assigned and distributed into the Department of Public Affairs; and the Director of the Department of Public Affairs hereby is vested with all the powers, authority, rights and duties now or

Exhibit B.

heretofore vested in or given by any statute, charter, or ordinance relating to the Free Public Library of the City of Bayonne and shall perform all the duties now or heretofore imposed by law with respect thereto.

I certify that the foregoing testimony was taken before me by George P. Stacy, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such testimony was taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that it accurately states the evidence given. 10

GEORGE A. WARDELL,
Supreme Court Examiner. 20

Writ of Certiorari.

(Allowed February 28th, 1925.)

THE STATE OF NEW JERSEY.

TO BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TALBOT and PATRICK J. O'CONNELL, Board of Commissioners of the City of Bayonne, and the CITY OF BAYONNE; 30

GREETING: We being willing for certain reasons appearing by the affidavit of Augusta Oliver filed in this case, and the depositions and [SEAL] exhibits taken under a rule to show cause heretofore allowed herein, to be certified of certain resolutions passed by the said respondents on the 2nd day of December, 1924, to wit: 40

Writ of Certiorari.

10 A certain resolution whereby the Director of Revenue and Finance is designated as officer to countersign and audit all warrants for the disbursement of money in the City of Bayonne; also a certain other resolution whereby certain powers and duties are attempted to be assigned and distributed unto the Department of Revenue and Finance of said City of Bayonne; also a further resolution whereby certain powers and duties are attempted to be assigned to the Department of Public Affairs of said City of Bayonne; also a further resolution whereby certain powers and duties are attempted to be assigned to the Department of Public Safety of the City of Bayonne; also a further resolution, whereby certain powers and duties are attempted to be assigned to the Department of Streets and Public Improvements of the City of Bayonne; also a further resolution, whereby certain powers and duties are attempted to be assigned to the Department of Parks and Public Property of the City of Bayonne; all of which were passed by the said respondents on December 2nd, 1924.

20 We do command you that the aforesaid resolutions so passed by the said respondents, Bert Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, Board of Commissioners of the City of Bayonne, and the City

30

Writ of Certiorari.

of Bayonne, on December 2, 1924, with the records of the proceedings of the said respondents, at which the said resolutions were introduced and passed, together with all things touching and concerning the passing of the same, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on the third day of March, 1925, you certify and send, together with this, our Writ, that therein may be done what of right and according to the laws of this State should be done. 10

WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court at Trenton, this twenty-eighth day of February, 1925.

EDWARD J. KELLEHER, 20
Clerk.

GROSS & GROSS,
Attorneys.

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Writ of Certiorari.

NEW JERSEY SUPREME COURT

Augusta Oliver, Robert J. Talbot
and Patrick J. O'Connell,
Prosecutors,

10

vs.

Bert Daly, Harry Hosford, W.
Homer Axford, Robert J. Talbot and
Patrick J. O'Connell, Board of Com-
missioners of the City of Bayonne,
and the City of Bayonne,
Respondents.

20

WRIT OF CERTIORARI.
GROSS & GROSS,
Attys of Prosecutors,
15 Exchange Place,
Jersey City, N. J.

Allocatur February 28, 1925, on
condition that the case be brought in
for argument at the March Term of
the Court, 1925, and further that the
writ shall not act as a stay

30

By the Court,
CHAS. C. BLACK,
J. S. C.

& further that either side may take
testimony upon notice according to
the rule of the Supreme Court.

CHAS. C. BLACK,
J. S. Ct.

40

Rule Changing Return Day of Writ, &c.

(Filed May 4th, 1925.)

NEW JERSEY SUPREME COURT.

<p>AUGUSTA OLIVER, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Prosecutors,</p> <p style="text-align: center;"><i>v.</i></p> <p>BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Board of Commissioners of the City of Bayonne, and the CITY OF BAYONNE, Defendants.</p>	<p style="font-size: 4em;">}</p>	<p>On Applica- tion for Certiorari.</p>	<p>10</p> <p>20</p>
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This matter being opened to the court by Gross & Gross, attorneys of the prosecutors herein, appearing by Benjamin Gross, of counsel, and satisfactory cause appearing therefor; it is, on this 3rd day of March, 1925:

ORDERED, that the return day of the aforesaid writ of certiorari heretofore allowed herein be, and the same is hereby extended to and including April 3, 1925; and it is further

ORDERED, that either of the parties hereto have leave to take depositions on the said writ, upon two days' notice to the other party.

Rule allowed in open court this 3rd day of March 1925.

Rule actually entered this 4th day of March, 1925.

On motion of

GROSS & GROSS,
Attorneys of Prosecutors.

40

A true copy,

EDWARD J. KELLEHER,
Clerk.

Reasons.

(Filed April 3, 1925.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
20 OF BAYONNE,
Defendants.

On Certiorari.

The said prosecutors, by Gross & Gross, their attorneys, come and pray that the resolutions of the Board of Commissioners of the City of Bayonne, passed on December 2nd, 1924, and returned with the writ of certiorari may be set aside and for nothing holden, for the following reasons:

30 1. That said resolutions attempt to take from the prosecutor Robert J. Talbot, as director of public affairs of the City of Bayonne, the powers and duties appropriate to his department, and vest the same in other departments.

2. That the said resolutions attempt to take from the prosecutor Robert J. Talbot, as director of public affairs of the City of Bayonne, and from Patrick J. O'Connell director of parks and public
40 property, of the City of Bayonne, the power of

Reasons.

appointment and removal of employees in their respective departments.

3. That the said resolutions deprive and take from the prosecutor Robert J. Talbot, director of public affairs of the City of Bayonne, all powers and duties as such director of public affairs and as Mayor of the City of Bayonne, which are required by law to be assigned to him or his department as appropriate thereto. 10

4. That said resolutions so taking and depriving the said prosecutor Robert J. Talbot, director of public affairs and Mayor of said City of Bayonne, of the powers and duties appropriate to his department, are illusive and arbitrary and were not passed in good faith, but for political purposes only. 20

5. That said resolutions were adopted at a regular meeting of the commissioners of the City of Bayonne, the individual respondents above named without notice calling a meeting for such purpose, and said meeting was not an organization meeting of said board of Commissioners of the City of Bayonne.

6. That said resolutions, and particularly the resolution assigning to the Department of Public Affairs, jurisdiction over the free Public Library, and the resolution purporting to assign to the departments and directors of Revenue and Finance of Public Safety of Streets and Public Improvements of the City of Bayonne, are in divers other respects illegal, illusive, arbitrary and unjust and should be set aside and for nothing holden. 30

Dated, April 3rd, 1925. 40

GROSS & GROSS,
Attorneys of Prosecutors.

Return to Writ.

(Filed April 3rd, 1925.)

NEW JERSEY SUPREME COURT.

10

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

v.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,

20

Defendants.

On Certiorari.

To the Honorable the Justices of the Supreme
Court of Judicature of the State of New Jer-
sey.

30

Bert Daly, Harry Hosford, W. Homer Axford,
Robert J. Talbot and Patrick J. O'Connell, Board
of Commissioners of the City of Bayonne, and the
City of Bayonne, the above named respondents, in
obedience to the command of the writ hereto
annexed, do hereby certify and send to you cer-
tain resolutions adopted by the Board of Commis-
sioners of the City of Bayonne at its meeting held
on the second day of December, 1924; to wit: A
resolution whereby the Director of Revenue and
Finance is designated as the officer to countersign
and audit all warrants for the disbursement of

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Return to Writ.

money in the City of Bayonne; also a resolution whereby certain powers and duties are assigned and distributed unto the Department of Revenue and Finance of said City of Bayonne; also a resolution whereby certain powers and duties are assigned to the Department of Public Affairs of said City of Bayonne; also a resolution whereby certain powers and duties are assigned to the Department of Public Safety of the City of Bayonne; also a resolution whereby certain powers and duties are assigned to the Department of Streets and Public Improvements of the City of Bayonne; also a resolution whereby certain powers and duties are assigned to the Department of Parks and Public Property of the City of Bayonne; and also two further certain resolutions adopted by the said Board of Commissioners at its meeting held on the fifth day of January, 1925, to wit: A resolution amending a resolution adopted on the second day of December, 1924, whereby certain powers and duties are assigned to the Department of Public Affairs of said City of Bayonne; and also a further resolution amending a resolution adopted on the second day of December, 1924, whereby certain powers and duties are assigned to the Department of Parks and Public Property of the City of Bayonne; and also the record of the proceedings of said Board of Commissioners adopting the said resolutions of the second day of December, 1924, and the resolutions of the fifth day of January, 1925, together with all things touching and concerning the same, as fully and entirely as the same remain in the office of the City Clerk of the City of Bayonne, as by said writ we are commanded.

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Return to Writ.

IN WITNESS WHEREOF the City of Bayonne has caused this return to be made on its behalf by the City Clerk, this Twenty-First day of March, 1925.

CITY OF BAYONNE,

10 (Seal of the City
of Bayonne)

By WILLIAM P. LEE,
City Clerk.

Annexed to and returned with the writ, as part of the return are the resolutions printed above, as Exhibits 4, 5, 6, 7, 8 and 9, which are printed on pages 43 to 52, and are not again here reproduced, to avoid duplication.

Meeting of December 9, 1924.

20

Regular Meeting of the Board of Commissioners of the City of Bayonne, held in the City Hall, Avenue E and 30th Street, on Tuesday, December 9, 1924, at 10:31 o'clock A. M.

Present—Mayor Talbot, Commissioners Hosford, O'Connell, Axford and Daly.

From the New Jersey Supreme Court:

30 Augusta Oliver, Robert J. Talbot and Patrick J. O'Connell, Prosecutors *v.* Bert. Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, Board of Commissioners of the City of Bayonne, and the City of Bayonne, Defendants,—Notice of application for certiorari and affidavit.

Ordered referred to the City Attorney.

Ayes—Commissioners Hosford, O'Connell, Axford, Daly and Mayor Talbot.

Nays—None.

From James Benny, City Attorney.

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Meeting of December 9, 1924.

Bayonne, N. J. Dec. 9th, 1924.

To the Honorable Board of Commissioners.

Gentlemen:

I beg to advise you that on an application made 10
 on the 8th day of December inst., in a cause
 wherein Augusta Oliver, Robert J. Talbot, and
 Patrick J. O'Connell, are prosecutors, and Bert
 Daly, Harry Hosford, Homer Axford, Robert J.
 Talbot and Patrick J. O'Connell, Board of Com-
 missioners of Bayonne, and the City of Bayonne,
 are defendants, in which a rule to show cause why
 a writ of certiorari should not issue out of the Su-
 preme Court to review the resolutions adopted by
 the Board of Commissioners on December 2, 1924, 20
 by which the Director of Revenue and Finance
 was designated to issue, countersign and audit all
 warrants for the disbursement of money, etc., and
 the resolutions by which the powers and duties to
 be performed by each department were distrib-
 uted, with a stay in these words—"That in the
 meantime and until the further order of this Court
 in the premises, the said defendants and each of
 them do desist and refrain from taking any fur-
 30
 ther proceedings or action under, upon or pur-
 suant to said resolutions, or either of them."

Inasmuch as the resolutions embrace most, if
 not all the powers, given by the act to the Commis-
 sioners, it is difficult to say what action, if any,
 can be taken by your honorable body without vio-
 lating the terms of the stay. It may be, that it
 was intended that only such new or additional
 powers, over and above those theretofore exer-
 cised by the several departments assigned to them
 by these resolutions, and the payment of the ad- 40

Meeting of December 9, 1924.

ditional policemen and firemen, are affected by the stay. But its language is so broad that it covers all that is embraced within the terms of each and every of the said resolutions.

10 I therefore advise your Honorable Body not to take any action on any matters that depend upon any of the resolutions in question. In the meantime it is my judgment that application should be made for a modification of the order.

Respectfully submitted,

JAMES BENNY,
City Attorney.

20 Commissioner Hosford moved that the communication be received and filed and the City Attorney be directed to apply to the Supreme Court for a modification of the foregoing order. Carried.

Ayes—Commissioners Hosford, Axford and Daly.

Nays—Mayor Talbot and Commissioner O'Connell.

Commissioner Daly moved that when the Board adjourn it adjourn to meet Monday, December 15, 1924, at 10:30 o'clock, A. M.

30 Carried.

Ayes—Commissioners Hosford, O'Connell, Axford and Daly.

Nays—Mayor Talbot.

Commissioner Daly moved to adjourn.

Carried.

Ayes—Commissioners Hosford, O'Connell, Axford, Daly and Mayor Talbot.

Nays—None.

Annexed to and returned with the writ, as part

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Meeting of December 9, 1924.

of the return, are the affidavit of Augusta Oliver, with the schedules thereunto annexed, which are the same as Exhibits 4, 5, 6, 7, 8 and 9, and the rule to show cause allowed upon the filing of the same, which are printed on pages 43 to 52, and are not here again reproduced, to avoid duplication. 10

Meeting of December 15, 1924.

Adjourned Regular Meeting of the Board of Commissioners of the City of Bayonne, held in the City Hall, Avenue E and 30th Street, on Monday, December 15, 1924, at 10:49 o'clock, A. M.

Present—Mayor Talbot; Commissioners Hosford, O'Connell, Axford and Daly. 20
From James Benny, City Attorney.

December 15th, 1924.

To the Honorable Board of Commissioners
of the City of Bayonne, N. J.

Gentlemen:

This is to advise you that on Saturday, December 13th, 1924, the Hon. James F. Minturn, one of the Justices of the Supreme Court, signed an order vacating the stay made in the case of Augusta A. Oliver, Robert J. Talbot and Patrick J. O'Connell, prosecutors, *v.* Bert Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, Board of Commissioners of the City of Bayonne, and the City of Bayonne, defendants, a copy of which order vacating the said stay is herewith enclosed. 30

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Meeting of December 15, 1924.

The Board, and each of the above named commissioners, are therefore, at liberty to act as if the said stay had never been made.

10 I have sent the original order to Trenton, together with a copy to be certified by the Clerk, so that the authenticated copy may be on the files of the City.

Respectfully yours,

JAMES BENNY,
City Attorney.

and copy of order vacating stay.

Ordered received and filed.

20 Ayes—Commissioners, Hosford, O'Connell, Ax-
ford, Daly and Mayor Talbot.

Nays—None.

* * * * *

Commissioner Daly move to adjourn.

Carried.

Ayes—Commissioners, Hosford, O'Connell, Ax-
ford, Daly and Mayor Talbot.

Nays—None.

30

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Order Vacating Stay.

(Filed December 15th, 1925.)

NEW JERSEY SUPREME COURT.

AUGUSTA OLIVER, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Prosecutors,	}	10
<i>v.</i>		
BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TAL- BOT and PATRICK J. O'CONNELL, Board of Commissioners of the City of Bayonne, and the CITY OF BAYONNE, Defendants.	}	20

On applica-
 tion for Rule
 vacating
 stay, etc.

This matter being opened to the Court by James Benny, Attorney for the defendants, and in the presence of Isaac Gross, of Gross and Gross, attorneys of the Prosecutors, and it appearing to the Court that the stay contained in the rule to show cause made in the above entitled cause on the 8th day of December, 1924, which stay is in the words following: 30

“that in the meantime, and until the further order of this Court in the premises, the said defendants and each of them do desist and refrain from taking any further proceedings or action under, upon or pursuant to said resolutions, or either of them,” was inadvertently made and issued.

It is thereupon on this 13th day of December, in the year A. D. 1924, ordered that the

Order Vacating Stay.

said stay so made and contained in the said rule to show cause made in the above entitled cause, on the 8th day of December, 1924, be and the same is hereby vacated and set aside.

10 AND it is further ordered that a copy hereof, certified to be a true copy by the attorney of the defendants, be served on the attorneys of the prosecutors.

JAMES F. MINTURN,
J. S. C.

Meeting of January 5, 1925.

20 Special Meeting of the Board of Commissioners of the City of Bayonne, held in the City Hall, Avenue E and 30th Street, January 5, 1926, at 11:13 o'clock, A. M.

Present—Commissioners Hosford, O'Connell, Axford and Daly.

Absent—Mayor Talbot.

January 3, 1925.

To William P. Lee,
City Clerk of the City of Bayonne.

30 Dear Sir:

Please call a Special Meeting of the Board of Commissioners of the City of Bayonne, to be held Monday, January 5th, 1925, at 11 o'clock in the forenoon, for the transaction of general business.

Yours truly,

BERT DALY,
W. HOMER AXFORD,
Commissioners.

Meeting of January 5, 1925.

Ordered received and filed.

Ayes—Commissioners Hosford, O'Connell, Axford and Daly.

Absent—Mayor Talbot.

Nays—None.

Annexed to and returned with the writ, as part of the return, are the resolutions Exhibit A, and Exhibit B, which are printed on pages 10 and are not here again reproduced, to avoid duplication.

Meeting of March 10, 1925.

Regular Meeting of the Board of Commissioners of the City of Bayonne, held in the City Hall, Avenue E and 30th Street, on Tuesday, March 10, 1925, at 11:02 o'clock, A. M. 20

Present—Mayor Talbot, Commissioners Hosford, O'Connell, Axford, Daly.

* * * * *

The following were received and ordered referred to the City Attorney:

* * * * *

From the New Jersey Supreme Court, Augusta Oliver, *et als.*, Prosecutors *v.* Bert Daly, *et als.*, Respondents, Writ of Certiorari. 30

* * * * *

Ayes—Commissioners Hosford, O'Connell, Axford, Daly and Mayor Talbot.

Nays—None.

* * * * *

Meeting of March 10, 1925.

From James Benny, City Attorney:

March 9th, 1925.

To the Honorable Board of Commissioners
of the City of Bayonne, N. J.

10 Gentlemen:

I write to advise you that the writ of certiorari in the case of Oliver, *et als. v.* the Commissioners of the City of Bayonne, etc., which was served on the Clerk on Friday, March 6th inst., was allowed "on condition that the case be brought on for argument at the March Term of the Court 1925, and further that the writ shall not act as a stay." By a rule allowed on March 3rd, inst. the return day of the writ was extended to and including April 20 3rd, 1925. Ordinarily a writ of certiorari operates as a stay, but in this case, the Court in allowing it, expressly provided that it should not operate as a stay. The only effect, therefore, of the writ is, that the Court will ultimately decide whether your Honorable Body had the legal right and power to pass the resolutions whereby the Director of Revenue and Finance is designated as the officer to countersign and audit all warrants for the disbursement of money, and the resolutions whereby 30 certain duties are assigned and distributed to and among the Department of Public Affairs; the Department of Public Safety; the Department of Streets and Public Improvements; the Depart-

Meeting of March 10, 1925.

ment of Parks and Public Safety, in the meantime the affairs of the City should be administered in the same manner as before the allowance of the writ.

Respectfully yours,

JAMES BENNY, 10
City Attorney.

Order received and filed.

Ayes—Commissioners Hosford, O'Connell, Ax-
ford, Daly and Mayor Talbot.

Nays—None.

* * * * *

Commissioner Daly moved to adjourn.

Carried. 20

Ayes—Commissioners, Hosford, O'Connell, Ax-
ford, Daly and Mayor Talbot.

Nays—None.

30

40

Stipulation.

(Filed April 16th, 1925.)

NEW JERSEY SUPREME COURT.

10

 AUGUSTA OLIVER, *et als.*,
 Prosecutors,
v.
 BERT DALY, *et als.*,
 Defendants.

} On Certiorari.

20

It is hereby Stipulated and agreed that the following rule for judgment entered in the Supreme Court in fifty-four consolidated cases on certiorari, under the name of William E. Carroll, *et als.*, Prosecutors *vs.* The City of Bayonne, defendant, may be offered in evidence on the part of the defendant.

The offer, however, is subject to the objection on the part of the prosecutors that it is incompetent, irrelevant and immaterial in this case.

30

 GROSS & GROSS,
 Attorneys of Prosecutors.

 JAMES BENNY,
 Attorney of Defendants.

40

Rule for Judgment in Carroll Case.

NEW JERSEY SUPREME COURT.

WILLIAM E. CARROLL, *et als.*,
Prosecutors,

v.

CITY OF BAYONNE,
Defendant.

On Certiorari.
(54 Consoli-
dated Cases.)

10

The Court having inspected the resolutions adopted by the Board of Commissioners of the City of Bayonne, complaint whereof was made in the various writs of certiorari allowed in the above entitled matters, and having inspected also all proceedings had pursuant thereto, together with the records of the meetings of the Board of Commissioners of the City of Bayonne relating to said resolutions as contained in the return to the writs of certiorari issued in the above entitled cause, and the reasons for setting aside the said resolutions, and the depositions of witnesses, and exhibits, and having duly considered the said matters, and the arguments and briefs of counsel for the respective parties;

20

30

It is on this First day of April, 1925, Ordered that the resolutions complained of in the several writs of certiorari issued in the above entitled matters, and all proceedings thereunder, be annulled, set aside, made void and for nothing holden, with costs to the prosecutors.

Entered April 1st, 1925.

On motion of

FALLON & FALLON,
Attorneys of Prosecutors.

40

Opinion of Supreme Court.

(Filed January 28, 1926.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

vs.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the City
20 of Bayonne,
Defendants.

Submitted June 9th, 1925. On writ of certio-
rari.

Decided October 5th, 1925. Filed January
28th, 1926.

Before:

30 Justices TRENCHARD, KATZENBACH and LLOYD.
For the Prosecutors, GROSS & GROSS, Esqrs.;
ISAAC GROSS, Esq., of Counsel.
For the Defendants, JAMES BENNY, Esq.

Per Curiam:

This case is before us upon a writ of certiorari
directed to the Board of Commissioners of the
City of Bayonne and the City of Bayonne. The
prosecutors of the writ are two of the Board of

40

Opinion of Supreme Court.

Commissioners, Robert J. Talbot, Mayor of Bayonne, and Patrick J. O'Connell, Director of Parks and Public Safety. The writ brings up for review the validity of six resolutions passed by the Board of Commissioners on December 2, 1924, by a vote of three to two. The prosecutors cast the two negative votes. 10

On April 23, 1915, the City of Bayonne assumed a new municipal raiment. On that day a Board of five commissioners elected under the provisions of the Walsh Act were inducted into office. The powers and duties of the respective departments were determined by appropriate resolutions. Each Commissioner was assigned to a department. Four years passed and a new Board of Commissioners was elected. On November 25, 1919, the members of the new commission were assigned to the different departments to assume the duties as previously outlined in 1915 for each department. On May 15th, 1924, when another Board took control, resolutions were adopted designating Robert J. Talbot as Mayor. He thereby was assigned to the Department of Public Affairs. Patrick J. O'Connell was assigned to the Department of Public Safety. Previous to the retirement of the old Board of Commissioners they had met and selected fifty-one new policemen and firemen. This action was questioned and reviewed. Mayor Talbot was opposed to this action of the old Board of Commissioners and refused to sign checks for the payment of salaries to the new policemen and firemen. This resulted in the Board of Commissioners passing the resolutions under review which stripped Mayor Talbot of all his powers and duties, excepting his duties in connection with the Free Public Library of the City of Bayonne. A 20 30 40

Opinion of Supreme Court.

like fate met Commissioner O'Connell. They applied for and obtained a writ of certiorari to review this action. The prosecutors contend that the resolutions are illegal. The Commission Government Act provides that the Board of Commissioners shall determine the powers and duties to be performed by each department and shall assign commissioners to the appropriate departments. The Act specifies the departments. The object of the Commission Government Act was to procure a form of government for municipalities in which politics would be, as far as possible, eliminated. The Act was intended to give considerable latitude and discretion to each of the heads of the departments in the conduct of the affairs of that department, without interference of other Commissioners. The purposes of this Act would not be accomplished if three Commissioners could at any time deprive the other two Commissioners of substantially all the duties and powers of the departments to which they had been assigned. The resolutions under review unquestionably do this. In our opinion they are illegal. This view finds support in several cases. In the case of *Woolley vs. Flock*, 92 N. J. L. 65, it was held that the office of presiding officer of the Board of Commissioners, and as such Mayor and Director of the Department of Public Affairs, was for a fixed term of four years and not merely at the will of the Board of Commissioners. While this case might not be considered identical with the one under review, yet the basic principle is the same. When a Commissioner has been assigned to a department he cannot by a vote of a majority of the Commissioners, be turned out of that department or have

Opinion of Supreme Court.

the powers and duties of the department so curtailed as to make the Commissioner a mere figure-head. The case of *Hendee vs. City of Wildwood*, 96 N. J. L. 286, is a case in point. In this case Commissioner Hendee was duly chosen as Mayor of Wildwood. This made him Director of the Department of Public Affairs. The other two Commissioners (this being a city governed by three Commissioners) endeavored to combine "Public Safety" with "Revenue and Finance" which took the Police Department out of the hands of the Mayor. The resolution seeking to accomplish this was set aside by this Court in certiorari proceedings. The judgment of the Supreme Court was affirmed by the Court of Errors and Appeals.

The resolutions in question are illegal and are set aside.

10

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30

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Rule for Judgment.

(Entered July 29th, 1926.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

vs.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne, and the CITY
OF BAYONNE,

20

Respondents.

On Certiorari.
RULE.

The court having inspected the resolutions passed by the respondents Bert Daly, Harry Hosford, W. Homer Axford, Robert J. Talbot and Patrick J. O'Connell, as the Board of Commissioners of the City of Bayonne, and the City of Bayonne, on the 2nd day of December, 1924, to
30 wit:

40 A certain resolution whereby the Director of Revenue and Finance is designated as officer to countersign and audit all warrants for the disbursement of money in the City of Bayonne; also a certain other resolution whereby certain powers and duties are attempted to be assigned and distributed unto the Department of Revenue and Finance of said City of Bayonne; also a further resolution whereby certain powers and duties are attempted to be assigned to the Department of Public Affairs of said City of Bayonne; also a further resolution whereby certain powers

Rule for Judgment.

and duties are attempted to be assigned to the Department of Public Safety of the City of Bayonne; also a further resolution, whereby certain powers and duties are attempted to be assigned to the Department of Streets and Public Improvements of the City of Bayonne; also a further resolution, whereby certain powers and duties are attempted to be assigned to the Department of Parks and Public Property of the City of Bayonne; all of which were passed by the said respondents on December 2nd, 1924. 10

returned with the writ of certiorari in this cause, and the reasons assigned by the prosecutors for setting the same aside, and the court having read the depositions taken pursuant to rule heretofore made in this cause, and the court having heard the arguments of Gross & Gross, attorneys of Prosecutors, and of James Benny, attorney of respondents, and duly considered the same, and it appearing to the court that the said resolutions so passed and adopted by the said respondents on the 2nd day of December, 1924, and each of said resolutions, are illegal and of no force and effect, and that the same should be set aside and for nothing holden; it is on this 29th day of January 1926, 20

ORDERED, that the said resolutions aforementioned and returned with the writ of certiorari herein, and each of said resolutions, be and the same are hereby set aside and are null and void for nothing holden, with costs. 30

Rule entered January 29, 1926, on motion of

GROSS & GROSS,
Attorneys of Prosecutors.

A true copy

EDWARD J. KELLEHER,
Clerk. 40

Notice of Appeal.

(Filed February 2, 1926.)

NEW JERSEY SUPREME COURT.

10 AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

vs.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
20 City of Bayonne,
Respondents.

On Certiorari.
Notice of
Appeal.

To GROSS & GROSS, Esquires, Attorneys for the
above named prosecutors.

30 TAKE NOTICE that the defendants appeal to the
Court of Errors and Appeals from the whole of
the judgment entered in the above entitled cause,
in the New Jersey Supreme Court, on the follow-
ing grounds:

1. The Supreme Court erred in setting aside
the six resolutions described in the writ of cer-
tiorari passed by the Board of Commissioners on
December 2nd, 1924, to wit:

2. A resolution whereby the Director of Rev-
enue and Finance is designated to issue, counter-
sign and audit all warrants for the disbursement
of moneys in the City of Bayonne.

40

Notice of Appeal.

BECAUSE by an act entitled "An act concerning municipalities" approved March 27th, 1917, known as Chapter 152 of Laws of 1917, and the several amendments thereof and supplements thereto, the defendants, the Board of Commissioners of the City of Bayonne, are given the power to designate the officer to issue warrants, in all cases where the governing body has not designated the officer to issue warrants. 10

3. A resolution whereby certain powers and duties are assigned and distributed into the Department of Revenue and Finance of the said City of Bayonne.

4. A resolution whereby certain powers and duties are assigned and distributed into the Department of Public Affairs of said City of Bayonne. 20

5. A resolution whereby certain powers and duties are assigned and distributed into the Department of Public Safety of said City of Bayonne.

6. A resolution whereby certain powers and duties are assigned and distributed into the Department of Streets and Public Improvements of said City of Bayonne. 30

7. A resolution whereby certain powers and duties are assigned to the Department of Parks and Public Property of said City of Bayonne.

8. BECAUSE the defendants, the Board of Commissioners of the City of Bayonne had the power, 40

Notice of Appeal.

and it was their duty under the provisions of an act entitled "An act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this state," approved April 25th, 1911, known as Chapter 221, Laws of 1911, and the several amendments thereof and supplements thereto, to distribute into and among the five departments named in the said act, the executive, administrative, judicial and legislative powers, authority and duties conferred upon said Commissioners by said act, and in compliance with such power and in discharge of such duty, said Commissioners passed the five resolutions mentioned in the above paragraphs numbered 3, 4, 5, 6 and 7.

20 9. The Supreme Court erred in holding that the Board of Commissioners of Bayonne did not have the power under the said act of April 25, 1911, and the several supplements and amendments to said act, to pass the resolutions described in said paragraphs 3, 4, 5, 6 and 7 above and in the said writ of certiorari.

30 10. BECAUSE the said Act of April 25, 1911, by its terms expressly vested in the said Board of Commissioners, all administrative, judicial and legislative powers and duties then held and possessed and exercised by the Mayor and City Council, and all other executive or legislative bodies in said cities, and gives said Commissioners complete control over the affairs of the City adopting the provisions of the Act.

40 11. BECAUSE the said act of April 25, 1911, and the said amendments and supplements requires

Notice of Appeal.

that all such executive, administrative, judicial and legislative powers, authority and duties shall be distributed into and among five departments, viz.: The Department of Public Affairs, Department of Revenue and Finance, Department of Public Safety, Department of Streets and Public Improvements, Department of Parks and Public Property. 10

12. BECAUSE the Board of Commissioners are required by said act of 1911, and the said amendments and supplements, to determine the powers and duties to be performed by each department, and to assign such powers and duties to the appropriate department.

13. BECAUSE the provisions of the said act of April 25, 1911, and the said amendments and supplements, are mandatory. 20

14. BECAUSE there are no directions in the said act of April 25, 1911, or in said amendments and supplements, as to the particular duties which are to be assigned to any of the respective directors or departments.

15. BECAUSE the Commissioners had the power under said act of April 25, 1911, and the said amendments and supplements, to determine the powers and duties to be performed by each department. 30

16. BECAUSE such powers and duties were assigned by the said Commissioners to the said Departments. 40

Notice of Appeal.

17. BECAUSE the said Commissioners had the power to determine the said powers and duties and make said assignments.

10 18. BECAUSE the Board of Commissioners are not bound to accept or follow the determination and assignment of powers and duties made by a former board.

19. BECAUSE said determination and assignments of duties may be made at any time.

20 20. No duty imposed by law upon the Mayor has been in any way infringed upon, nor has any attempt been made by the Commissioners to infringe upon any such duty. His duties are defined in said act, and other acts of the legislature.

21. The determination and assignment of powers made by former commissioners were and are not binding upon the respondent appellants.

22. The said judgment of the Supreme Court is in other respects erroneous and illegal.

30 Dated January 30, 1926.

JAMES BENNY,
Attorney and of Counsel
for Appellants.

Proof of Service of Notice of Appeal.

(Filed February 2nd, 1926.)

NEW JERSEY SUPREME COURT.

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors,

vs.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne,
Respondents.

10

On Certiorari.
Proof of
Service of
Notice of
Appeal.

20

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

JULIUS RIEHL, being duly sworn on his oath
says, that on Saturday, the 30th day of January,
1926, I served the annexed notice of appeal upon
Gross & Gross, attorneys of record of the prose-
cutors-appellees, at their office # Exchange Place,
Jersey City, by handing to Leo Blumberg, the
clerk in charge of their office, a true copy of the
said notice of appeal. 30

JULIUS RIEHL.

Sworn and subscribed to before me }
this last day of February, 1926. }

MARY F. FOX,
Commissioner of Deeds
of New Jersey.

40

Notice of Application for Stay.

(Filed February 2, 1926.)

**NEW JERSEY COURT OF ERRORS &
APPEALS.**

10

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors-Appellees,

vs.

20

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne,
Respondents-Appellants.

On Certiorari.
On appeal of
Commissioners of
the City of Ba-
yonne from the
Supreme Court.
Notice of Appli-
cation for Stay.

To GROSS & GROSS, Esquires, Attorneys for the
Prosecutors-Appellees.

30

TAKE NOTICE that on Tuesday, the second day
of February, 1926, at ten thirty (10:30) o'clock in
the forenoon, or as soon thereafter as counsel can
be heard, at the State House in Trenton, I shall
move before the New Jersey Court of Errors and
Appeals, for a stay of all proceedings on the rule
for judgment made and entered in the Supreme
Court in the above entitled cause, on the 30th day
of January, 1926, on the following grounds:

1. The Supreme Court erred in setting aside
the six resolutions described in the writ of certi-
orari, passed by the Board of Commissioners on
December 2nd, 1924, to wit:

40

Notice of Application for Stay.

2. A resolution whereby the Director of Revenue and Finance is designated to issue, countersign and audit all warrants for the disbursement of moneys in the City of Bayonne.

Because by an act entitled "An act concerning municipalities" approved March 27th, 1917, known as Chapter 152 of the Laws of 1917, and the several supplements thereto and amendments thereof, the defendants the Board of Commissioners of the City of Bayonne, are given the power to designate the officer to issue warrants in all cases where the governing body has not designated the officer to issue warrants. 10

3. A resolution whereby certain powers and duties are assigned and distributed into the Department of Revenue and Finance of the said City of Bayonne. 20

4. A resolution whereby certain powers and duties are assigned and distributed into the Department of Public Affairs of said City of Bayonne.

5. A resolution whereby certain powers and duties are assigned and distributed into the Department of Public Safety of said City of Bayonne. 30

6. A resolution whereby certain powers and duties are assigned and distributed into the Department of Streets and Public Improvements of said City of Bayonne.

7. A resolution whereby certain powers and duties are assigned and distributed into the Department of Parks and Public Property of said City of Bayonne.

Notice of Application for Stay.

10 8. Because the defendants the Board of Commissioners of the City of Bayonne had the power and it was their duty under the provisions of an act entitled "An Act relating to, regulating and providing for the Government of cities, towns, boroughs and other municipalities within this state," approved April 25th, 1911, known as Chapter 221, Laws 1911, and the several amendments thereof and supplements thereto, to distribute into and among the five departments named in the said act, the executive, administrative, judicial and legislative powers, authority and duties conferred upon such Commissioners by said act, and in compliance with such power and in discharge of such duty said Commissioners passed the five resolutions mentioned in the above paragraphs numbered 3, 4, 5, 6 and 7.

20 9. The Supreme Court erred in holding that the Board of Commissioners of Bayonne did not have the power under the said act of April 25, 1911, and the several supplements and amendments to said act, to pass the resolutions described in said paragraphs 3, 4, 5, 6, and 7 above and in the said writ of certiorari.

30 10. Because the said act of April 25th, 1911, by its terms expressly vested in the said Board of Commissioners, all administrative, judicial and legislative powers and duties then held and possessed and exercised by the Mayor and City Council, and all other executive or legislative bodies in said cities, and gives said Commissioners complete control over the affairs of the city adopting the provisions of the Act.

40 11. Because the said act of April 25, 1911, and the said amendments and supplements, require

Notice of Application for Stay.

that all such executive, administrative, judicial and legislative powers, authority and duties shall be distributed into and among five departments, viz.: The Department of Public Affairs, Department of Revenue and Finance, Department of Public Safety, Department of Streets and Public Improvements, Department of Parks and Public Property. 10

12. Because the Board of Commissioners are required by said act of 1911, and the several amendments and supplements to determine the powers and duties to be performed by each department, and to assign such powers and duties to the appropriate department.

13. Because the provisions of the said act of April 25, 1911, and the several amendments and supplements, are mandatory. 20

14. Because there are no directions in the said act of April 25, 1911, or in said amendments and supplements, as to the particular duties which are to be assigned to any of the respective directors or departments.

15. Because the Commissioners had the power under said act of April 25, 1911, and the said amendments and supplements, to determine the powers and duties to be performed by each department. 30

16. Because such powers and duties were assigned by the said Commissioners to the said Departments.

17. Because the said Commissioners had the power to determine the said powers and duties and make the said assignments. 40

Notice of Application for Stay.

18. Because the Board of Commissioners are not bound to accept or follow the determination and assignment of powers and duties made by a former board.

10 19. Because said determination and assignment of duties may be made at any time.

20. No duty imposed by law upon the Mayor has been in any way infringed upon, nor has any attempt been made by the Commissioners to infringe upon any such duty. His duties are defined in said act, and other acts of the legislature.

21. The determination and assignment of powers made by former commissioners were and are not binding upon the respondents-appellants.

20 22. The questions involved have never been adjudicated by the Supreme Court (except in the present case) and have never been adjudicated by the Court of Errors and Appeals.

23. The case involves the construction of important public statutes, and the administration of the affairs of all municipalities which have adopted the Commission Government Act depends upon such construction.

30 24. Because the said judgment of the Supreme Court is in other respects erroneous and illegal.

Dated, January 30, 1926.

JAMES BENNY,
Attorney and of Counsel
for the Appellants.

Proof of Service of Application for Stay.

(Filed February 2nd, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

AUGUSTA OLIVER, ROBERT J. TALBOT and PATRICK J. O'CONNELL,
Prosecutors-Appellees,

vs.

BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TALBOT and PATRICK J. O'CONNELL,
Board of Commissioners of the City of Bayonne,
Respondents-Appellants.

10

On Certiorari.
On appeal of Commissioners of the City of Bayonne from the Supreme Court.

Proof of Service of Notice of Application for Stay.

20

STATE OF NEW JERSEY }
COUNTY OF HUDSON. } ss.:

JULIUS RIEHL being duly sworn on his oath says, that on Saturday, the 30th day of January, 1926, I served the annexed notice of application for Stay, upon Gross and Gross, attorneys of record of the prosecutors-appellees, at their office #15 Exchange Place, Jersey City, by handing to Leo Blumberg, the clerk in charge of their office, a true copy of the said Notice of application for Stay.

30

JULIUS RIEHL.

Sworn and subscribed to before me }
this 1st day of February, 1926. }

MARY F. FOX,

Commissioner of Deeds of New Jersey.

40

Order Granting Stay.

(Filed February 2, 1926.)

NEW JERSEY COURT OF ERRORS & APPEALS.

10

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Prosecutors-Appellees,

vs.

BERT DALY, HARRY HOSFORD, W.
HOMER AXFORD, ROBERT J. TAL-
BOT and PATRICK J. O'CONNELL,
Board of Commissioners of the
City of Bayonne,
Respondents-Appellants.

20

On Certiorari.
On appeal of the
Commissioners of
the City of Ba-
yonne. On appli-
cation of the
Commissioners
for a Stay.
ORDER.

30

Application having been made to the Court of Errors and Appeals by James Benny, attorney of the City of Bayonne, and of counsel with the appellants, and Robert H. McCarter, Esq., of counsel, for a stay of all proceedings on the rule for judgment made and entered in the Supreme Court, in the above entitled cause, under certain resolutions referred to in a writ of certiorari allowed in said cause, which resolutions were passed by the Commissioners of the City of Bayonne, on the 2nd day of December, 1924, to wit:

A resolution whereby the Director of Revenue and Finance is designated to issue, counter sign and audit all warrants for the disbursement of moneys in the City of Bayonne.

40

Order Granting Stay.

Also a certain other resolution whereby certain powers and duties are assigned and distributed into the Department of Revenue and Finance of said City of Bayonne.

Also a further resolution whereby certain powers and duties are assigned and distributed into the Department of Public Affairs of said City of Bayonne. 10

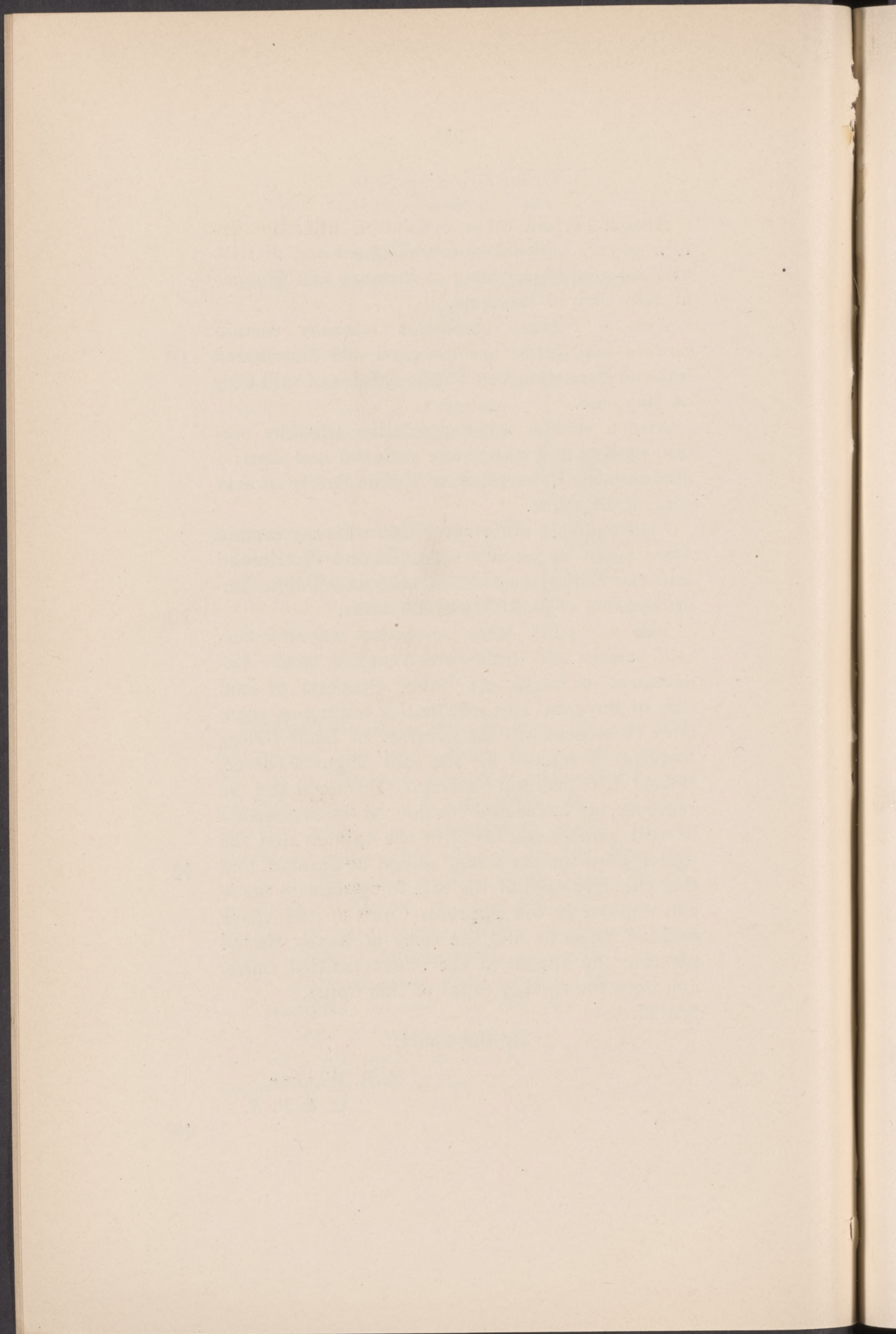
Also a certain other resolution whereby certain powers and duties are assigned and distributed into the Department of Public Safety of said City of Bayonne.

Also a certain other resolution whereby certain powers and duties are assigned and distributed into the Department of Streets and Public Improvements of said City of Bayonne. 20

Also a certain other resolution whereby certain powers and duties are assigned to the Department of Parks and Public Property of said City of Bayonne, and said matter coming on regularly to be heard in the presence of Isaac Gross, Esquire, of counsel for the said Augusta Oliver, Robert J. Talbot and Patrick J. O'Connell and the court having heard and considered the arguments of said counsel and being of the opinion that the said application for a stay should be granted, and that the operation of the rule for judgment made and entered in the Supreme Court in the above entitled cause be and the same is hereby stayed pending the appeal in the above entitled cause, and until the further order of this Court. 30
2/2/26.

By the Court,

E. R. WALKER,
C. & P. J.



New Jersey Court of Errors and Appeals

AUGUSTA OLIVER, ROBERT J. TALBOT and PATRICK J. O'CONNELL,
Prosecutors-Appellees,

vs.

BERT DALY, HARRY HOSFORD, W. HOMER AXFORD, ROBERT J. TALBOT and PATRICK J. O'CONNELL,
Board of Commissioners of the City of Bayonne,
Respondents-Appellants.

On Certiorari.

BRIEF FOR APPELLANTS.

Statement of Case.

This is an appeal from the judgment of the Supreme Court setting aside six resolutions passed by the Board of Commissioners of the City of Bayonne.

Important public questions involving the construction of the so-called Walsh or Commission Government Act (Supp. Comp. Stats., p. 1087) and the so-called Home Rule Act (P. L. 1917, p. 319) are to be decided.

There are no decisions in this State construing either of these Acts so far as the questions in this case are concerned.

The resolutions set aside by the Supreme Court are six in number, five of which relate to the determining of the powers and duties of the Directors

of the respective departments of the government of the City of Bayonne. Such departments are as follows:

1. Department of Revenue and Finance (Exhibit 6, p. 45).
2. Department of Public Affairs (Exhibit 4, p. 43).
3. Department of Public Safety (Exhibit 8, p. 50).
4. Department of Streets and Public Improvements (Exhibit 7, p. 48).
5. Department of Parks and Public Property (Exhibit 5, p. 44).

The other resolution designates the Director of Revenue and Finance as the officer to issue, countersign and audit all warrants for the disbursement of money (Exhibit 9, p. 51). It was passed under the provisions of the Home Rule Act (P. L. 1917, p. 319, Art. 14, Sec. 4, at p. 357, and P. L. 1920, p. 559).

The City of Bayonne adopted the provisions of the so-called Walsh Act on the 9th day of March, 1915 (p. 13, line 33). There are five Commissioners constituting the government of the City.

The *first* commission was elected April 13th, 1915 (p. 13, line 37) for a term of four years. That commission determined the powers and duties to be performed by each department and assigned such powers and duties to the several departments. But we claim that such determination and assignment did not bind subsequent Boards.

The *second* commission was elected May 13th, 1919 (p. 14, line 33) for a term of four years. It failed (p. 16, line 18) to determine the powers and duties of the several departments.

The *third* commission under which the resolutions now under review were passed was elected May 8th, 1923 (p. 15, line 24) for a term of four years. It organized May 15th, 1923, and designated (p. 15, line 30):

Robert J. Talbot as Mayor and Director of Public Affairs.

Harry Hosford, Director of the Department of Revenue and Finance.

Patrick J. O'Connell, Director of the Department of Public Safety (which designation of the Department of Public Safety was afterwards changed as hereinafter set forth under Point IV),

W. Homer Axford, Director of the Department of Streets and Public Property,

Bert Daly, Director of the Department of Parks and Public Property (which designation of the Director of Parks and Public Property was also changed, as hereinafter set forth).

On October 7th, 1924 (p. 16, line 3) the designation of the Department of Public Safety was changed (Exhibit 3, p. 41) by designating Commissioner Bert Daly as director thereof in the place and stead of Commissioner Patrick J. O'Connell, and at the same time the designation of the Department of Parks and Public Property was also changed by substituting Commissioner Patrick J. O'Connell in the place and stead of Commissioner Bert Daly.

On December 2nd, 1924 (p. 16, line 33) the resolutions now under review (Exhibits 4, 5, 6, 7 and 8, pp. 43 to 50) were passed.

Questions Involved.

1. Did the commissioners of Bayonne have the legal right and power to determine the powers and duties of, and assign such powers and duties to, the several departments?

2. Is it necessary that *each* commission should determine the powers and duties to be performed by each department, and assign such powers and duties to the several departments?

3. Did the commissioners of Bayonne have the legal right to change the designation of the Directors of the Departments of Public Safety and of Parks and Public Property?

4. Did the commissioners have the legal right to designate the Director of Revenue and Finance as the officer to issue, countersign and audit all warrants for the disbursement of moneys?

ARGUMENT

POINT I.

The appellants, as the Commissioners of Bayonne, have the right to determine the powers and duties of each department, and to assign such powers and duties to such departments.

The Supreme Court seems to have erroneously assumed that the powers and duties of the respective departments had been determined and assigned *before* the passage of the resolutions now under review, because in the opinion (p. 77) it is set forth as follows:—

“On April 23rd, 1915, the City of Bayonne
“assumed a new municipal raiment. On that
“day a board of five commissioners elected
“under the provisions of the Walsh Act were
“inducted into office. The powers and duties
“of the respective departments were deter-
“mined by appropriate resolutions. Each
“commissioner was assigned to a department.
“Four years passed and a new board of com-
“missioners was elected. On November 25th,
“1919, the members of the new commission
“were assigned to the different departments
“to assume the duties as previously outlined
“in 1915, for each department. On May 15th,
“1924, when another board took control reso-
“lutions were adopted designating Robert J.
“Talbot Mayor. He thereby was assigned to
“the Department of Public Affairs. Patrick
“J. O’Connell was assigned to the Depart-
“ment of Public Safety.”

In fact the powers and duties were not deter-
mined and assigned until *after* the designation of
the commissioners (p. 16, line 30).

Unless the powers and duties determined by the
first commissioners in the year 1915 were final and
could not be changed by subsequent boards, there
were no powers and duties in existence between the
time when the term of the members of said first
board expired in 1919 and December 2nd, 1924,
when the resolutions now under review determin-
ing such powers and duties, and assigning them to
the respective departments, were adopted by the
present board.

The court below seems to have lost sight of the
fact that when the said several commissioners
were designated as directors of the various de-
partments, no powers and duties had yet been
determined or assigned to said departments by
the present commissioners.

The only powers and duties ever determined prior thereto were those determined and assigned by the first commissioners in the year 1915.

The second board of commissioners elected in 1919 never determined or assigned any powers.

It was not until December 2nd, 1924 (p. 16, lines 30 to 40), that the present or third commission determined the powers and duties and assigned them to the several departments by the resolutions now under review.

Before the passage of such resolutions the directors of the several departments were acting without any determination of the powers to such departments.

The theory of the opinion of the Court below is that the resolutions now under review "*stripped*" the Mayor and Commissioner Patrick J. O'Connell of powers which had been previously determined and assigned to them, but we respectfully point out that prior to the passage of the resolution now under review, no powers had been determined, or assigned to them and that even if the powers determined by the first commissioners in 1915, were still in force, no material change was made when the present board passed the resolutions now under review.

It may be well to state here what the powers and duties were that were assigned to the Department of Public Affairs by the first commissioners (Exhibit 1, p. 35) in 1915 and of which the prosecutors allege they have been deprived. They were as follows:

1. General supervision and oversight over all the departments and affairs of the city.

That power still exists by statute in the said department and no attempt has been made to take it away by the resolutions now under review.

2. He shall be the chief executive officer and representative of the city.

That power likewise remains with him and no attempt has been made to take it away by the resolutions now under review.

3. He shall sign all contracts, agreements and conveyances.

That power he still has and no attempt has been made to take it away from him.

4. He shall sign all warrants for payment of moneys.

That power, as we contend, only existed under the Home Rule Act, until the Board of Commissioners designated some officer so to do, which is more fully treated under Point XIII.

5. He shall have charge of and cause to be prepared and published all statements and reports required by law, ordinance or resolution of the board of commissioners.

That power he still has, and no attempt has been made to take it away from him by the resolutions now under review.

6. He also is given charge of the mayor's office, city clerk's office, legal department, superintendent of weights and measures, store keeper, excise inspector, and all licenses for the sale of intoxicating liquors and all officers and employees of such officers and all other officers or employees created by law or ordinance and not otherwise assigned.

No assignment has been made since the year 1915 of either the city clerk's office or the legal department.

The act (Supp. to Comp. Stats., sec. 4, at foot of p. 1091) expressly provides that the city clerk shall be appointed by the board of commissioners.

The city clerk and the legal department are obliged to serve all the departments of the city government, and therefore are not assigned to any particular department.

Since the adoption of the 18th Amendment to the Constitution and of the Volstead Act, there has not been any excise inspector appointed.

No attempt has been made in and by the resolutions now under review to take away any of the powers so assigned to the mayor, except that of signing all warrants for the payment of moneys, and except some minor powers, as follows: weights and measures, and store keeper, both of which are so infinitesimal as not to require any comment.

The power to sign warrants has been taken away by virtue of the Home Rule Act (P. L. 1917, p. 319 art. 14 sec. 4 and amendment P. L. 1920, p. 559, and that is one of the questions to be passed upon by this Court. The argument in relation thereto is covered by Point XIII.

The powers assigned in 1915 (Exhibit 1, p. 35) to the Director of Parks and Public Property are the same as those that were assigned to said department by the resolutions now under review, except that the charge of the City Hall (Exhibit 8, p. 50) has been assigned to the Department of Public Safety and the planting of trees on the streets has been assigned to the Department of Streets and Public Improvements.

The fact is that the resolutions now under review *gave* powers to the Department of Public Affairs and the Department of Parks and Public Property instead of *taking them away*.

WALSH OR COMMISSION GOVERNMENT ACT.

The Walsh or Commission Government Act as amended (P. L. 1915, p. 494, sec. 4, Supp. to Comp. Stats., p. 1090, Sect. 265) expressly provides *inter alia* as follows:

“The Board of Commissioners shall have
 “and possess all administrative, judicial and
 “legislative powers and duties now had and
 “possessed and exercised by the Mayor and
 “City Council, and all other executive or
 “legislative bodies in said city, and have com-
 “plete control over the affairs of the city
 “adopting the provisions of the Act. The
 “executive, administrative, judicial and legis-
 “lative powers, authority and duties in such
 “city shall be distributed into and among five
 “departments, except that in any city having
 “but three Commissioners, three departments
 “shall be designated and provided by the con-
 “solidation of the first and third departments
 “and the fourth and fifth departments as fol-
 “lows:

1. Department of Public Affairs.
2. Department of Revenue and Finance.
3. Department of Public Safety.
4. Department of Streets and Public Improve-
ments.
5. Department of Parks and Public Property.
 “The Board of Commissioners shall deter-
 mine the powers and duties to be performed
 by each department, and assign such powers
 and duties to the appropriate depart-
 ments.”

This act has been held by this Court to be man-
 datory.

Foley vs. Orange, 91 N. J. L., p. 554.

Each commission is, therefore, obliged to determine and assign such powers.

The powers and duties determined and assigned by the first commission to each department (p. 14 and Exhibit 1, p. 35) ceased to exist at the end of the terms of the commissions determining them.

The second commission did not determine the powers and duties to be performed and did not make any assignment of duties (p. 16, line 20.)

The third or present commission on December 2nd, 1924, determined the powers and duties to be performed by each department, as set forth in the resolutions now under review (Exhibits 4, 5, 6, 7 and 8, pp. 43 to 50).

POINT II.

The determination of the powers and duties to be performed by each department only existed during the term of the Board making such determination.

All the commissioners are elected at the same time for a term of four years, and the terms of each and every of them expire at the same time.

Original Act (P. L. 1911, p. 462, Sec. 2; Supp. to Comp Stats., p. 1088, Amendment P. L. 1922, p. 214).

Every commission elected is required to determine the powers and duties and assign the same to each department.

There is a new commission elected every four years, and it is as much the duty of the new commission to determine the powers and duties to be performed by each department and to assign such duties as it was the duty of their predecessors.

The powers thus determined and assigned become void at the end of the term of the commission determining and assigning them.

The commissioners do not constitute a continuous body and the powers and duties determined and assigned by them do not survive after their term has ended.

Mr. Justice Swayze in *Guilnac vs. Freeholders of Bergen*, 74 N. J. L., p. 543 in delivering the opinion of this Court said:

“Although only a portion of the Board of Freeholders goes out of office each year the body itself is not a continuous body. The reasons which led to the decision that the Senate of New Jersey is not a continuous body are quite as cogent in the case of the board of chosen freeholders.”

In the Senate case referred to by Mr. Justice Swayze (*State vs. Rogers*, 56 N. J. L., p. 480) the late Chief Justice Beasley, referring to the constitutional provisions governing the case says:

“This clause is significant with respect to the subject we are considering in all its parts. Its first observable feature being that it appoints a day for the organization of both legislative houses.”

The Walsh Act likewise appoints a day for the organization of the commissioners (P. L. 1911, p. 462, Sec. 2; Supp. to Comp. Stats., p. 1088, Sec. 263, and P. L. 1922, p. 214).

Since all the commissioners go out of office at the same time every four years the reasons for said board not being a continuous body are more cogent in this case than they were in either the Senate case or the Guilnac case.

POINT III.**The Board of Commissioners, the appellants,
made the designations required by the Act.**

On May 15th, 1923, the following designations were made (p. 15, line 30) :

Robert J. Talbot, Mayor and Director of the Department of Public Affairs.

Harry Hosford, Director of the Department of Revenue and Finance.

Patrick J. O'Connell, Director of the Department of Public Safety (which designation was afterwards changed).

W. Homer Axford, Director of the Department of Streets and Public Improvements.

Bert Daly, Director of the Department of Parks and Public Property (which designation was afterwards changed).

See Deposition of City Clerk Lee, p. 15, line 30.

On October 7th, 1923 (p. 16, line 3) the commissioners changed the designation of the Director of Public Safety by designating commissioner Bert Daly in the place and stead of commissioner Patrick J. O'Connell, and designated commissioner O'Connell as Director of the Department of Parks and Public Property in the place and stead of commissioner Daly.

POINT IV.

The Commissioners had the right to change the designation of the Directors of the departments set forth in Point III.

The act (Supp. to Comp. Stats., p. 1090, Sec. 265, par. 3) expressly provides, after the provision for making the designation of Directors of the several departments, as follows:

*“And such designation may be changed
“whenever it appears that the public service
“would be benefited thereby.”* (The italics are ours.)

The commissioners are the sole judges.

If it is claimed that the public service is not benefited by such changes in the designations of directors of the said departments, we respectfully urge that there is no testimony on that subject, and that the presumption is in favor of the resolutions making the changes.

Runge v. West Hoboken, 88 N. J. L. 301.

We respectfully contend that the cases of *Wooley vs. Flock*, 92 N. J. L., p. 65, and *Hendee vs. Wildwood*, 96 N. J. L., p. 286, referred to by the learned Justices of the Court below, are not authorities for the statement in the opinion of that Court to the effect that “when a commissioner has been assigned to a department he cannot, by a vote of a majority of the commissioners, be turned out of that department.”

The case of *Wooley vs. Flock* above referred to (92 N. J. L., p. 65) decides only that the mayor holds his office for the term of four years, and cannot be removed therefrom during that period,

and that in cities having only three commissioners he is director of the Department of Public Affairs and Department of Public Safety.

In *Hendee vs. Wildwood* above referred to (96 N. J. L., p. 286), the Court refers to the Wooley case and says:

“The reading of the opinion will show that “the phrase ‘such designation’ is (*sic*) referred to the assignment of commissioners “to departments, and that the mayor is “cepted from such change in his duties by “reassignment, *though the other commis-* “*sioners are not.*” (The italics are ours.)

In the *Wildwood* case there were but three commissioners. The Act expressly provides that in cases of a city having three commissioners, only three departments shall be designated, and that said departments shall be created by the consolidation of the first and third departments and the fourth and fifth departments. The following is the exact language of the act.

“except that in any city having but three “commissioners, three departments shall be “designated and provided by the consolida- “tion of the first and third departments and “the fourth and fifth departments.” (Supp. to Comp. Stats., p. 1090, Sec. 265, par. 1.)

The first department is the Department of Public Affairs.

The third department is the Department of Public Safety. (See Supp. Comp. Stats., p. 1090, Sec. 265, par. 1.)

William C. Hendee was chosen mayor of *Wildwood* and he by virtue of his office became director of the Department of Public Affairs, and by the terms of said Act above quoted said department became consolidated with the third depart-

ment, which is the Department of Public Safety (P. L., 1915, p. 494, Sec. 4). Subsequently the Board of Commissioners of Wildwood attempted to change the statutory arrangements of the department by combining "public safety" with "revenue and finance."

There was no other course for the court to pursue than to set aside the resolutions which attempted to make a change in the *statutory* rights of the mayor.

The mayor in the case now before the Court has no such rights. There is no attempt to remove him from the Department of Public Affairs, of which by virtue of his office he is the Director (P. L., 1915, p. 494, Sec. 4). Nor is there any attempt in any way to interfere with or infringe upon any of his statutory rights and duties.

If the commissioners did not assign to the Department of Public Affairs as many duties as the mayor desires to perform, that is a matter wholly within their discretion.

They are the sole judges of what powers and duties are to be assigned to each department, including the Department of Public Affairs.

POINT V.

There are no directions in the Act as to what duties are to be assigned to any of the respective departments.

The language of the act is:

"The board of commissioners shall determine the powers and duties to be performed
"by each department and assign such powers
"and duties to the appropriate departments."

(Supp. to Comp. Stats. 1090, Sec. 265,
par. 2.)

It is true that the act provides that the mayor by virtue of his office shall be Director of Public Affairs (P. L. 1915, p. 494, Sec. 4). That is the only instance in which any designation is made by the act, *but there is nothing in the act prescribing or defining the duties of the Director of Public Affairs, nor of any of the other departments.* (The italics are ours.)

It is claimed by the prosecutors-appellees that some duties are more appropriate to one department than to another.

We urge that the word "appropriate" is used in this act in the sense that when the commissioners have determined the powers and duties to be performed by each department, the department which is to perform the powers and duties thus determined is the "appropriate" department to which such powers and duties are to be assigned.

What are "*public affairs*" of a city?

The act does not define them. Are not all the affairs of a city "public affairs"? Is the director of the department of public affairs to have charge and control of *all* the affairs of the City?

Since there is no definition in the act of what constitutes public affairs, nor what affairs are to be administered by the director of that department, the question of what duties are to be assigned is left to the discretion of the Commissioners.

It is manifest that the legislature did not contemplate that the director of the department of public affairs should have charge of *all* the affairs of the city, because there are four other departments provided for by the act, to which duties after they are determined by the commissioners, are to be assigned.

How is the Court to determine which department is the most appropriate one to which any particular duty should be assigned?

Would it not be as appropriate to assign the duty of administering the police and fire departments to the department of public affairs as to the department of public safety? Are not both the police and fire departments public affairs?

We contend that it is better that all such questions should be left to the discretion of the commissioners, than for either the legislature or the Court to determine them. For instance, it so happens that the Director of Public Affairs in this case is a retired grocer (p. 21, line 29) and the Director of Streets and Public Improvements is a regular practicing physician. Which is the most appropriate department to refer "Child Hygiene" and the "Day Nursery" to, a department presided over by a retired grocer, or a department presided over by a practicing physician?

POINT VI.

The failure of the commissioners to determine the powers and duties of the respective departments at their first meeting after their election did not estop them from afterwards making such determination and assignment.

In order to properly consider this "Point" it is necessary to read all of Sections 264 and 265 of the act, as they are set forth in Comp. Stats., pp. 1089 and 1090.

We quote from the above named sections such parts thereof as affect the question now under consideration, as follows:

"At the first meeting after their election
"the said commissioners shall choose one of
"their number to preside at all meetings of

“the board of commissioners and he shall be
“designated ‘Mayor’ * * *.

“The board of commissioners shall deter-
“mine the powers and duties to be performed
“by each department, and assign such powers
“and duties to the appropriate departments
“* * *.

“The mayor shall be Director of the De-
“partment of Public Affairs, and the Board
“of commissioners shall, at the first regular
“meeting after the election of its members,
“designate by a majority vote, one commis-
“sioner to be Director of the Department of
“Revenue and Finance, one to be Director of
“the Department of Public Safety, one to be
“Director of the Department of Streets and
“Public Improvements, and one to be Direc-
“tor of the Department of Parks and Public
“Property, except that upon the organization
“of a board of three commissioners but three
“departments shall be designated, as above
“provided, and but three directors voted
“therefor, and such designation may be
“changed whenever it appears that the pub-
“lic service would be benefited thereby.”

It is significant that while the act provides that the mayor shall be selected at the *first* meeting after their election, and that at the *first* regular meeting after their election one of their number shall be designated to be director of the several departments, still no such provision is made regarding the assignment of the powers and duties.

It is our contention, however, that the act so far as it requires the assignment of powers and duties is merely directory.

The law on the subject is thus stated:

“When a public duty is imposed and the
“statute requires that it shall be performed
“in a certain manner within a certain *time*
“or under certain other *specified conditions*

“such prescription may well be regarded as
“intended to be directory only.”

Endlich on Interpretation of Statutes,
Secs. 433, 436 and 437.
Ruling Case Law, Vol. 25, p. 767, Sec. 14.

But assuming that such powers should have been determined and assigned, and the designation of the directors of the several departments made at the first meeting after their election, still the commissioners are not estopped from afterwards determining and assigning such powers to each department. *It is a continuing duty.*

If it were otherwise the government of the city would cease to function.

POINT VII.

No attempt has been made to take away any of the powers or duties of the Mayor imposed upon him by law.

The act requires the mayor to supervise all departments.

It may, therefore, be said that the Legislature intended that his duties as director of the Department of Public Affairs should be of a supervisory character.

The act also requires him to report to the Board of Commissioners for its action all matters requiring its attention, or the attention of any department.

The following is the language of the act:

“The mayor shall be president of the
“board and shall preside at its meetings and
“supervise all departments, and report to
“the board for its action all matters requir-

“ing the attention of the board or any department.”

(Supp. to Comp. Stats., p. 1094, Sec. 266.)

The mayor is required by law to approve or disapprove all claims against the City (P. L. 1917, p. 319, Art. 14, Secs. 5, 7 and 8 at pp. 357 and 358).

The fact that the mayor is required to supervise all departments and report to the board all matters requiring its attention, or the attention of any department, is probably the reason why the legislature designated him as director of public affairs, and that such supervisory duties are the powers and duties of the department of public affairs.

That he is to supervise all departments may be an indication that no particular duties are to be assigned to him by the commissioners.

Among the duties assigned to him by the several acts of the legislature the following may be cited:

1. He is to preside at all meetings of the Commissioners. (Supp. to Comp. Stats., p. 1094, Sec. 266, last para.)
2. He is to supervise all departments of the City. *Ibid.*
3. He is required to make recommendations to the commissioners, etc. *Ibid.*
4. He is to approve or disapprove of all claims against the city.

(Home Rule Act, P. L. 1917, p. 319, Art. 14, Sects. 5 and 7 at p. 357.)

5. He is by virtue of his office a member of the Board of School Estimate.

(Spec. Sess. 1903, bound in Laws of 1904, p. 5, Art. 6, Sec. 73, at p. 27.)

6. He is required to make appointments to the school board.

(Spec. Sess. Laws 1903, bound in laws 1904, p. 5, Art. 6, Sec. 38, at p. 17.)

7. He is a member of the police and firemen's pension fund.

(P. L. 1920, p. 324, Sec. 5.)

There may be other duties imposed upon him contained in the various acts of the legislature which have escaped our attention.

Any duty not imposed by law on him as mayor or director of the Department of Public Affairs, must be determined and assigned to him by the Commissioners.

Is the Court going to determine whether additional duties are to be imposed upon him or not?

If additional duties are to be assigned to him, what are such duties? Are not all of these questions to be decided by the commissioners in the exercise of their discretion?

POINT VIII.

The resolutions now under review do not deprive any of the Commissioners of any power or duty.

It should not be overlooked that no powers and duties had been determined or assigned by the present commissioners until the passage of the resolutions now under review, and that the com-

missioners of the several departments only have such powers and duties as are so assigned to them.

The prosecutors of the writ of certiorari in this case had no powers or duties of which they could be deprived prior to the passage of the said resolutions, because no powers and duties had been determined or assigned to them.

The prosecutors have, therefore, no justification in alleging in their first and second reasons (p. 60) that they were deprived of any power or duty.

All that they can complain of is that in their opinion *additional or greater* powers and duties ought to have been assigned to them.

Unless there must be an equal distribution of the powers and duties, why is not the distribution of the powers and duties made by the commissioners proper?

If we should admit that there should be an equal distribution of such powers and duties, who is to be the judge whether such distribution is equal or not?

Is the court going to determine what other duties of the commissioners are equal to the duty of looking after the police and fire departments?

Can the court say from the evidence in this case that the duties of the commissioner who is charged with looking after the parks are not as great as the duty of the commissioner to whom the duty of looking after the streets is assigned?

If not, what additional duty is to be assigned to the commissioner having charge of the parks to make such duty equal to that of the commissioner to whom the duty of looking after the streets is assigned?

Is no allowance or consideration to be made by the party determining the powers and duties to be performed by each department for the ability and experience of the several commissioners?

One commissioner may have more ability and experience, and therefore better qualified to look after the finances than another, and one commissioner may have the ability to look after the parks better than the others; while another commissioner by reason of his ability or past experience, be the best qualified to have charge of the police and fire departments.

Are not the commissioners the sole judges of these matters in the exercise of their discretion?

POINT IX.

In the absence of proof to the contrary it must be assumed that the discretion of the commissioners was properly exercised.

There is no allegation, testimony or reason that the commissioners did not properly exercise their discretion.

It, therefore, stands admitted that such discretion was properly exercised.

In *Runge vs. West Hoboken*, 88 N. J. L., p. 301, Mr. Justice Minturn delivering the opinion of this Court, said:

“* * * Since the legislature has committed to the local governing body in such matters the discretion to be exercised in the public interest, which, unless palpably abused in its exercise, must stand as the result of legislative delegation of power.”
citing *Boylan vs. Newark*, 58 N. J. L., p. 133.
Evans vs. Freeholders, 53 N. J. L., p. 585.
Newark v. Lyon, 53 N. J. L., p. 632. *Paddock vs. Board of Taxation*, 82 N. J. L., p. 360.

POINT X.

The appellants eliminated from the resolutions the right of appointment and removal of employees of the Department of Public Affairs and the Department of Parks and Public Property reserved unto the commissioners.

The prosecutors of the writ set forth as their second reason (p. 60):

“That the said resolutions attempt to take
“from the prosecutor Robert J. Talbot as
“Director of Public Affairs of the City of
“Bayonne, and from Patrick J. O’Connell,
“Director of Parks and Public Property of
“the City of Bayonne, the power of appoint-
“ment and removal of employees in their
“respective departments.”

Assuming that said commissioners as directors of the respective departments to which they had been designated, have the power of appointment and removal under the Act, it is sufficient to say that prior to the date when the writ of certiorari was allowed (p. 55) and after the stay contained in the rule to show cause had been vacated (p. 69) the appellants on January 5th, 1925, passed resolutions (Exhibit “A”, p. 52, and Exhibit “B”, p. 54) eliminating therefrom said reservations.

The appellants, the commissioners of the City of Bayonne, certainly had the right to thus eliminate the above stated features from said resolutions.

POINT XI.

The appellants were not required to give any notice of the passage of the resolutions now under review.

The 5th Reason (p. 60) is:

“That said resolutions were adopted at a
 “ ‘regular’ meeting of the commissioners of
 “ the City of Bayonne, the individual respond-
 “ ents above named without notice calling a
 “ meeting for such purpose, and said meeting
 “ was not an organization meeting of said
 “ board of commissioners of the City of
 “ Bayonne.”

The act requires the commissioners to meet at least once a week. (Supp. to Comp. Stats., p. 1093, sec. 266.)

The prosecuting commissioners were in duty bound to attend all regular stated meetings, and as a matter of fact they were both present at the meeting at which the said resolutions were adopted and voted against them.

(See Exhibit 4 to 9, pp. 43 to 51.)

We contend that there is no merit whatever in the 5th Reason.

POINT XII.

There is no evidence to sustain the objections contained in the fourth reason that the resolutions are illusive and arbitrary and were not passed in good faith but for political reasons.

The burden of proving *mala fides* is upon him who asserts its existence, and in the absence of such proof the legal presumption is in favor of the action taken by the Commissioners.

Buckley v. Guttenberg, 87 N. J. L., p. 434
(Sup. Ct.).

Runge v. West Hoboken, 88 N. J. L., p.
301 (Ct. E. & A.).

In the case of *Buckley v. Guttenberg* above cited, Mr. Justice Kalisch in delivering the opinion of the Supreme Court (at p. 436) said:

“To establish a charge of fraudulent conduct against a legislative body in passing an ordinance the proof must be clear and convincing.”

There is no proof in the case now before the Court which justifies the allegation that the resolutions in question were not passed in good faith.

POINT XIII.

The commissioners as the governing body of Bayonne had the right to designate the officer who should sign warrants for the disbursement of money.

No “reason” has been filed covering the objection that the commissioners had no power to designate the Director of Revenue as the officer to sign warrants, etc.

They have, therefore, abandoned all objections to the resolution making such designation. The resolution is Exhibit 9, p. 51.

The so-called Home Rule Act (P. L. 1917, p. 319, Art. 14, sec. 4 at p. 357) however expressly empowers the governing body to make such designations, as follows:

“In all cases where the governing body *has not* designated the officer or officers to issue,

“countersign and audit, and the manner of
 “issuing all warrants for the disbursement of
 “money, the same shall be drawn on the
 “treasurer or general custodian of the funds
 “of the municipality, and signed by the
 “Mayor or other chief executive officer of the
 “municipality, and by the clerk or comp-
 “troller or auditor thereof.” (Italics are
 ours.)

The mayor is only required to sign warrants when the governing body has not designated the officer so to do.

After such designation the officer so designated must sign all warrants.

The Commissioners, the appellees, on December 2nd, 1924 passed a resolution (Ex. 9, p. 51) designating the Director of Revenue and Finance (p. 17) as the officer to sign all warrants for the disbursements of money.

POINT XIV.

The mayor had no right to refuse to sign the warrants for the payment of the salaries of policemen and firemen.

This question has been unnecessarily injected into the case. If we assume that the reason for the designation of the Director of Revenue and Finance was due to his refusal to sign the warrants for the salaries of the police officers and firemen, such refusal would be a sufficient reason for the designation of an officer so to do if no other reason existed.

There were two groups of cases in which the question of the rights of these policemen and firemen were considered by our Courts.

The first group of cases was on certiorari to review a resolution passed by the Board of Commissioners, rescinding the resolution by which the policemen and firemen were appointed. *Carroll, et al. vs. Bayonne*, 99 N. J. L., p. 493.

The Supreme Court set aside the rescinding resolution on the ground that because of the change of time from "standard time" to "daylight saving time", the term of the commissioners passing the rescinding resolution had not begun at the time of its passage. Such resolution was passed immediately upon the organization of the board which took place at 3 minutes after 12 o'clock noon, "daylight saving time". The Court held that the term of the Commissioners under the Statute (Supp. to Comp. Stats., p. 1098, Sec. 263) did not commence until 12 o'clock noon, "Standard Time."

This Court affirmed the judgment of the Supreme Court, *Carroll, et al. vs. Bayonne*, 99 N. J. L., p. 493.

The commissioners thereupon passed a new resolution rescinding the appointment of said police officers and firemen and the Supreme Court again set this last resolution aside on the ground that the policemen and firemen were protected by the Tenure of Office Act. *Carroll vs. Bayonne*, 128 Atl. Rep., p. 234.

While this last case was pending the policemen and firemen were assigned to duty and when the first installment of their salaries became due the Mayor refused to sign the warrants for the same.

The policemen and firemen were entitled to pay after their appointment whether they were permitted to perform duty or not. *Jardot vs. Rahway, et al.*, 127 Atl. Rep., p. 799.

They were at least entitled to be paid for the time they performed service. *McArt vs. Bellville*, 117 *Atl. Rep.*, p. 595.

The Mayor had no justification for refusing to sign the warrants for the payment of their salaries.

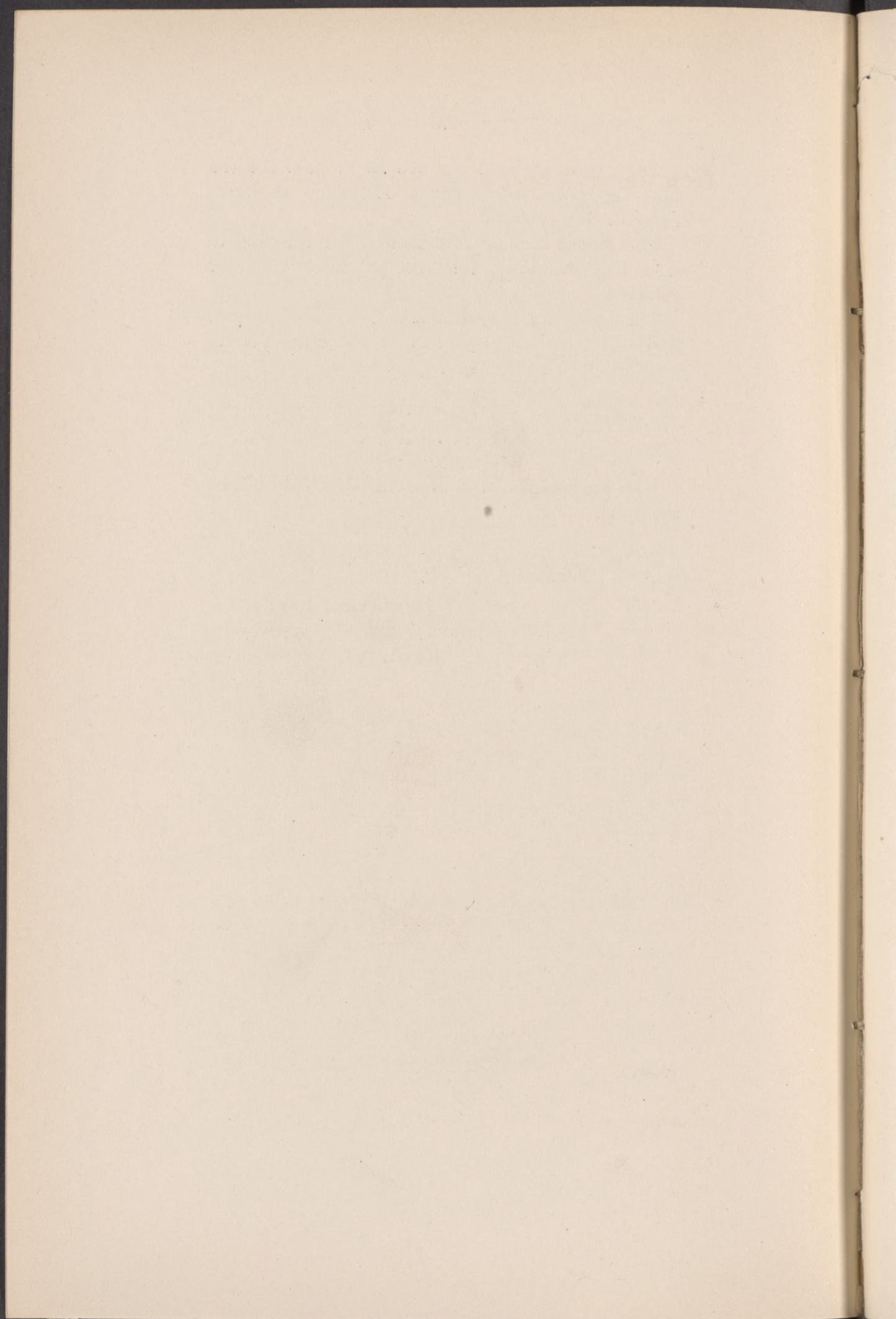
The decision of the Supreme Court holding that they were entitled to protection under the Tenure of Office Act, settled that question.

POINT XV.

The judgment of the Supreme Court should be reversed.

All of which is respectfully submitted.

JAMES BENNY,
Attorney and of Counsel with
the City of Bayonne.



New Jersey Court of Errors and Appeals

AUGUSTA OLIVER, ROBERT J. TAL-
BOT and PATRICK J. O'CON-
NELL,

Prosecutors-Appellees,

and

BERT DALY, *et als.*, Board of
Commissioners of the City of
Bayonne,

Respondents-Appellants.

*On Appeal
from
Supreme
Court.*

*Trenchard,
Katzenbach
and Lloyd,
JJ.*

*On
Certiorari.*

BRIEF FOR APPELLEES.

Statement of the Case.

The City of Bayonne adopted the provisions of the Commission Government, or Walsh Act, at an election held March 9, 1915 (p. 13).

On April 13, 1915, five commissioners were elected (Case, p. 13). These commissioners organized on April 21, 1915, and passed resolutions designating one of their number to be Mayor, and the other four commissioners directors of the respective departments of the City (p. 14). They constitute the first Board of Commissioners elected under the Act.

On April 23, 1915, these commissioners determined, by resolution, the powers and duties of each of the respective departments of the City, and assigned such powers and duties to the appropriate departments (p. 14). The resolution by which these duties were assigned and distributed is marked Exhibit "1" on the part of the appellees, and it is printed on page 35.

The term of office of each of the said five commissioners expired on the 20th day of May, 1919

(p. 14 between ll. 20 and 30), which is the term fixed by the Act.

On May 13, 1919, a new election was held and five commissioners were elected for the term of four years (p. 14) which is the term fixed by the Act.

On May 29, 1919, these commissioners organized and passed resolutions designating one of their number as Mayor, and the other commissioners as directors of the several departments of the City (pp. 14, 15). They constituted the second Board of Commissioners elected under the Act.

On November 25, 1919, there was a change in the designation of the Commissioners to the different departments by resolution of the Commissioners, Exhibit "2" (p. 39) and that resolution, in assigning the different commissioners, provided, in each case, that the person so assigned "immediately assume the performance of the duties heretofore assumed and performed by said _____ (the commissioner previously assigned) as the director of said department _____."

The term of office of these commissioners expired on May 15, 1923.

On May 8, 1923, a new election (which was the third under the Commission Government Act) was held, and the present commissioners, viz: Robert J. Talbot, Harry Hosford, Patrick J. O'Connell, Bert Daly and W. Homer Axford were elected (p. 15). They constituted the third Board of Commissioners elected under the Act.

On May 15, 1923, these commissioners organized and passed resolutions designating Robert J. Talbot, Mayor, who by virtue of his

office, as provided by said act, became Director of Public Affairs; Harry Hosford, Director of Revenue and Finance; Patrick J. O'Connell, Director of the Department of Public Safety; W. Homer Axford, Director of the Department of Streets and Public Improvements, and Bert Daly, Director of the Department of Parks and Public Property (p. 15).

On October 7, 1924, a change in the heads of certain departments was again made, and the resolutions of assignment, Exhibit "3" (p. 41), again provided that the incoming director "immediately assume the performance of all duties heretofore as summed and performed by said _____ as the Director of the Department of _____."

On November 16, 1924, Bert Daly, as Director of the Department of Public Safety, appointed 44 patrolmen and ten firemen. There was litigation over these appointments. Pending that litigation Talbot declined to sign the pay checks (pp. 28, 29).

Commissioner O'Connell stood with the Mayor. Thereupon, on December 2, 1924, the three other commissioners, over the objection of O'Connell and Talbot, passed the resolutions which were reviewed by the writ of certiorari herein. These resolutions were six in number. Five of them purported to distribute the legislative, judicial executive and administrative powers of the commission into the several departments (Exhibits 4, 5, 6, 7, 8, p. 43, etc.), and the sixth (Exhibit 9, p. 51), purported to take from the Mayor the duty of counter-signing warrants.

By resolution Exhibit 4 (p. 43) the Director of the Department of Public Affairs, or the Mayor of the City, was deprived of all authority or

power, excepting over the Free Public Library and even, as to that institution, was deprived of the power to appoint and discharge officers and employees.

By resolution Exhibit 5 (p. 44) the Director of the Department of Parks and Public Property, O'Connell, was deprived of all authority or power except with respect to parks, and even, with respect to parks, was deprived of the power of appointment and discharging of officers, employees and workmen, which power was expressly reserved by the Board of Commissioners to itself.

By resolution Exhibit 6 (p. 45), many of the powers theretofore vested in the Mayor and Director of Public Affairs or in the Department of Parks and Public Property were vested in the Department of Revenue and Finance.

By resolution Exhibit 7 (p. 48) many of the powers and duties theretofore vested in the Department of Public Affairs or Mayor or in the Department of Parks and Public Property were vested in the Department of Streets and Public Improvements.

By resolution Exhibit 8 (p. 49) the remainder of the powers and duties vested in the Department of Public Affairs, or Mayor or in the Department of Parks and Public Property were vested in the Department of Public Safety, excepting the power to countersign warrants on the city treasurer, which, by resolution Exhibit 9 (p. 51), was taken from the Mayor or Department of Public Affairs and vested in the Director of Revenue and Finance.

By this series of resolutions, all passed at the same time, the Mayor, or Director of Public Affairs, was stripped of all powers excepting the

attempted vesting of authority in him over the Free Public Library, and as to that, was deprived of the right of appointment and discharge of employees, as was likewise the Director of Parks and Public Property (O'Connell) in his department.

It is significant that, with respect to the two commissioners against whom the resolutions were directed, Talbot and O'Connell, the Board of Commissioners attempted to deprive them of their power to appoint and remove officers and employees in direct violation of the law, *Sykes v. Heinzman*, 125 Atl. 17, whereas, with respect to the three commissioners passing the resolution, in their respective departments they were left free to appoint and remove.

After the allowance of the rule to show cause why certiorari should not go and on the 5th day of January, 1925, the Board of Commissioners passed resolutions Exhibits A and B (pp. 53, 54, offered p. 23), restoring to the Directors of the Departments of Parks and Public Property and of Public Affairs the right to appoint and discharge officers and employees.

The preamble of these resolutions is significant (p. 52):

“Whereas, Commissioner Patrick J. O'Connell at the last meeting of this board urged that a greater degree of harmony should prevail among its members during the year 1925, than was exhibited during the year 1924, and suggested as a means to that end, that the power of appointment, removal and discharge of all officers and employees in the 'Department of Public Affairs' and in the 'Department of Parks and Public Property' reserved and retained by this board in and by the resolutions assigning the powers to said departments re-

spectively, be restored and assigned to them.”

“Therefore be it resolved, etc.”

If there were any evidence necessary, at the time these resolutions were passed, to prove that the action of the three members of the commission, in passing the resolutions brought up for review, was purely for the purpose of punishing the Mayor for the position which he had taken with respect to the pay of the police and firemen and of punishing O'Connell, who had stood by the Mayor, it was supplied by the action of the Board as indicated in these resolutions. For the purpose of punishment, the three commissioners went further than the law would, under any conditions, allow in stripping powers from the Mayor and the Director of the Department of Parks and Public Property. Then, for the purpose of promoting harmony, they give back to the Mayor and the Director of the Department of Parks and Public Property that which the law, under no circumstances, would permit them to take away.

The Supreme Court in setting aside these resolutions, in effect, held—

First: That the resolutions were passed because the Mayor had refused to sign checks for the payment of salaries to the new policemen and firemen. That the resolutions passed by the three commissioners deprived the other two commissioners of substantially all the duties and powers of the departments to which they had been assigned. That if the three commissioners were to be permitted to do this thing, for the purpose and in the manner in which they attempted to do it, the object of the Commission Government Act, which was to procure a form of government for municipalities in which poli-

tics would be, as far as possible, eliminated and which was intended to give considerable latitude and discretion to each of the heads of the departments in the conduct of the affairs of that department, without interference of the other commissioners, would be frustrated.

Second: That when the second board of commissioners in 1919 and the third in 1923, the board now serving, assigned directors to the different departments, and, from time to time, made changes in those assignments, by resolutions which provided that such new director should "immediately assume the performance of the duties heretofore assumed and performed by said _____ as Director of said Department of _____," they ratified and confirmed the assignment of the legislative, executive, judicial and administrative functions, which was made by the first board of commissioners, by the resolution of April 23, 1915 (Ex. I, p. 35), and that, such assignment continuing, a commissioner could not, by a vote of the majority of the Commissioners, have the powers and duties of the department to which he was designated so curtailed as to make him a mere figurehead, as was the effect of the resolutions attacked.

The effect of the opinion of the Supreme Court upon the facts was that the Court held that the resolutions were not passed in an exercise of any bona fide discretion of the commissioners but rather in the exercise of a claimed arbitrary power for the purpose of punishing two commissioners and that they were not passed for the purpose of benefiting public service.

See the opinion of the Supreme Court (p. 76).

From the judgment setting aside the resolutions (p. 80) this appeal was taken by the Board of Commissioners.

ARGUMENT.

I.

Appellants' points 1, 2, 3, 4, 5, 6, 7 and 8.

These points may be considered together. The argument of appellants under them is that it was the duty of the commissioners elected in 1923 to assign powers into the various departments and that, not having so assigned them at their first meeting, the resolutions of assignment, which were set aside, were the first assignments made by the 1923 board of commissioners and that the commissioners might make such assignment as they saw fit limited, in the exercise of their power, by nothing whatever.

Section 4 of the act of 1911, P. L. 1911, p. 462 as amended P. L. 1912, p. 643, Cumulative Supplement to Compiled Statutes of New Jersey, Volume 2, p. 2461, provides:

“* * * The executive, administrative, judicial and legislative powers, authority and duties in such city shall be distributed into and among five departments, * * *.”

“The Board of Commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the *appropriate departments*, and they shall prescribe the powers and duties of all officers and employees * * *.”

“The mayor shall be the director of the department of public affairs, and the board of commissioners shall, at the first regular meeting after the election of its members, designate by majority vote one commissioner to be director of the department of revenue and finance, one to be director of the department of public safety, one to be director of the department of streets and public improvements, and one to be director of the department of parks and public property, except that upon the organization of a board

of three commissioners but three departments shall be designated, as above provided, and but three directors voted therefor, and such designation may be changed whenever it appears that the public service would be benefited thereby."

"The Board of Commissioners shall at the first meeting, or as soon as may be after organization, create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city. Any board created may be abated * * *"

It has been held that the duty of assigning all powers, authority and duties into and among the five departments is mandatory.

Herbert v. Atlantic City, 87 N. J. L. 98;
Foley v. Orange, 91 N. J. L. 554;
Hewson v. Newark, 95 N. J. L. 28;
Sykes v. Heinzman, 125 Atl. 17.

So far as we know, no case has arisen where the question has been as to what would happen if a board of commissioners did not assign certain governmental powers and duties to the various departments. Most of the cases have involved the question as to whether a director possessed *all* executive, administrative and judicial powers in connection with offices assigned to his department. Upon that subject, in *Foley v. Orange*, 91 N. J. L. 554, the Court said:

"The legislative will thus declared was imposed upon the municipal agent without regard to its concurrence or dissent, which would be as nugatory in the one case as it would be futile in the other. The statute being imperative and importing absolute obligation was self-executing, a rule that lies at the root of all legislative supremacy."

The Court has therefore held that all executive, administrative, judicial and legislative

powers, authority and duties are, by force of the act itself, distributed into and among the five departments created by the statute.

Following the language providing for the distribution of *all* powers, authority and duties there is the provision that the board of commissioners *shall* determine the powers and duties to be performed by each department and assign such powers and duties to the *appropriate departments*.

Then follows the provision that the mayor shall be the director of the department of public affairs and the board of commissioners shall, at the first regular meeting after the election of its members, designate, by majority vote, one commissioner to be the director of each department.

If the board of commissioners should fail to assign particular officers and employees to any department does this mean that the scheme of the statute would fall?

We think not, for the legislature has provided for a department of public affairs, one of revenue and finance, one of public safety, one of streets and public improvements, and one of parks and public property, and, in view of the legislative fiat that all administrative, executive, judicial and legislative powers, authority and duties *shall* be distributed into and among the five departments and of the determination of the Court that such direction is self-executing, it is clear, we think, that, in such a case, those offices and powers and duties which would be *appropriate* to each department would be distributed into that department by force of the statute.

While the board is to determine the powers and duties to be performed by each department,

it is to assign the powers and duties to the *appropriate departments*.

It is true that there is no express provision in the statute as to when these powers and duties shall be determined or assigned. It is expressly provided that the designation of the commissioners to the different departments shall be "at the first regular meeting after the election of its members." It is to be assumed that the powers and duties of the various departments have been determined and assigned prior to the designation of the department heads.

There is no provision in the statute as to the manner in which the duties and powers are to be determined or assigned.

The argument of appellants is that it is necessary, under the statute, for *each* commission elected to determine and assign the powers and duties and that the assignment made by each commission ceases to exist at the ends of the terms of the commissions determining and assigning them.

This must be argued from the fact that the commissioners are directed, at their first meeting after their election, to designate the directors of the different departments for there is no provision in the statute which, in terms, requires each board of commissioners to newly determine the powers and duties and to newly assign them.

Of course, each new board of commissioners *must* go through the form of formally assigning its different members to the different departments for, in contemplation of law at least, they are new commissioners.

But it does not follow that each new board must formally determine the powers, etc., and assign such powers, etc., into the several departments, for the determination of powers, etc., and the assignment thereof sets up a permanent municipal structure which does not depend upon the personnel of the directors of the departments.

The determination of powers and duties and the assignment of those powers and duties into the several departments should not depend upon the personnel of the directors of the departments. The statute requires that the powers and duties should be assigned "to the *appropriate* departments." The statute is looking to the statutory titles of the various departments when it uses the term "appropriate departments." It is not looking to the personnel of the heads of the departments.

But, before the board of commissioners can appropriately assign directors to the various departments, the powers and duties appertaining to the various departments should be determined, for the powers and duties which may be assigned to the various departments may play a part in determining which one of the commissioners should be designated to a particular department.

No method having been prescribed by the statute by which the board of commissioners shall determine the powers and duties and assign them into the various and *appropriate* departments it is insisted that *any* acts of the commissioners which either creates or recognizes an assignment of powers and duties into a particular department is sufficient.

In the case at bar the first board of commissioners which was elected, by formal resolution, Ex. 1 (p. 35), on April 23, 1915, assigned

powers and duties to the different departments. The board which came into existence in 1919, when it designated its various members to the different departments, resolved that they assume and perform all of the duties theretofore performed and exercised by their predecessors.

And so with the present board which came into existence in 1923.

Upon several occasions a board of commissioners has seen fit to change the designation of members to departments but, when doing so, has always provided that the director newly designated assume the performance of all duties theretofore assumed and performed by his predecessor and the present board, on October 7, 1924, in changing the designation of O'Connell from Public Safety to Parks and Public Property resolved that he "immediately assume the performance of all duties heretofore assumed and performed by said Bert Daly as the Director of the Department of Parks and Public Property" (p. 41).

This method of procedure was as if the board had adopted a resolution which, in so many words, approved of the distribution of the powers and duties as it found them and designated the particular directors to the different departments to function as did their predecessors.

And the act of the present board in designating directors was, in effect, a determination of the powers and duties and an assignment thereof to the various departments.

If this is not so then Bayonne since 1919 has been operating without any determination of powers and duties and assignment thereof into the various departments. In other words it had

no legal municipal structure. This would be in express violation of the legislative mandate and is not to be presumed.

These powers and duties having been determined and assigned prior to the designation of the commissioners as directors of the various departments **may the powers and duties be changed during the terms of the commissioners?**

In *Wooley v. Flock*, 92 N. J. L. 65, the Supreme Court held that the designation of the mayor could not be changed basing its determination, among other things, upon the theory of the act, the Court saying:

“The theory of the Walsh act was that the best form of municipal government was one which would centralize responsibility, that responsibility centralized and individualized could not be shirked or shifted, and that thus those who were immediately responsible for bad government could be directly and individually held to personal accountability. This being the theory of which the Walsh act is the fruit, it would be surprising indeed to find that the legislature formulated therein a scheme by which the individual duty and responsibility of the mayor and director of public affairs might be shifted and changed from day to day by the board.”

The Court also held that, inasmuch as the statute provided that the board of commissioners, at their first meeting, should elect one of their members to preside, who should become the head of the department of public affairs, under the principle of *Smith v. Regan*, 54 N. J. L. 167, and *Burgan v. Civil Service Commission*, 84 N. J. L. 219, the person so designated held the office of mayor, and also Director of Public Affairs, for a period of four years.

In *Hendee v. Wildwood*, 96 N. J. L. 286, it appeared that the prosecutor had been chosen as mayor and thereby became the director of the Department of Public Affairs. Wildwood is a city governed by three commissioners and, under the terms of the statute, the Department of Public Affairs was consolidated with that of Public Safety.

Subsequently, the Board, by the resolution which was brought up for review, attempted to change the arrangement by combining "Public Safety" with "Revenue and Finance" and it was insisted that the Board might so act because of the provision in section 4 that "such designation may be changed whenever it appears that the public service would be benefited thereby."

The Court held that "such designation" did not apply to the grouping of departments but rather to the designation of commissioners. The Court relied upon the principle of *Wooley v. Flock*, 92 N. J. L. 65. Its judgment was affirmed by this Court.

The underlying basis of each of these decisions is the policy of the act as stated by the Supreme Court in the instant case.

Assuming that the designation of the commissioners, other than the mayor, to the departments may be changed by the Board of Commissioners, "*whenever it appears that the public service would be benefited thereby,*" it is one thing to permit a change of designation from one department to the other if the duties and powers of each department have been previously assigned and another thing to permit the Board both to change the designation and to change the powers and duties for, if the latter

be allowed, then it is within the power of the board to strip a department of practically all of its powers and duties and re-designate a commissioner, whom the other commissioners desired to punish, to that denuded department?

Unless it be held that the words "revenue and finance," "public safety," "streets and public improvements" and "streets and public property," as used in the titles of the departments in the statute, mean something in and of themselves, if the argument made by counsel for appellants be correct, the Board might assign to the department of Revenue and Finance the duty of taking care of the Poor House only and assign the City Treasurer's Office and all those matters which usually pertain to finance to the Department of Public Safety and then designate a commissioner to be punished to the Department of Revenue and Finance.

There must be *some* limit upon the power of the Commissioners or otherwise the purpose of the statute has completely failed. It is significant that, while the statute expressly gives the power to change the designation (unless that power is confined to a city governed by three commissioners), it specifically provides that the change may be made "*whenever it appears that the public service would be benefited thereby.*"

The power to change powers and duties, so far as their assignment into the departments are concerned, is not expressly given, although there is expressly given the power to compel officers and employees to perform duties in two or more departments, and the power to abate subordinate boards which may be created.

The absence of an express grant to change the assignment of powers and duties, in view of

the express grant in other cases in which the legislature intended that changes might be made, is, we submit, significant. If the powers and duties cannot be changed, or new assignments made, after the directors have once been designated, a considerable part of the evil which might result from holding that designations may be changed, would be avoided because, at least during the four-year period, if a combination of Commissioners desired to punish a particular member by changing his designation, they would be obliged to assign him to a department with duties and powers determined.

It is settled that the spirit of the law, the public policy of the State with respect to the subject matter dealt with, the intention that the legislature had in view, may all be taken into consideration in construing an act and that the Court is not confined to a literal interpretation of the language used and may indeed construe a statute contrary to its letter if necessary to carry out the legislative policy or to prevent a defeat of the object aimed at.

Brown v. Wright, 13 N. J. L. 240;

Associates v. Davidson, 29 N. J. L. 415.

This Court in *Rudderow, Collector, etc., v. The State*, 31 N. J. L. 512, after noticing the principle that, in the absence of ambiguity, in ordinary cases the Court is confined to the express words of the statute, said:

“But if from a view of the whole law, or from other laws in *paria materia*, the evident intention is different from the literal import of the terms employed to express it in a particular part of the law, that intention should prevail, for that in fact is the will of the legislature.”

And see *Conover v. Public Service Railway Co.*, 80 N. J. L. 681, in which the Supreme Court held that the public policy of the State upon a given subject might be invoked in ascertaining the legislative intent.

And in *Holt v. Akarman*, 84 N. J. L. 371, this Court said that where the legislature has assumed to deal with all the phases germane to the subject matter of the act, due regard must be had to the old law, the mischief resulting therefrom, and the enacted legislative remedy for the eradication of the evil.

As the Supreme Court said in this case (p. 78):

“The object of the Commission Government Act was to procure a form of government for municipalities in which politics would be, as far as possible, eliminated. The act was intended to give considerable latitude and discretion to each of the heads of the departments in the conduct of the affairs of that department, without interference of other Commissioners.”

The Supreme Court then said:

“The purposes of this Act would not be accomplished if three Commissioners could at any time deprive the other two Commissioners of substantially all the duties and powers of the departments to which they had been assigned. The resolutions under review unquestionably do this.”

As we have argued before, the purpose of the act will be accomplished if it be held that during the term of the commissioners, an assignment of powers and duties cannot be disturbed, and that, as no specific time or manner is fixed for the making of the assignment of the duties, etc., into the different departments, when such assignment is made by one commission and then a subsequent commission, without disturbing the

assignment, designates directors by such act of designation, there is acquiescence in, or adoption of, the assignment of duties theretofore made and then in existence.

If the contention of counsel for appellants be correct, unless the assignment of duties is made at the first meeting of the Commissioners, and counsel is correct in asserting that there is no provision in the statute requiring that this be done, or unless the statute itself automatically assigns duties which are appropriate to each department without action by the Commissioners if the Commissioners fail to act, there will always be, between the time of the going out of office of one commission and action by the new commission a hiatus, the various offices and duties, during that hiatus, being suspended in air, and it would appear that, for at least five years, the government of Bayonne has not been legally organized.

The resolutions which were brought up for review by the writ of certiorari herein were, therefore, beyond the power of the Commissioners.

But if the Commissioners had the right, at the time they acted, to assign powers and duties to the various departments they were bound by the legislative provision that the powers and duties should be assigned to the "*appropriate* departments."

Counsel for appellants on p. 16 of his brief reads the word "appropriate" out of the act when he says

"We urge that the word 'appropriate' is used in this act in the sense that when the commissioners have determined the powers and duties to be performed by each depart-

ment, the department which is to perform the powers and duties thus determined is the 'appropriate' department to which such powers and duties are to be assigned."

This, of course, is an argument in a circle.

While it is true, as counsel says, that the legislature does not define "public affairs," this does not mean that "public affairs" does not connote, when taken in conjunction with the titles of the other departments—"Revenue and Finance," "Public Safety," "Streets and Public Improvements," "Parks and Public Property," something which is quite definite.

It is true, as counsel urged, that in one sense all affairs of the city are "public affairs." It is likewise true that the legislature did not intend that all offices and duties should be assigned to the mayor, who is the head of the Department of Public Affairs. It does not follow that there is nothing in the act from which the Court can ascertain what the legislature intended should be assigned to the Department of Public Affairs.

The legislature has provided for four other departments, the titles of which indicate what duties and powers may appropriately be assigned to those departments, and the result is that all powers and duties which are not peculiarly appropriate for the departments the titles to which are definite in their meaning, naturally fall into the department of Public Affairs, for as counsel concedes, all matters affecting the municipality are public affairs.

Counsel argues on page 17 of his brief, "For instance, it so happens that the Director of Public Affairs in this case is a retired grocer and the Director of Streets and Public Improve-

ments is a regular practicing physician. Which is the most appropriate department to refer 'Child Hygiene' and the 'Day Nursery' to, a department presided over by a retired grocer, or a department presided over by a practicing physician?" The vice in this is that counsel makes the criterion, of what powers and duties should be given to a particular department, the personnel of the director assigned to that department, whereas the duties which are assigned to each department should have an influence in the designation of the director to preside over that department. He ignores the legislative titles given to the departments and, in effect, argues that the Commissioners may disregard those titles altogether and may, for instance, assign the City Treasurer's Office to the Department of Streets and Public Improvements.

In the light of the titles of the various departments and of the legislative mandate that powers and duties shall be assigned to the *appropriate* department let us examine the resolutions brought up.

By the resolution of April 23, 1915, assigning duties and powers there were assigned to the Department of Public Affairs the Mayor's Office, City Clerk's Office, Legal Department, Free Public Library, Superintendent of Weights and Measures, Storekeeper, Excise Inspector, all licenses for the sale of intoxicating liquor, *and all officers not otherwise assigned*. This assignment of all officers "not otherwise assigned" indicates that the first board clearly understood that the legislative titles of the departments meant something.

By the resolution of reassignment all these officers and duties are taken from the Depart-

ment of Public Affairs, except the Free Public Library, leaving the Free Public Library to that department was a mere sham for Bayonne is a city of the second class and under the statute (C. S. of N. J. 3102) (title "Libraries") jurisdiction over public libraries in cities of the second class is vested in a board of library trustees which has power to purchase lands, erect buildings, condemn property for library purposes, and is generally given the powers of an independent municipal corporation so that the resolution of re-assignment took from the mayor every power which he can or may possess by any assignment by the Board.

Even with respect to the Free Public Library the Commissioners attempted to deprive the mayor of the power to appoint and discharge employees.

Each one of these duties and officers which, by the resolution of April 23, 1915, was assigned into the department of Public Affairs was appropriate to that department and not appropriate to any other department. The City Clerk's Office must be assigned into some department. The City Clerk is the clerk for the entire city. His office is not a distinct department. His work is not peculiar to any of the four departments which have specific titles. His duties are peculiarly appropriate to the department of Public Affairs.

And so with the Legal Department.

The storekeeper performs duties which touch all departments. The duties do not fall peculiarly within any of the four departments of "Revenue and Finance," "Public Safety," "Streets and Public Improvements" and "Parks and Public Property." This office is peculiarly

appropriate, therefore, to be assigned into the Department of Public Affairs.

And so with the Superintendent of Weights and Measures, Excise Inspector and licenses for the sale of intoxicating liquors.

By the resolutions of reassignment there was thrown into the Department of Revenue and Finance the janitor and assistant janitor at the City Hall, the switch board operator and the City Hall engineer. What have the duties of these employees peculiarly to do with the Department of Revenue and Finance?

They properly belong to the Department of Public Affairs, and, under the resolution of April 23, 1915, they would be within the Department of Public Affairs as officers and employees "not otherwise assigned."

Into the Department of Streets and Public Improvements, by the resolution of reassignment, there was placed the City Veterinarian, Bureau of Child Hygiene, Bureau of Child Welfare, Day Nursery and District Nurse.

What have the duties of these to do with the Department of Streets and Public Improvements?

Counsel does not attempt to argue that the duties are appropriate to the Department except by arguing that a physician *happens* to be in charge of the department. The duties do not appear to be peculiarly appropriate to either "Revenue and Finance," "Public Safety," "Streets and Public Improvements," or "Parks and Public Property," but rather to the affairs of the city as a whole and therefore are appropriate to the Department of Public Affairs.

By the resolution of assignment of April 23, 1915, there was assigned to the Department

of Parks and Public Property "Public parks, play grounds, pleasure grounds * * * and of all property belonging to the same, and shall have charge and supervision of the City Hall and other city property not otherwise assigned." It was provided that the Director should have charge of enforcing the provisions of law and ordinances relating to the improvement and care of the parks and planting and care of trees therein and upon the streets and avenues of the city, and supervision and direction of the lighting of public grounds and public buildings of the city. By the resolution of re-assignment all power was taken from him except over public parks, playgrounds and pleasure grounds.

Into the Department of Streets and Public Improvements was thrown the duty of the lighting, not only of streets, but of all public places, and the supervision and control of docks and wharves, the Building Department, buildings, City Forester and Tree Department.

Into the Department of Public Safety was thrown all public buildings, the electrical bureau, the storekeeper and service clerk, and yet the title of the fifth department, as fixed by the legislature, is, "Department of Parks *and Public Property.*"

By the resolution of re-assignment, it is left with parks and playgrounds and nothing for "public property."

But with respect to it the Commissioners reserved to themselves the power to appoint and discharge employees.

The duty and power to countersign pay warrants has been from time immemorial a function and power of the mayor. This power the

Commissioners sought to take away from him by one of the resolutions of December 2, 1924.

All of these resolutions must be considered as a whole. They are part of a single scheme. It is apparent that the aim and purpose was not to assign powers and duties appropriate to the several departments and the resolutions are, therefore, illegal because of the legislative mandate that the powers and duties should be assigned to "appropriate departments."

II.

Under this head there will be discussed the subject matter of appellants' points 9, 10, 11, 12, 13 and 14, so far as we deem it necessary to consider them.

Assuming that the Commissioners had the power to assign powers and duties at the time when they attempted to do so and to deal with the subject matter of the resolutions brought up, they were at least required, as are all municipal bodies, to act in good faith.

With respect to the change of designation of directors to the various departments the Legislature has specifically provided that the changes may be made *whenever it appears that the public service will be benefited thereby.*

If the Commission had the power to make changes in powers and duties we urge that they were limited to the same extent as they would be limited in changes of designation of directors.

It is apparent that the purpose of the resolutions was in no sense to benefit the public service. Their purpose was to punish the mayor and O'Connell, who was the head of the Department of Parks and Public Property.

It is argued by counsel under his Point 12 that there is no evidence to sustain the claim that the resolutions are illusory and arbitrary and were not passed in good faith but for political reasons.

We do not know what stronger evidence there can be than what the record here discloses.

The mayor in the exercise of his judgment declined to sign warrants for the pay of policemen and firemen whom he thought were not entitled to be paid. It is argued under Point 14 by counsel for appellants that he had no right to so refuse. There is no charge that he acted in bad faith. The validity of the appointments was pending in the Supreme Court and he refused to sign until the validity of the appointments was determined (p. 29); what the Supreme Court finally held with respect to the appointments is immaterial upon the question of his good faith. Following his refusal to sign these warrants, the resolutions of re-designation of powers and duties were passed.

The resolutions upon their face show their purpose. They cannot be supported by any plea that the re-designation of powers was for the public benefit and counsel for appellants has not attempted to show in his brief wherein the public benefit could possibly be subserved.

By the resolutions the three commissioners not only stripped the Department of Public Affairs of every duty "except that pertaining to the Free Public Library," which was nothing, and the Department of Parks and Public Property of everything except public parks, but, in violation of the law, as determined in many cases, including *Sykes v. Heinzman*, 127 Atl. 117, they reserved to themselves the power to

appoint and discharge employees in these two departments.

If they had reserved the power to appoint and discharge employees in ALL departments that would be one thing. But they left in the directors of the three other departments power to appoint and remove employees.

Can any argument be made that this discrimination was made for the public benefit?

And then, pending these proceedings, when it appeared that there was no doubt but that their attempt to deprive the Directors of "Public Affairs" and of "Parks and Public Property" of the power to appoint and remove employees was illegal they passed the resolutions restoring those powers. And did they restore those powers because of any supposed public benefit? Not so. As recited in the preamble of the resolutions, they did so because one of the commissioners had urged "*that a greater degree of harmony should prevail among the members.*"

It may be that harmony among the members of a commission governing a city is a desirable thing, but it has nothing to do with the advisability, from the standpoint of public service, of the commissioners exercising within their departments the power to appoint and remove employees.

To punish they attempted to remove powers which by law they had no right to remove; to restore harmony they gave back the powers.

The Supreme Court found as a fact that it was the refusal of the mayor to sign warrants for the payment of the salaries to the new policemen and firemen which resulted in the commissioners passing the resolutions and found as a

fact that these resolutions, passed by three commissioners, deprived the other two commissioners of substantially all duties and powers of the department to which they had been assigned and found as a fact that to permit the resolutions to stand would defeat the purposes of the act.

This Court will not disturb a judgment of the Supreme Court upon the facts unless there is no evidence to sustain it.

Suburban Land Co. v. Vailsburgh, 68 N. J. L. 311;

Borough v. State Water Supply, 85 N. J. L. 673;

Yellow Pine v. State Board, 72 N. J. L. 182.

The resolutions speak for themselves and the conduct of the commissioners was such as that there is no necessity for any oral testimony to be considered as to the motives of the three commissioners who passed these resolutions. We can neither find nor think of any suggestion of any public service which could possibly be subserved by the passage of the resolutions and no suggestion is made that the purpose is not as it was held to be by the Supreme Court.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

ISAAC GROSS,
MERRITT LANE,
Of Counsel Appellees.

