State of New Jersey
Department of Education
Trenton

NEW JERSEY

SCHOOL LAWS

Enacted during the Legislative Session of 1956
and Laws of 1955
Passed Too Late for Inclusion in 1955 Bulletin

SCHOOL LAW DECISIONS
1955 - 1956

Keep with 1938 Edition of New Jersey School Laws

SCHOOL LAWS, SESSION OF 1955

(Passed too late in 1955 to be included in the 1955 School Law Bulletin.)

AMENDMENTS

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SCHOOL LAWS, SESSION OF 1955

(Passed too late in 1955 to be included in the 1955 School Law Bulletin)

AMENDMENTS, 1955 *

CHAPTER 223, LAWS OF 1955

AN ACT to amend "An act concerning the Teachers' Pension and Annuity Fund, and supplementing article 3 of chapter 13 of Title 18 of the Revised Statutes," approved July 17, 1951 (P. L. 1951, c. 328).

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

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

1. Notwithstanding the provisions of chapter 245 of the laws of 1947 or any other law, the membership and interest accrual of any member of the Teachers' Pension and Annuity Fund, protected by tenure pursuant to Title 18 of the Revised Statutes, who heretofore was or may hereafter become unemployed by reason of the creation of a regional school district or a consolidated school district *or the closing or discontinuance of any school supported in whole or in part by State funds,* shall not cease, except upon withdrawal of accumulated deductions, retirement, or death. Any such member, who may subsequently be employed as a teacher in a school district *or school* at a salary or compensation less than he was receiving in the district *or school* where he became unemployed, shall be permitted to pay or cause to be paid into such fund the same amount as he was paying immediately prior to becoming unemployed, and upon retirement his "average salary," for pension purposes, shall be the average annual salary upon which contributions were based for the last 5 years preceding retirement. If such member is not subsequently employed in a school district *or school,* his "average salary," for pension purposes, shall be the average annual salary earned, as a teacher in a school district *or school,* for the last 5 years of his contributing membership.

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

2. Any member who shall elect to come under the provisions of this act shall notify the board of trustees of the Teachers' Pension and Annuity Fund in writing within 3 years of the date of the termination of his employment by reason of the creation of the regional or consolidated school district *or the closing or discontinuance of any school supported in whole or in part by State funds.*

3. This act shall take effect immediately.

Approved October 7, 1955.

* Italics show amendments of 1955.

AN ACT to amend the title of "An act to preserve the tenure and pension rights of teachers in high schools in school districts which unite to create a regional school district for the establishment and development of high school education," approved May 31, 1951 (P. L. 1951, c. 128), so that the same shall read "An act to preserve the tenure and pension rights of teachers in high schools and in junior high schools in school districts which unite to create a regional school district for the establishment and development of high school or junior high school education." and to amend the body of said act.

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

1. The title of "An act to preserve the tenure and pension rights of teachers in high schools in school districts which unite to create a regional school district for the establishment and development of high school education," approved May 31, 1951, is amended to read "An act to preserve the tenure and pension rights of teachers in high schools and in junior high schools in school districts which unite to create a regional school district for the establishment and development of high school or junior high school education."

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

1. Whenever, subsequent to April 1, 1951, a regional school district shall be created for the establishment and development of high school *or junior high school* education, the tenure and pension rights of the high school teachers *or junior high school teachers* in any high school *or junior high school* or schools located in any district or districts uniting to create a regional district shall be recognized and preserved by the regional board of education of the newly created district in the organization and operation of any high school *or junior high school* in the regional district, and any period of employment in any one or all of the high schools *or junior high schools* in any district or districts uniting to create a regional district shall count toward the acquisition of tenure in the new regional district. Nothing contained herein shall be construed to apply to supervising principals or high school *or junior high school* principals.

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

2. For the purposes of this act, a high school *or junior high school* teacher shall mean any high school teacher *or junior high school teacher* who, on the date of a referendum favorable to the creation of a regional school district for the establishment and development of high school *or junior high school* education, is assigned for a majority of her time anywhere in grades 7 to 12, inclusive, in any high school *or junior high school* or schools in any district or districts uniting to create a regional district for furthering high school *or junior high school* education.

4. This act shall take effect immediately and shall be retroactively in effect as of July 1, 1955.

Approved December 9, 1955.

AN ACT concerning school districts in townships, incorporated towns and boroughs, and in cities accepting chapter 7 of Title 18 of the Revised Statutes, and amending section 18:7–9 of the Revised Statutes.

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

1. Section 18:7–9 of the Revised Statutes is amended to read as follows:

18:7–9. Whenever the membership of a board has been reduced to 3, and the board shall deem it advisable to increase the number from 3 to 5, the district clerk shall, when directed by said board, insert in the call for the next annual school meeting a notice that that issue will be determined at the meeting.

If it shall be determined at the meeting to increase the number of members from 3 to 5, there shall be elected at the next annual school meeting 2 members for terms of 3 years and 1 member for a term of 2 years. Each year thereafter a successor to each member whose term expires shall be elected for a term of 3 years.

Whenever the membership of a board has been reduced to 3, and the board shall deem it advisable to increase the number from 3 to 7, the district clerk shall, when directed by said board, insert in the call for the next annual school meeting a notice that that issue will be determined at the meeting.

If it shall be determined to increase the number of members from 3 to 7, there shall be elected at the next annual school meeting 3 members for terms of 3 years, 1 for a term of 2 years, and 1 for a term of 1 year. Each year thereafter successors to members whose terms expire shall be elected for terms of 3 years.

Whenever the board shall deem it advisable to increase the number of members from 5 to 7 the district clerk shall, when directed by the board, insert in the call for the next annual school meeting a notice that that issue will be determined at the meeting.

If it shall be determined to increase the number of members from 5 to 7, there shall be elected at the next annual school meeting 3 members for terms of 3 years, and 1 for a term of either 1 or 2 years if necessary to cause the terms of 2 members to expire at each of the next 2 annual meetings. Each year thereafter successors to the members whose terms expire shall be elected for terms of 3 years.

Whenever the board shall deem it advisable to increase the number of members from 7 to 9 the district clerk shall, when directed by the board, insert in the call for the next annual school meeting a notice that that issue will be determined at the meeting.

If it shall be determined to increase the number of members from 7 to 9, there shall be elected at the next annual school meeting 3 members for terms of 3 years, and either (a) 1 member for a term of 2 years and 1 member for a term of 1 year, or (b) 1 member for a term of either 1 or 2 years, as may be necessary to cause the terms of 3 members to expire at each of the next 2 annual meetings. Each year thereafter successors to the members whose terms expire shall be elected for terms of 3 years.

2. This act shall take effect immediately.

Approved January 25, 1956.

AN ACT to establish a general system authorizing the granting of noncontributory pensions by counties, municipalities, and school districts in certain cases; and repealing sundry acts and parts of acts.

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

1. As used in this act:

(a) "Employee" means any person holding office, position, or employment in any county, municipality, or school district in the State.

(b) "Employer" means any county, municipality, or school district in the State.

(c) "Final average salary" means the average base compensation paid by the employer to the employee for the 5 years of *his employment* preceding his retirement.

(d) "Permanent and total disability." An employee is deemed to be permanently and totally disabled when it appears not only that he is physically or otherwise incapacitated for service, but that such incapacity will, in all reasonable probability, continue permanently. If an employee claims that such disability exists, the employer shall appoint a physician of skill and repute in his profession and resident of this State, who shall examine the employee. The physician shall make a report of the employee's physical condition or other disability, and if a disability exists, whether in all reasonable probability it will continue permanently, and does and will continue to prevent the employee from giving service to his employer in the performance of his duties. *Any person who is retired for permanent and total disability hereunder, and who is under the age of 65 years, shall undergo an annual medical examination by a physician or physicians designated by the county, municipality or school district paying pension benefits based upon disability to such person. If upon examination it is determined that such disability no longer exists, the benefits payable hereunder for disability shall cease. If a person receiving pension benefits based upon disability refuses to submit to examination, the county, municipality or school district paying such benefits shall discontinue same until such person submits to a physical examination.*

(e) The Social Security system shall not be deemed a retirement system for the purposes of determining eligibility to a pension under this act.

2. Any employee who is not a member of and was not required by law at the time of appointment or employment, or at any time thereafter, to become a member of a contributory retirement system, may, at the discretion of his employer, be retired and granted a pension under the provisions of this act. No employee shall receive a pension under this act, if he is eligible to receive a pension for the same employment under any other law of this State.

3. The payment of pensions granted pursuant to this act shall be provided for in the budget of the employer.

4. In order to be eligible for a pension under the provisions of this act, an employee must be at least 65 years of age, *or have been employed by an employer for at least 40 years,* or *be* permanently and totally disabled.

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

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

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

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

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

6. The following acts and parts of acts are hereby repealed: Sections 18:6–29; 18:6–36; 18:6–43; 18:6–44; 18:14–62 to 18:14–64, both inclusive; 40:37–149; 40:37–150; 43:6–8 to 43:6–14, both inclusive; 43:8–5 to 43:8–7, both inclusive; 43:9–1 to 43:9–8, both inclusive; 43:11–3; 43:12–1 to 43:12–55, both inclusive, of the Revised Statutes, and chapter 142 of the laws of 1938, chapter 156 of the laws of 1939, chapter 36 of the laws of 1940, chapter 214 of the laws of 1941, chapter 368 of the laws of 1941, chapter 369, of the laws of 1941, *chapter 255 of the laws of 1942*, chapter 194 of the laws of 1943, chapter 154 of the laws of 1944, chapter 223 of the laws of 1944, chapter 287 of the laws of 1945, chapter 216 of the laws of 1947, chapter 221 of the laws of 1947, chapter 285 of the laws of 1947, chapter 119 of the laws of 1948, chapter 224 of the laws of 1948, chapter 254 of the laws of 1948, chapter 228 of the laws of 1949, chapter 262 of the laws of 1949, chapter 293 of the laws of 1949, chapter 248 of the laws of 1950, chapter 223 of the laws of 1951, chapter 262 of the laws of 1951, chapter 283 of the laws of 1952, chapter 353 of the laws of 1952, chapter 301 of the laws of 1953, chapter 308 of the laws of 1953, chapter 309 of the laws of 1953, and chapter 362 of the laws of 1953.

7. No pensions may be granted under the provisions of any statute repealed by section 6 of this act after the date this act becomes effective. Any pension granted prior to the effective date of this act under the provisions of any statute repealed by section 6 of this act shall be continued in the same manner and under the same conditions as originally granted.

8. This act shall be known and may be cited as the "General Noncontributory Pension Act."

9. This act shall take effect immediately.

Approved January 11, 1956.

ACT, 1955

JOINT RESOLUTION No. 9, 1955

A JOINT RESOLUTION concerning the display of the State flag.

WHEREAS, Chapter 86 of the laws of 1938 provides that the State flag may be displayed on all occasions and in such manner as it is appropriate and lawful to display the flag of the United States; and

WHEREAS, The State of New Jersey has played an extensive part in the history of our great nation; and

WHEREAS, The citizens of the State take great pride in the leadership of the State in the nation; and

WHEREAS, The flag is symbolic of that leadership and the pride of the people in their great State; therefore,

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

1. The Governor is requested by executive order to provide for a greater display of the State flag throughout our State on and in all public buildings of this State particularly on all public holidays and all occasions of special public State functions.

2. The board of chosen freeholders of the various counties, the governing body of the various municipalities and the board of education of the various school districts are likewise requested to provide for the greater display of the State flag on and in the county, municipal and school buildings respectively.

3. This joint resolution shall take effect immediately.

Approved June 14, 1955.

SCHOOL LAWS, SESSION OF 1956

AMENDMENTS *

CHAPTER 9, LAWS OF 1956

AN ACT to authorize school districts to establish, maintain and use capital reserve funds in the custody of the State Treasurer, supplementing chapter 5 of Title 18, and amending sections 18:6–49 and 18:7–77.1 (as added by laws of 1943, chapter 201), Revised Statutes.

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

1. Authorization. The board of school estimate of any school district governed under chapter 6 and the board of education of any school district governed under chapter 7 of Title 18 of the Revised Statutes, may establish, maintain and use a capital reserve fund pursuant to this act.

2. Credits to reserve. A capital reserve fund shall be established by resolution of the board of education or board of school estimate, as the case may be, in such form as shall be prescribed by the commissioner, a true copy of which shall be filed with the Department of Education. The fund shall consist of (a) such sums, not exceeding $30.00 per pupil in average daily enrollment (including the amount of State building aid as well as funds to be raised locally), as the board of education or board of school estimate, as the case may be, shall annually appropriate for that purpose; and (b) the earnings attributable to the investment of the assets of the fund, as determined by the State Treasurer.

3. Custody and investment of reserve. The capital reserve fund of each district shall be kept in the custody of the State Treasurer for investment and reinvestment without segregation of assets from other State investments. It shall also be credited with the amount of State school building aid and other moneys which the district is entitled or required pursuant to law to have credited to its capital reserve fund; and shall be debited with the amount of annual withdrawals made by the district, pursuant to law.

4. Use of reserve. A school district may in any school year draw against its capital reserve fund, up to the amount of the balance therein, to the extent that such withdrawal is anticipated as a revenue in the school budget for the then current school year; provided, that such budget anticipation and withdrawal may not be greater than the amount by which capital outlay and debt service included in such budget exceeds State school building aid applicable thereto, as determined pursuant to the State school building aid act.

5. Section 18:6–49 of the Revised Statutes is amended to read as follows:

18:6–49. On or before February 1 in each year, the board of education shall prepare and deliver to each member of the board of school estimate a budget for the ensuing school year in such detail and upon such forms as shall be prescribed by the Commissioner of Education by regulation and a statement so itemized as to make the same readily understandable, in which shall be shown

* Italics show amendments of 1956.

(1) the amounts of money estimated to be necessary for the current expenses of and for repairing and furnishing the public schools of the district for such ensuing school year itemized so as to indicate separately the amounts required for

(a) the repairing or furnishing of a schoolhouse or schoolhouses,
(b) industrial schools,
(c) evening schools or classes for foreign-born residents,
(d) current expenses of the schools,
(e) appropriation to capital reserve fund,
(f) any other major purposes, and

(2) the amount appropriated for each of said items for the current school year, and

(3) the anticipated revenues intended to be used for said items and purposes and the respective sources and amounts of the same, and

(4) the anticipated revenues for similar items and purposes for the current school year and the respective sources and amounts of the same, and

(5) the amount of the surplus account available at the beginning of the current school year, and

(6) the amount of money which shall have been apportioned to the district by the county superintendent and authorized by law to be used to meet the expenses of such district for such ensuing year, and said board of education shall then fix a date, place and time for the holding of a public hearing by the board of school estimate with respect to said budget and the amount of money necessary to be appropriated for the use of the public schools for the ensuing school year and with respect to the various items and purposes for which the same is to be appropriated, which date shall be between February 1 and February 15 and which date shall be not less than 7 days after the publication of said statement as herein provided and shall cause notice of such public hearing and said statement to be published at least once in at least 1 newspaper published in the municipality or if no newspaper be published therein then in at least 1 newspaper circulating in said municipality, not less than 7 days prior to the date fixed for such public hearing, and said notice shall also set forth that said budget will be on file and open to examination of the public, between reasonable hours to be fixed therein and, at a place to be named therein, from the date of said publication until the date of the holding of said public hearing and said board of education shall cause said budget to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

6. Section 18:7–77.1 of the Revised Statutes is amended to read as follows:

18:7–77.1. The board of education in school districts in townships, incorporated towns and boroughs and in cities governed by chapter 7 of Title 18 of the Revised Statutes in which there is not established a board of school estimate shall on or before the second Tuesday in January in each year prepare a budget for said school district for the ensuing year in such detail and upon such forms as shall be prescribed by the Commissioner of Education by regulation and a statement so itemized as to make the same readily understandable in which shall be shown

(1) the amounts of money estimated to be necessary to be appropriated for such ensuing school year, itemizing them separately so as to show the amounts required for

(a) the purchase or taking and condemning of land for school purposes,

(b) the building, enlarging, repairing or furnishing of a schoolhouse or schoolhouses,

(c) interest and debt redemption charges,

(d) industrial schools,

(e) evening schools or classes for foreign-born residents,

(f) current expenses of the schools including principals', teachers', janitors' and medical inspectors' salaries; fuel, textbooks, schools supplies, flags, transportation of pupils, tuition of pupils attending schools in other districts with the consent of the board, school libraries, compensation of district clerk, the custodian of school moneys and truant officers, truant schools, insurance, and the incidental expenses of the schools,

(g) appropriation to capital reserve fund,

(h) any other major purposes, and

(2) the amount appropriated for each of said items for the current school year, and

(3) the anticipated revenues intended to be used for said items and purposes and the respective sources and amounts of the same, and

(4) the anticipated revenues for similar items and purposes for the current school year and the respective sources and amounts of the same, and

(5) the amount of the surplus account available at the beginning of the current school year, and

(6) the amount of money which shall have been apportioned to the district by the county superintendent and authorized by law to be used to meet the expenses of such district for such ensuing year,

and said board of education shall then fix a date, place and time for the holding of a public hearing before it with respect to said budget and the amount of money necessary to be appropriated for the uses of the public schools for the ensuing school year and with respect to the various items and purposes for which the same is to be appropriated, which date shall be between the second Tuesday in January and the first day of February and which date shall be not less than 7 days after the publication of said statement as herein provided and shall cause notice of such public hearing and said statement to be published at least once in at least 1 newspaper published in the municipality or if no newspaper be published therein then in at least 1 newspaper circulating in said municipality, not less than 7 days prior to the date fixed for such public hearing, and said notice shall also set forth that said budget will be on file and open to the examination of the public, between reasonable hours to be fixed therein and, at a place to be named therein, from the date of said publication until the date of the holding of said public hearing and said board of education shall cause said budget to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

7. Effective date. This act shall take effect immediately.

Approved March 29, 1956.

CHAPTER 58, LAWS OF 1956

AN ACT concerning education and to amend an act entitled "An act to provide for and regulate the granting of sick leave to certain persons in the public schools of this State, and supplementing Title 18 of the Revised Statutes, and to repeal 'An act to provide for and regulate the granting of sick leave to certain teachers, principals, assistant superintendents and superintendents in the public schools of this State, and supplementing chapter 13 of Title 18 of the Revised Statutes,' approved May 6, 1942 (P. L. 1942, c. 142), as the title of said act was amended by chapter 237 of the laws of 1952," approved July 22, 1954 (P. L. 1954, c. 188).

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

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

1. All persons holding any office, position or employment in all school districts, regional school districts or county vocational schools of the State who are steadily employed by the board of education or who are protected in their office, position or employment under the provisions of sections 18:13–16 to 18:13–19 of the Revised Statutes or under any other law shall be allowed sick leave with full pay for a minimum of 10 school days in any school year. If any such person requires in any school year less than this specified number of days of sick leave with pay allowed, all days of such *minimum sick* leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years.

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

5. Nothing in this act shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave *or granting sick leave over and above the minimum sick leave as defined in this act.*

3. This act shall take effect July 1, 1956.

Approved May 22, 1956.

CHAPTER 64, LAWS OF 1956

AN ACT to amend an act entitled "An act concerning education, providing for the establishment and maintenance of county educational audio-visual aid centers, and supplementing Title 18 of the Revised Statutes," approved June 13, 1950 (P. L. 1950, c. 228).

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

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

7. The commission shall assess against the participating school districts a sum which, together with any anticipated State aid and private donations, shall be required for the establishment and maintenance of the County

Educational Audio-Visual Aids Center during the first year and for the maintenance and operation of the same, during each year thereafter, which total annual assessment shall not exceed $0.40 per pupil in daily average *enrollment* in the participating school districts and shall be apportioned among the participating school districts in the proportion which the average daily *enrollment* of the pupils of each such district shall bear to the total average daily *enrollment* of the pupils of all of the participating school districts. Said average daily *enrollment* shall be calculated and determined upon the basis of the preceding school year in the same manner as the same was calculated and determined by the Commissioner of Education, as of the previous October 1, for apportionment of State aid for schools among the participating school districts.

2. This act shall take effect July 1, 1956.

Approved June 1, 1956.

Chapter 68, Laws of 1956

An Act concerning education, and amending section 18:14–7 of the Revised Statutes.

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

1. Section 18:14–7 of the Revised Statutes is amended to read as follows:

18:14–7. Any school district heretofore or hereafter created, which has not heretofore designated a high school or schools outside such district for the children thereof to attend, and which district lacks or shall lack high school facilities within the district for the children thereof to attend, may designate any high school or schools of this State as the school or schools which the children of such district are to attend. Whenever 2 or more schools are designated, the board of education of such school district shall make an allocation and apportionment of pupils to the designated high schools.

If no such allocation or apportionment of pupils has been made by resolution of the board of education of such district prior to the academic year 1943-1944, the actual allocation and apportionment of pupils to the designated high schools in effect in the academic year 1943-1944 shall be deemed to be the allocation and apportionment of pupils for the purpose of this section. In the event that any district, which is not now sending pupils to a high school or schools outside such district shall hereafter decide to designate 2 or more high schools which the pupils of the district shall attend, and in the event such district shall fail to make an allocation and apportionment by resolution of the board of education, then the actual allocation and apportionment of pupils in effect in the first academic year of the designation shall be deemed to be the allocation and apportionment of pupils for the purpose of this section.

No designation of a high school or schools heretofore or hereafter made by any district either under this section or under any prior law shall be changed *or withdrawn, nor shall a district having such a designated high school refuse to continue to receive high school pupils from such sending district* unless good and sufficient reason exists for such change and unless an

application therefor is made to and approved by the commissioner. Whenever 2 or more high schools have been designated, the commissioner shall make equitable determinations on applications for change of designation and allocation and apportionment by allocating and apportioning pupils of the sending district to the designated high schools. *Any sending or receiving district aggrieved by the decision of the commissioner may appeal such decision to the State Board of Education which, in its discretion, may affirm, revise or modify such decision.*

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

2. This act shall take effect immediately.

Approved June 6, 1956.

CHAPTER 69, LAWS OF 1956

AN ACT concerning education, and amending section 18:14–11 of the Revised Statutes.

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

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

18:14–11. No contract for the transportation of children to and from school shall be made, when the amount to be paid during the school year for such transportation shall exceed *$600.00*, unless the board of education making such contract shall have first publicly advertised for bids therefor in a newspaper circulating in the school district once, at least 10 days prior to the date fixed for receiving proposals for such transportation and shall have awarded the contract to the lowest responsible bidder.

Each transportation bid shall be accompanied by information required on a standard form of questionnaire approved by the State Board of Education and by a cashier's or certified check for 5% of the annual amount of the contract, which deposit shall be forfeited upon the refusal of a bidder to execute a contract; otherwise, checks shall be returned when the contract is executed and a bond filed.

2. This act shall take effect immediately.

Approved June 6, 1956.

AN ACT concerning regional school districts, and amending sections 18:8–1, 18:8–17 and 18:8–19 of the Revised Statutes.

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

1. Section 18:8–1 of the Revised Statutes is amended to read as follows:

18:8–1. Whenever the boards of education of 2 or more school districts and the State Commissioner of Education, after study and investigation, shall deem it advisable for such school districts to unite in creating a regional school district for the establishment and development of elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational services or facilities in the territory comprised within such school districts and shall determine whether the amounts to be raised for annual or special appropriations for such regional school district, as provided in section 18:8–17 of the Revised Statutes, are to be apportioned upon the basis of *apportionment valuations, as defined in section 54:4–49 of the Revised Statutes*, or of average daily enrollment of the constituent school districts during the preceding school year, the board of education of each of such school districts shall call and conduct a special election, which shall be held on the same date in each of such school districts, in the manner provided for the conduct of special school district elections in chapter 7 of this Title and shall submit a proposal for creation of a regional school district for any 1 or more of the above purposes. The proposal so submitted shall state whether the amounts to be raised for annual or special appropriations for such regional school district, as provided in section 18:8–17 of the Revised Statutes are to be apportioned upon the basis of *such apportionment valuations* or of average daily enrollment of the constituent school districts during the preceding school year.

There may be included, as a part of each proposal to be submitted with respect to the creation of a regional school district, an authorization for the issuance of promissory notes or temporary loan bonds of the regional school district, in a principal amount not in excess of that stated in such proposal, for the purpose of providing for the current expenses of the regional school district until June 30 subsequent to the date of the first annual election of the regional school district. No such authorization shall be included in such proposal unless the State Commissioner of Education shall have made a finding, in writing, prior to the date of submission of such proposal, that the principal amount of such promissory notes or temporary loan bonds, as stated in such proposal, is not in excess of the amount of money reasonably expected to be necessary for the current expenses of the regional school district as aforsaid. If each of such proposals includes such an authorization and pursuant to such proposals such school districts shall vote to create a regional school district, such proposals shall after such vote be authority for the issuance of such promissory notes or temporary loan bonds of the regional school district to the amount and for the purposes set forth therein, and shall for all the purposes of chapters 7 and 8 of this Title and any other provisions of said Title, be deemed to constitute a proposal duly adopted on said date by the legal voters of the regional school district authorizing

the regional board of education to issue bonds of the regional school district, but no school debt statement need be prepared or filed prior to such authorization. Such promissory notes or temporary loan bonds of the regional school district shall be issued by the regional board of education in the manner provided in article 8 of chapter 7 of this Title, except that all such promissory notes or temporary loan bonds shall mature in not exceeding 1 year and may be renewed by similar promissory notes or temporary loan bonds which shall mature not later than 2 years from the date of the first of the original notes or bonds so issued. An amount, sufficient to pay the principal and interest, at maturity, of such promissory notes or temporary bonds shall be raised in the same manner as provided by law for the payment of bonds of the regional school district.

There may be included, as a part of each proposal to be submitted with respect to the creation of a regional school district, the authorization of bonds of the regional school district for any 1 or all of the following purposes: (a) any purpose or purposes described in section 18:7–85 of the Revised Statutes, (b) the purchase of any schoolhouse or schoolhouses or other buildings for school purposes with or without the sites thereof and lands appertaining thereto or the furniture and other necessary equipment therefor or the materials and supplies therefor, and (c) the making of additions, alterations, repairs or improvements in or upon any such schoolhouse or other building or purchasing school furniture or other necessary equipment therefor. Such an authorization shall for all the purposes of this Title, and particularly chapter 8 and article 18 of chapter 5 thereof, be deemed to constitute a proposal authorizing the regional board of education to issue bonds of the regional school district, but no school debt statement need be prepared or filed prior to the authorization of such bonds. A copy of each such proposal may be submitted prior to said election for consideration by the State Commissioner of Education and the Local Government Board under and for all the purposes of section 18:5–86 of the Revised Statutes. If each of such proposals includes such an authorization and pursuant to such proposals such school districts shall vote to create a regional school district, such proposals shall after such vote be authority for the issuance of bonds of the regional school district to the amount and for the purpose or purposes set forth therein and, from and after the date of such vote, shall for all the purposes of chapters 7 and 8 of this Title, and any other provisions of said Title, be deemed to constitute a proposal duly adopted on said date by the legal voters of the regional school district authorizing the regional board of education to issue bonds of the regional school district for the purpose or purposes and in the amount or amounts set forth in such proposal. The bonds so authorized shall be issued, shall be dated and sold in all respects in accordance with the provisions of said chapters, and shall mature within the period or respective periods of time prescribed by such provisions, in each case computed from the date of such bonds.

2. Section 18:8–17 of the Revised Statutes is amended to read as follows:

18:8–17. The amounts to be raised for annual or special appropriations for a regional school district and the amounts to be raised for interest and the redemption of bonds of a regional school district shall be *certified by the regional board of education to the county board of taxation and the county*

board of taxation shall apportion such amounts among the constituent school districts as follows:

(1) The amounts to be raised for interest and the redemption of bonds of a regional school district shall be apportioned upon the basis of the *apportionment valuations, as defined in section 54:4–49 of the Revised Statutes,* of the constituent school districts;

(2) The amounts, except the amounts referred to in paragraph (1) above, to be raised for annual or special appropriations for a regional school district created prior to July 1, 1953, shall be apportioned upon the basis of *such apportionment valuations* of the constituent school districts unless *average daily enrollment shall have been adopted as a* basis of apportionment as provided in chapter 8 of this Title; and

(3) The amounts, except the amounts referred to in paragraph (1) above, to be raised for annual or special appropriations for a regional school district created on or subsequent to July 1, 1953, shall be apportioned upon the basis of (1) *such apportionment valuations* of the constituent school districts, if *(a)* such basis shall have been adopted at the time of creation of the regional school district and a different basis of apportionment shall not have been adopted as provided in chapter 8 of this Title, *or (b) ratables shall be the basis of apportionment prevailing at the time of the effective date of this act,* or (2) the average daily enrollment of the constituent school districts during the preceding school year if (a) such basis shall have been adopted at the time of creation of the regional school district, or (b) such basis is thereafter adopted as provided in chapter 8 of this Title, or (c) a basis of average daily attendance shall have been adopted at the time of the creation of the regional school district.

With respect to regional school districts for which the average daily enrollment of the constituent school districts during the preceding school year is to be used as a basis for apportionment of amounts to be raised for annual or special appropriations for such school districts, the State Commissioner of Education shall certify to the *county board of taxation,* from the latest official statistics then available, the average daily enrollment of resident public school pupils in *each* constituent school district in the grade levels for which the regional school district is organized for use by the *county board of taxation* until such time as actual average daily enrollment statistics for the constituent school districts for a preceding school year shall be available and shall be certified by the State Commissioner of Education for such regional school district.

The amount thus apportioned to each constituent school district *shall be* assessed, levied and collected in the same manner and at the same time as other school taxes are assessed, levied and collected therein and shall be paid upon requisition as provided with respect to school districts governed by the provisions of chapter 7 of this Title.

Where the constituent school districts are located in more than 1 county, county board of taxation shall, for the purposes of this section, mean the county board of taxation of the county in which the constituent school districts having the largest aggregate apportionment valuations are located, as established by the last published county abstracts of ratables, and the county board or county boards of taxation in which the other constituent school districts are located shall certify to the county board of taxation charged with

the duty of apportioning moneys hereunder the apportionment valuations of the constituent school districts within their respective jurisdictions. The county board of taxation making the apportionment shall certify to the other county board or boards of taxation the amounts apportioned to the constituent school districts within their respective jurisdictions.

3. Section 18:8–19 of the Revised Statutes is amended to read as follows:

18:8–19. Whenever the board of education of a regional school district, heretofore or hereafter created, and the State Commissioner of Education, after study and investigation, shall deem it advisable to add to the purpose or purposes for which the regional school district was created, the regional board of education may submit, at any subsequent election held in the regional school district, a proposal authorizing the regional school district to carry out any 1 or more additional purposes for which a regional school district may be created as provided in section 18:8–1 of this Title. Upon the adoption of such proposal by the affirmative vote of a majority of the legal ballots cast thereon in the entire regional school district and the certification of the adoption of such proposal by the secretary of the regional school district to the county superintendent of schools of each county in which any part of the regional school district is situated and to the State Commissioner of Education, the regional school district shall be authorized to carry out such additional purpose or purposes as stated in such proposal.

Whenever the board of education of a regional school district, heretofore or hereafter created and for which amounts raised for annual or special appropriations, as provided in section 18:8–17 of the Revised Statutes, are apportioned on *a basis other than the average daily enrollment* of the constituent school districts, and the State Commissioner of Education, after study and investigation, shall deem it advisable that the amounts to be raised for annual or special appropriations as aforesaid for such regional school district are to be apportioned upon the basis of the average daily enrollment of the constituent school districts during the preceding school year, the regional board of education may submit a proposal providing for the apportionment of such amounts as aforesaid at any subsequent election held in the regional school district. Upon the adoption of such proposal by the legal voters of each constituent school district by the affirmative vote of a majority of the legal ballots cast thereon in each such constituent school district, the amounts to be raised thereafter for annual or special appropriations as aforesaid for such regional school district shall be apportioned upon the basis of the average daily enrollment of the constituent school districts during the preceding school year. The secretary of the regional school district shall certify the adoption of such proposal by each constituent school district to the county superintendent of schools of each county in which any part of the regional school district is situated and to the State Commissioner of Education.

4. This act shall take effect January 1, 1957.

Approved June 13, 1956.

CHAPTER 96, LAWS OF 1956

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

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

1. Section 14 of the act of which this act is amendatory is amended to read as follows:

14. The amounts authorized to be raised for annual or special appropriations, or for interest, or for the redemption of bonds *shall be certified by the board of education of the consolidated school district to the county board of taxation, which shall apportion such amounts* among the taxing districts, comprising the former constituent school districts from which the consolidated district was constituted in the proportion that the *apportionment valuation, as defined in section 54:4–49 of the Revised Statutes,* of each taxing district bears to the total *apportionment valuations* within the consolidated school district and the amount thus apportioned to each taxing district shall be assessed, levied and collected in the same manner and at the same time as other taxes are assessed, levied and collected therein and shall be paid upon requisitions, as provided by chapter 7 of Title 18 of the Revised Statutes.

Where the constituent school districts are located in more than 1 county, county board of taxation shall, for the purposes of this section, mean the county board of taxation of the county in which the constituent school districts having the largest aggregate apportionment valuations are located, as established by the last published county abstracts of ratables, and the county board or county boards of taxation in which the other constituent school districts are located shall certify to the county board of taxation charged with the duty of apportioning moneys hereunder the apportionment valuations of the constituent school districts within their respective jurisdictions. The county board of taxation making the apportionment shall certify to the other county board or boards of taxation the amounts apportioned to the constituent school districts within their respective jurisdictions.

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

Approved June 13, 1956.

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

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

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

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

(1) pay to each school district the amount of its building aid allowance less its net appropriation to its capital reserve fund, at the times and in the manner hereinafter provided; and

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

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

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

7. Withdrawal from reserve funds. A school district may *on November 1 or May 1* in any school year draw against its capital reserve fund, up to the amount of the balance therein, to the extent that such withdrawal is anticipated as a revenue in the school budget for the then current school year; provided, that such budget anticipation and withdrawal may not be greater than the amount by which capital outlay and debt service included in such budget exceeds State school building aid applicable thereto. Such withdrawal shall be paid by the State Treasurer to the board of education upon application duly made to the commissioner and upon his certification and the warrant of the Director of the Division of Budget and Accounting.

3. This act shall take effect immediately.

Approved July 2, 1956.

AN ACT to amend the title of "An act to authorize school districts to establish, maintain and use capital reserve funds in the custody of the State Treasurer, supplementing chapter 5 of Title 18, and amending sections 18:6–49 and 18:7–77.1 (as added by laws of 1943, chapter 201), Revised Statutes," approved March 29, 1956 (P. L. 1956, c. 9), so that the same shall read "An act to authorize school districts to establish, maintain and use capital reserve funds in the custody of the State Treasurer, amending 'An act concerning budgets in school districts and for the holding of public hearings thereon, and amending sections 18:6–49, 18:6–50, 18:7–112, 18:7–113 and 18:7–114 of the Revised Statutes, and supplementing chapter 7 of Title 18 of the Revised Statutes,' approved April 19, 1943 (P. L. 1943, c. 201), and section 18:6–49 of the Revised Statutes and supplementing chapter 5 of Title 18 of the Revised Statutes," and to amend the body of said act and section 18:7–112 of the Revised Statutes.

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

1. The title of "An act to authorize school districts to establish, maintain and use capital reserve funds in the custody of the State Treasurer, supplementing chapter 5 of Title 18, and amending sections 18:6–49 and 18:7–77.1 (as added by laws of 1943, chapter 201), Revised Statutes," approved March 29, 1956, is amended to read "An act to authorize school districts to establish, maintain and use capital reserve funds in the custody of the State Treasurer, amending 'An act concerning budgets in school districts and for the holding of public hearings thereon, and amending sections 18:6–49, 18:6–50, 18:7–112, 18:7–113 and 18:7–114 of the Revised Statutes, and supplementing chapter 7 of Title 18 of the Revised Statutes,' approved April 19, 1943 (P. L. 1943, c. 201), and section 18:6–49 of the Revised Statutes and supplementing chapter 5 of Title 18 of the Revised Statutes."

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

3. Custody and investment of reserve. The capital reserve fund of each district shall be kept in the custody of the State Treasurer for investment and reinvestment without segregation of assets *as between the funds of the several school districts.* It shall also be credited with the amount of State school building aid and other moneys which the district is entitled or required pursuant to law to have credited to its capital reserve fund; and shall be debited with the amount of annual withdrawals made by the district, pursuant to law.

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

6. Section *3 of P. L. 1943, c. 201* is amended to read as follows:

3. The board of education in school districts in townships, incorporated towns and boroughs and in cities governed by chapter 7 of Title 18 of the Revised Statutes in which there is not established a board of school estimate shall on or before the second Tuesday in January in each year prepare a budget for said school district for the ensuing year in such detail and upon

such forms as shall be prescribed by the Commissioner of Education by regulation and a statement so itemized as to make the same readily understandable in which shall be shown

(1) the amounts of money estimated to be necessary to be appropriated for such ensuing school year, itemizing them separately so as to show the amounts required for

(a) the purchase or taking and condemning of land for school purposes,

(b) the building, enlarging, repairing or furnishing of a schoolhouse or schoolhouses,

(c) interest and debt redemption charges,

(d) industrial schools,

(e) evening schools or classes for foreign-born residents,

(f) current expenses of the schools including principals', teachers', janitors' and medical inspectors' salaries; fuel, textbooks, school supplies, flags, transportation of pupils, tuition of pupils attending schools in other districts with the consent of the board, school libraries, compensation of district clerk, the custodian of school moneys and truant officers, truant schools, insurance, and the incidental expenses of the schools,

(g) appropriation to capital reserve fund,

(h) any other major purposes, and

(2) the amount appropriated for each of said items for the current school year, and

(3) the anticipated revenues intended to be used for said items and purposes and the respective sources and amounts of the same, and

(4) the anticipated revenues for similar items and purposes for the current school year and the respective sources and amounts of the same, and

(5) the amount of the surplus account available at the beginning of the current school year, and

(6) the amount of money which shall have been apportioned to the district by the county superintendent and authorized by law to be used to meet the expenses of such district for such ensuing year,

and said board of education shall then fix a date, place and time for the holding of a public hearing before it with respect to said budget and the amount of money necessary to be appropriated for the uses of the public schools for the ensuing school year and with respect to the various items and purposes for which the same is to be appropriated, which date shall be between the second Tuesday in January and February 1 and which date shall be not less than 7 days after the publication of said statement as herein provided and shall cause notice of such public hearing and said statement to be published at least once in at least 1 newspaper published in the municipality or if no newspaper be published therein then in at least 1 newspaper circulating in said municipality, not less than 7 days prior to the date fixed for such public hearing, and said notice shall also set forth that said budget will be on file and open to the examination of the public, between reasonable hours to be fixed therein and, at a place to be named therein, from the date of said publication until the date of the holding of said public hearing and said board of education shall cause said budget to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

4. Section 18:7–112 of the Revised Statutes is amended to read as follows:

18:7–112. On or before February 1 in each year, the board of education of every school district coming within the provisions of section 18:7–107 or 18:7–108 of this Title shall prepare and deliver to each member of the board of school estimate a budget for the ensuing school year in such detail and upon such forms as shall be prescribed by the Commissioner of Education by regulation and a statement so itemized as to make the same readily understandable, in which shall be shown

(1) the amounts of money estimated to be necessary for current expenses and for repairing and furnishing the public schools of the district for such ensuing school year itemized so as to indicate separately the amounts required for

(a) the repairing or furnishing of a schoolhouse or schoolhouses,
(b) industrial schools,
(c) interest and debt redemption charges,
(d) evening schools or classes for foreign-born residents,
(e) current expenses of the schools,
(f) appropriation to capital reserve fund,
(g) any other major purposes, and

(2) the amount appropriated for each of said items for the current school year, and

(3) the anticipated revenues intended to be used for said items and purposes and the respective sources and amounts of the same, and

(4) the anticipated revenues for similar items and purposes for the current school year and the respective sources and amounts of the same, and

(5) the amount of the surplus account available at the beginning of the current school year, and

(6) the amounts which shall have been apportioned to the district by the county superintendent of schools for the ensuing school year, or in default of such apportionment the amount so apportioned by the county superintendent for the preceding school year, and

Said board of education shall then fix a date, place and time for the holding of a public hearing by the board of school estimate with respect to said budget and the amount of money necessary to be appropriated for the use of the public schools for the ensuing school year and with respect to the various items and purposes for which the same is to be appropriated, which date shall be between February 1 and February 15 and which date shall be not less than 7 days after the publication of said statement as herein provided and shall cause notice of such public hearing and said statement to be published at least once in at least 1 newspaper published in the municipality or if no newspaper be published therein then in at least 1 newspaper circulating in said municipality, not less than 7 days prior to the date fixed for such public hearing, and said notice shall also set forth that said budget will be on file and open to the examination of the public, between reasonable hours to be fixed therein and, at a place to be named therein, from the date of said publication until the date of the holding of said public hearing and said board of education shall cause said budget to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

5. This act shall take effect immediately.

Approved July 2, 1956.

SUPPLEMENTS

CHAPTER 8, LAWS OF 1956

AN ACT to authorize the payment of State grants-in-aid to certain school districts, for school building facilities, and requiring the State Treasurer to maintain capital reserve funds for the administration of such grants-in-aid and other moneys applicable thereto, supplementing Title 18 of the Revised Statutes.

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

1. Short title. This act shall be known as the "school building aid act."

2. Definitions. For the purposes of this act, unless the context clearly requires a different meaning:

"Average daily enrollment" shall mean the average daily number of full-time pupils enrolled in a public school during a school year *next preceding the date for calculation of aid under this act.*

"Building aid allowance" shall mean a school district's annual building aid allowance as computed and determined pursuant to this act.

"Capital foundation program" shall mean the amount annually determined pursuant to section 4 of this act.

"Capital reserve fund" shall mean a fund by that designation established by the State Treasurer for each school district which elects to appropriate moneys into such fund pursuant to this act. *The State Treasurer shall not be required to segregate the fund for each such school district, provided however that each district's share shall be shown separately in the records of the State Treasurer.*

"Commissioner" shall mean the State Commissioner of Education.

"School district" shall mean a district organized or operating under chapters 6, 7 or 8, of Title 18 of the Revised Statutes.

3. Aid authorized. For the school year 1956-1957 and each school year thereafter there shall be established for each school district a capital foundation program, a local share, and an annual building aid allowance as hereinafter provided.

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

5. Local share.

(a) There shall be deducted from the amount of the capital foundation program of each district a local share equal to $0.05 per $100.00 (½ mill per $1.00) upon the equalized full valuation of the taxing district or districts within the school district, as certified by the Director of the State Division of Taxation to the commissioner, pursuant to law, for the year in which the calculation is required to be made. The remainder shall constitute the district's building aid allowance.

(b) With respect to regional school districts and their component districts, however, the equalized valuations as certified by the Director of Taxation as described above shall be allocated among the regional district and its component districts in proportion to the number of pupils in each of them as determined for the foundation program.

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

(1) pay to each school district the amount of its building aid allowance less its net appropriation to its capital reserve fund, at the times and in the manner hereinafter provided; and

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

The *Director of the Division of Investment* shall invest and reinvest such capital reserve funds in the same manner and subject to the same requirements as are prescribed for the investment of State funds generally. Earnings upon such investment shall be credited pro rata to the capital reserve funds.

7. Withdrawal from reserve funds. A school district may in any school year draw against its capital reserve fund, up to the amount of the balance therein, to the extent that such withdrawal is anticipated as a revenue in the school budget for the then current school year; provided, that such budget anticipation and withdrawal may not be greater than the amount by which capital outlay and debt service included in such budget exceeds State school building aid applicable thereto. Such withdrawal shall be paid by the State Treasurer to the board of education upon application duly made to the commissioner and upon his certification and the warrant of the Director of the Division of Budget and Accounting.

8. Municipal debt service for school purposes. For the purposes of this act, debt service shall include annual payments of principal and interest upon school bonds and other obligations issued to finance the acquisition of school sites and the acquisition, construction or reconstruction of school buildings, including furnishings, equipment and the costs of issuance of such obligations, and shall also include annual payments of principal and interest upon bonds heretofore issued to fund or refund such obligations, and upon municipal bonds and other obligations which the Commissioner of Education approves as having been issued for such purposes.

9. Sending and receiving districts. In computing the capital foundation program, the commissioner, upon request of the sending district and submission of proof satisfactory to him, shall credit to a sending district and debit to the receiving district as an expenditure for capital outlay and debt service that portion of tuition payments representing a charge for such purpose. For the purposes of this section, a sending district shall be deemed to be a school district which pays tuition to another school district or a State teachers college demonstration school for resident pupils of such paying district who are regularly in attendance; and a receiving district shall be deemed to be any school district which has nonresident pupils in regular attendance for which it receives a tuition payment from the district of residence of such pupils.

10. Determination of capital aid. On or before November *15* in each year, the commissioner shall determine the *maximum building aid allowance available* to each school district and *estimate* the amount necessary to be appropriated by the State to carry out the provisions of this act, for the succeeding school year. The commissioner shall make such determination and *estimate* upon the basis of average daily enrollment of *the district*, and a local fair share determined for the current calendar year. *He shall promptly certify to each school district the maximum building aid allowance so determined, and the school district may include the amount so certified in its next ensuing school budget subject to the provisions of section 11 hereof.*

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

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

(b) The maximum building aid allowance available to the district as certified by the commissioner.

The sum so anticipated, subject to audit by the commissioner, shall be payable as school building aid pursuant to this act and required to be set aside and reserved by the State Treasurer pursuant hereto respectively, *and shall be paid* and reserved, as the case may be, in each school year, ½ *on November 1, and* ½ *on May 1.* Payments shall be made, by the State Treasurer to each board of education, and reserve funds set aside, upon certification of the Commissioner of Education and warrant of the Director of the Division of Budget and Accounting. In the case of school districts operating under chapter 6 of Title 18 of the Revised Statutes any payment of building aid allowance or withdrawal from a reserve fund shall be remitted to the chief financial officer of the municipality in which such district is located.

12. Reports and regulations.

(a) On or before a date to be set by the Commissioner of Education, but not later than October 15 in each year, the secretary of each school district and the superintendent, or when there is no superintendent, such other officer or employee as shall be delegated by the district board of education to maintain budget and appropriation records, shall make and transmit a report to the Commissioner of Education of such information as the com-

missioner may require to administer the provisions of this act. Such report shall be certified, under the penalties of perjury, as true to the best of the knowledge and belief of the persons making it. With respect to school districts operating under chapter 6 of Title 18 of the Revised Statutes, the commissioner may require that such report be accompanied by a statement of a licensed public school accountant for New Jersey certifying to the amount of debt service payments made by the municipality during the preceding school year for or on account of bonds and other obligations issued for school purposes as defined in section 8 of this act. Such certificate may be made upon the basis of such records and other information available to the accountant, and in such form, as the commissioner may by regulation prescribe. The amount of the debt service so certified shall for the purposes of this act be deemed to be the debt service budgeted and appropriated by the school district.

(b) In order to participate in any apportionment made according to the provisions of this act, a school district shall comply with the regulations and standards for the equalization of educational opportunity, including the maintenance of minimum acceptable school building facilities, which have been or which may hereafter be prescribed by law, or formulated by the Commissioner of Education or the State Board of Education pursuant to law. The Commissioner of Education is hereby authorized to withhold all or part of such apportionment for failure to comply with any regulation or standard. No apportionment under this act shall be paid to any district which has not provided public school facilities for at least 180 days during the preceding school year, but the commissioner, for good cause shown, may remit the penalty.

13. New school districts. When the apportionment shall have been made for any year and a part of any district becomes a new school district or a part of another school district, or comes partly under the authority of a regional board of education, the commissioner shall adjust such apportionment or apportionments among the districts affected, or between the district and the regional board, as the case may be, on an equitable basis in accordance with the intent of the act.

14. Transition. (a) For the school year 1956-1957 the commissioner shall forthwith make an estimate of the amount payable to each district or creditable to its capital reserve fund under this act, and shall as soon as possible notify each school district as to the amount payable or creditable under this act for the school year 1956-1957.

(b) If this act becomes law prior to March *31*, 1956, the commissioner shall certify to each county board of taxation, on or before that date, the amount of the building aid allowance due each school district in the county for the school year 1956-1957, *except that in the case of school districts operating under chapter 6 of Title 18 of the Revised Statutes and those operating under chapter 7 of said Title on a calendar year basis for taxation purposes he shall certify only the amount of such allowance which is payable in the calendar year 1956. Each* county board of taxation shall deduct the amount so certified in striking the respective tax rates for the municipalities within the counties. In such event, the amount required to be raised by taxation for school purposes in each municipality shall be deemed to have been reduced by the respective amounts so certified.

(c) If this act does not become law prior to March *31*, 1956, for the school year 1956-1957 building aid allowance payments otherwise due shall be credited to the capital reserve fund of each district.

15. Appropriation. There will be appropriated for the purposes of this act for the fiscal year ending June 30, 1957, the sum of $12 million to be included in the annual appropriation act to be adopted for that fiscal year.

16. Effective date. This act shall take effect immediately.

Approved March 29, 1956.

Chapter 90, Laws of 1956

An Act concerning the method of paying school personnel employed for an academic year, and supplementing chapter 5 of Title 18 of the Revised Statutes.

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

1. Whenever persons employed for an academic year by a board of education shall indicate in writing their desire to participate in a summer payment plan, and such board of education by majority vote of the board approves such participation, then, and thereupon, the proper disbursing officer of the board of education, under such rules and regulations as may be promulgated by the Commissioner of Education with the approval of the State Board of Education, are hereby empowered and directed to deduct and withhold an amount equal to 10% of each semimonthly or monthly salary installment, from the payments of the salaries made to such employees as shall participate in such plan. These accumulated deductions for any academic year shall be paid to the employee or his estate under such rules and regulations as may be established by the board of education in one of the following ways: (1) at the end of the academic year; (2) in 1 or more installments after the end of the academic year but prior to September 1; (3) upon death or termination of employment if earlier.

2. This act shall take effect immediately.

Approved June 11, 1956.

SCHOOL LAWS, SESSION OF 1956

ACTS AND RELATED LAWS

CHAPTER 4, LAWS OF 1956

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

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

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

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

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

(c) Except as provided in subsection (b) hereof, an employee of the State whose compensation is paid in whole or in part by any such county or municipality or by any board, body, commission or agency of any such county or municipality maintained by funds supplied by such county or municipality shall be eligible for membership in the Public Employees' Retirement System and shall not be a member of any county or municipal pension system by reason of such State service. Any such veteran employee who is not a member of such county or municipal pension system on the effective date of this amendatory act may within 60 days from such effective date apply for prior service credit as provided in section 60 of this act, and shall be entitled to same as therein provided. The county or municipality shall be deemed to be the employer of such employees of the State for the purposes of this act and shall have the obligations as such employer as set forth in section 81 of this act.

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

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

2. This act shall take effect immediately.

Approved February 10, 1956.

Chapter 31, Laws of 1956

An Act concerning certain pensioners, and amending section 43:3–5 of the Revised Statutes.

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

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

43:3–5. The provisions of this chapter shall not apply to any appointment of a temporary nature made or created by any rule or order of procedure of any court of this State, so as to interfere with any rule or order of procedure in such courts for the proper administration of justice therein; nor shall the provisions of this chapter apply to any person appointed to the office of court crier in any court where the term of such office is indefinite, or to any person who is appointed to the office of magistrate of any municipal court in a municipality having a population of less than 5,000, where the salary paid to such municipal magistrate is less than the amount of his pension; nor to the appointment and employment of any pensioned former municipal manager as an engineer or consultant or member of any commission or board by any municipality, county or by the State, or as a teacher or lecturer in any school or educational institution in the State; nor to the employment, by the State or by any county, municipality or school district in any position or employment, at a salary or compensation of not more than *$1,200.00 per calendar year*, of any person who retires or has retired

under the Teachers' Pension and Annuity System created pursuant to article 3 of chapter 13 of Title 18 of the Revised Statutes; nor to any person who has or who may hereafter receive permanent disability in the performance of his duty while serving as a member of the Armed Forces of the United States, the New Jersey State Police, or the police department, or the fire department of any county or municipality in this State.

2. This act shall take effect immediately.

Approved May 10, 1956.

Chapter 33, Laws of 1956

An Act authorizing boards of education of school districts to provide museum facilities and services.

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

1. The board of education of any school district may provide by contract and appropriate funds for the support and maintenance of existing museum facilities and services for the educational or recreational use and benefit of pupils in the public schools. Appropriations for such facilities and services shall be made in the same manner as for other school purposes.

2. Such museum facilities and services may include exhibition in a museum building or elsewhere of subjects of natural. historical, educational, scientific, industrial or cultural nature; operation of arts, crafts and other hobby workshops; conduct of field trips and other projects of an educational or recreational nature and provision for the personal services required in connection with any of the foregoing.

3. This act shall take effect immediately.

Approved May 14, 1956.

Chapter 35, Laws of 1956

An Act in relation to the construction, reconstruction, enlargement or other improvement of buildings for the purposes for which a board of trustees of schools for industrial education is constituted in any city, or the acquisition of lands therefor, or the purchase or installation of furnishings, equipment, machinery or apparatus required for the proper equipment of such buildings, and the issuance of bonds or other obligations of such city to finance the cost thereof.

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

1. Whenever a board of trustees of schools for industrial education in any city shall decide that it is necessary to raise money for the construction or reconstruction or enlargement or other improvement of a building or buildings to be used for the purposes for which the board is constituted, or the acquisition of lands suitable as a site therefor, or the purchase or installation therein of furnishings, equipment, machinery or apparatus required for the proper equipment of such building or buildings, it may prepare and

deliver to the governing body of said city a statement of the amount of money estimated to be necessary for such purpose or purposes. Whenever such a statement is received by the governing body of the city, such governing body may, in its discretion, appropriate and borrow such money or any part thereof for such purpose or purposes, and shall secure the repayment of the sum or sums so borrowed by the issuance of bonds or other obligations in the corporate name of said city, which shall be issued pursuant to and in the manner prescribed by, and shall be subject to the limitations imposed by article 8 of chapter 6 of Title 18 of the Revised Statutes, and shall be deemed to be issued for school purposes in any annual or supplemental debt statement prepared and filed to comply with the provisions of the local bond law, but not for the purposes of chapters 8 and 9 of the laws of 1956.

2. This act shall take effect immediately.

Approved May 14, 1956.

CHAPTER 61, LAWS OF 1956

AN ACT concerning The Trustees of Rutgers College in New Jersey, the State University of New Jersey, changing its name to Rutgers, The State University, reorganizing the Board of Trustees thereof, and creating a Board of Governors having general supervision over and vested with the conduct of the University, amending its Charter, and repealing Section 3 of Chapter 49 of the Laws of 1945, approved March 26, 1945 (P. L. 1945, page 115), and all acts and parts of acts inconsistent with this Act.

WHEREAS, the Trustees control and administer properties and funds of great value, derived from private sources, which are utilized in furtherance of public higher education of the people of the State of New Jersey and its further and continuous development in conjunction with the support of the State, and it is deemed advisable in the interest of the State University and of the people and the increasingly efficient and productive utilization of its educational facilities and services that the name of the State University be changed and that the Board of Trustees of Rutgers College be reorganized as is hereinafter provided, and that a Board of Governors be established, having supervision over and vested with the conduct of the University, a majority of whom shall be appointed by the Governor of the State with the advice and consent of the Senate, and that the Board of Trustees shall continue in an over-all advisory capacity, retaining control over the private properties and funds vested in it, subject to the application thereof to the purposes of public higher education as hereinafter provided, and the enactment of this Act is deemed and declared to be in the public interest, and thereby to increase the efficiency of the public school system; therefore

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

1. This Act shall be known as and may be cited as the "Rutgers, The State University Act of 1956."

2. The name of "The Trustees of Rutgers College in New Jersey," a body corporate and politic, is hereby changed to "Rutgers, The State University," effective September 1, 1956.

3. The term "the Corporation," as used in this Act, shall mean the said body corporate and politic, incorporated under the name of "The Trustees of Queen's—College, in New—Jersey," by Royal Charter dated November 10, 1766 (amended March 20, 1770), confirmed and amended by Acts of the Legislature of the State of New Jersey adopted June 5, 1781, and May 31, 1799, respectively, and having perpetual succession and existence; its name having been changed to "The Trustees of Rutgers College in New Jersey" by Act of the Legislature adopted November 30, 1825; 1 of the departments maintained by which is and continues to be the Land Grant College of New Jersey; the property and educational facilities, rights and privileges of which are and shall continue to be impressed with a public trust for higher education of the people of the State of New Jersey; and which is the instrumentality of the State for the purpose of operating the State University. Nothing herein contained shall impress with such trust any property of the State.

4. The term "the State University" or "the University," as used in this Act, shall, unless the context clearly indicates to the contrary, include and mean the educational entity conducted by the Corporation, heretofore designated the State University, as now and hereafter constituted, including all departments, colleges, schools, centers, branches, educational and other units and extensions thereof.

5. There is hereby created a Board of Governors of the Corporation, which shall be constituted, and on and after September 1, 1956, shall have and exercise the powers, authority, rights and privileges, and be subject to the duties, obligations and responsibilities, hereinafter set forth and expressed.

6. The existing Board of Trustees of the Corporation shall continue as such and on September 1, 1956, shall be reorganized and reconstituted, and shall have and exercise the powers, authority, rights and privileges, and be subject to the fiduciary and other duties, obligations and responsibilities, hereinafter set forth and expressed.

7. The membership of the Board of Governors shall be classified as follows and consist of

(a) two ex-officio members, without vote, serving by virtue of their respective offices during the terms thereof, viz.,
    (i) the Commissioner of Education of New Jersey, and
    (ii) the President of the Corporation; and

(b) eleven voting members,
    (i) six of whom shall be appointed by the Governor of the State, with the advice and consent of the Senate, and
    (ii) five of whom shall be appointed by the Board of Trustees from among their members elected and serving under the provisions of Section 8 I (c), (d), or (e) of this Act.

All members shall serve for terms of 6 years, except that the terms of those initially appointed by the Governor shall begin on September 1, 1956, and expire respectively (as designated by him) 1, 2, 3, 4, 5 and 6 years after June 30, 1956, and the terms of those initially appointed by the Board of Trustees shall begin on September 1, 1956, and expire respectively (as designated by the Board) 2, 3, 4, 5 and 6 years after June 30, 1956; all of whose

respective successors shall be appointed to serve 6-year terms. Governors may succeed themselves for not more than 1 additional term after having served 1 full 6-year term (including an initial term beginning on September 1, 1956, and expiring on June 30, 1962).

8. I. The membership of the Board of Trustees shall be classified as follows and consist of

(a) two ex-officio Trustees, without vote, serving by virtue of their respective offices during the terms thereof, viz.,

(i) the Commissioner of Education of the State of New Jersey, and

(ii) the President of the Corporation;

(b) eleven Public Trustees, appointed and to be appointed by the Governor of the State, with the advice and consent of the Senate, viz.,

(1) five Public Trustees, serving under Section 4 of Chapter 49 of the Laws of 1945 (R. S. 18:22–15.4) for 5-year terms expiring respectively, 1, 2, 3, 4, and 5 years after June 30, 1956, whose respective successors shall be appointed upon the expiration of such terms and annually thereafter to serve 5-year terms; and

(2) six Public Trustees appointed Governors under Section 7 (b) (i) of this Act and serving by virtue thereof for and during their respective initial and subsequent terms as Governors;

(c) five Alumni Trustees elected by the Board of Trustees on nomination by the Alumni Association in accordance with rules and regulations adopted by the Board, to serve 5-year terms expiring respectively 1, 2, 3, 4 and 5 years after June 30, 1956, whose respective successors shall be elected upon the expiration of such terms and thereafter to serve 6-year terms;

(d) two Alumnae Trustees—likewise elected by the Board of Trustees on nomination by the Associate Alumnae of Douglass College in accordance with rules and regulations adopted by the Board, to serve 5-year terms expiring respectively 2 and 4 years after June 30, 1956, whose respective successors shall be elected upon the expiration of such terms and thereafter to serve 6-year terms; and

(e) Charter Trustees (i) in the number of Trustees serving as such on August 31, 1956 without definite term, who shall continue to serve indefinitely, provided, that upon the occurrence of any vacancy among such Charter Trustees, no successor shall be elected to fill such vacancy until such time as the number of such Trustees has been reduced below 12, and thereafter vacancies within that number shall be filled by the Board subject to the following paragraph II; and, provided, further, that such a vacancy may be filled for the interim period expiring on June 30 next following, and for a 6-year term beginning on July 1 of the same year, or for such 6-year term only; (ii) 3 women elected by the Board of Trustees serving 5-year terms expiring respectively on June 30, 1957, 1959, and 1961, whose respective successors shall be elected by the Board upon the expiration of such terms and thereafter to serve 6-year terms.

II. All Trustees elected or appointed for terms commencing on or after September 1, 1956, other than those serving ex-officio pursuant to paragraph I (a) and (b) (1) of this section, shall serve for terms of 6 years (subject to the provisions of Section 9(a)), and may succeed themselves for not more than 1 additional term after having served 1 full 6-year term.

III. The ex-officio members of the Board of Trustees as constituted on August 31, 1956, pursuant to the Charter, statute, or resolutions of the Board from time to time adopted, shall cease to be such members on August 31, 1956, with the exception of the Commissioner of Education, who, with the President of the Corporation, shall continue as ex-officio Trustees and be ex-officio Governors, without voting power as hereinabove provided.

9. (a) The terms of all Governors and Trustees which are limited shall, unless otherwise expressly provided herein, commence on July 1 in the first year, and end on June 30 in the last year, of such term.

(b) In case a Governor or a Trustee is elected President or appointed Commissioner of Education and he thereby becomes a non-voting Governor or Trustee ex officio, a vacancy in his prior office as Governor or Trustee shall thereby occur.

(c) In case a Trustee is appointed a Governor by the Governor of the State, and he thereby becomes a Trustee during his term as Governor, a vacancy in his prior office as Trustee shall thereby occur.

(d) Any vacancy occurring during the term of any Governor or Trustee (other than by the expiration of his term) shall be filled for the unexpired term only in the same manner and subject to the same provisions as in the case of his appointment or election, subject, however, to the provisions of Section 8 I (e).

10. No person, other than the Commissioner of Education or the President, shall be eligible to membership on the Board of Governors if he is a salaried official of the State of New Jersey, or shall be eligible to membership on either the Board of Governors or the Board of Trustees if he is receiving remuneration for services from the Corporation or the University. If any member of either Board shall become ineligible by reason of the foregoing, a vacancy in his prior office as Governor or Trustee, as the case may be, shall thereby occur.

11. Each Governor, and each Trustee taking office after August 31, 1956, before entering on the duties of his office shall take and subscribe an oath or affirmation to support the Constitution of the State of New Jersey and of the United States, to bear allegiance to the government of the State, and to perform the duties of his office faithfully, impartially and justly, to the best of his ability.

12. (a) Any Governor shall be subject to removal after hearing, by a majority of the Board of Governors, for malfeasance or conduct injurious to the interests of the Corporation or the University, subject to review and confirmation (i) by the Governor of the State in the case of his appointees, and (ii) by the Board of Trustees in the case of its appointees.

(b) Any Trustee other than one serving under the provisions of Section 8 I (a) shall be subject to removal after hearing for malfeasance or conduct injurious to the interests of the Corporation or the University, (i) by the Governor of the State in the case of a Trustee appointed by him, or (ii) in the case of a Trustee elected by the Board of Trustees, by a majority of the then membership of the Board of Trustees.

13. The Governors and Trustees shall not receive compensation for their services as such. Each Governor and Trustee shall be reimbursed for his actual expenses reasonably incurred in the performance of his duties or in rendering service as a member of or on behalf of either Board or any committee of either Board.

14. No Governor, Trustee or officer of the Corporation shall be personally liable for any debt, obligation or other liability of the Corporation or of or incurred by or on behalf of the University or any constituent unit thereof.

15. (a) Six members of the Board of Governors shall constitute a quorum.

(b) Such number, not less than 12, of the Board of Trustees as shall be determined by the Board, and until so determined, 12 members, shall constitute a quorum.

(c) A quorum of a joint meeting of the Boards shall be present if 6 Governors and not less than a majority of the Trustees then in office (other than those who are Governors), are present.

16. The Board of Governors and the Board of Trustees shall each elect its own chairman from among its respective members.

17. The government, control, conduct, management and administration of the Corporation and of the University shall be respectively vested in and allocated between the Board of Governors and the Board of Trustees as set forth and expressed in this Act.

18. The Board of Governors shall have general supervision over and be vested with the conduct of the University. It shall have the authority and responsibility to

(1) Determine policies for the organization, administration and development of the University;

(2) Study the educational and financial needs of the University, annually acquaint the Governor and Legislature with the condition of the University, *and prepare,* and jointly with the State Board of Education, present the annual budget to the Governor and Legislature, in accordance with law;

(3) Disburse all monies appropriated to the University by the Legislature, monies received from tuition, fees, auxiliary services and other sources, and from or by direction of the Board of Trustees;

(4) Direct and control the expenditures of the Corporation and the University in accordance with the appropriation acts of the Legislature, and, as to funds received from the Trustees and other sources, in accordance with the terms, of any applicable trusts, gifts, bequests, or other special provisions. All accounts of the University shall be subject to post-audit by the State;

(5) Borrow money for the needs of the Corporation and the University, as deemed requisite by the Board, in such amounts and for such time and upon such terms as may be determined by the Board, with the consent and advice of the Board of Trustees; provided, that no such borrowing shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, or be payable out of property or funds (other than moneys appropriated for that purpose) of the State of New Jersey;

(6) (a) Purchase all lands, buildings, equipment, materials and supplies; and

(b) Employ architects to plan buildings; secure bids for the construction of buildings and for the equipment thereof; make contracts for the construction of buildings and for equipment; and supervise the construction of buildings;

(7) Manage and maintain, and provide for the payment of all charges on and expenses in respect of, all properties utilized by the University;

(8) In accordance with the provisions of the budget, have the sole power (subject to the provisions of Section 27 (c)) to elect, appoint, remove, promote or transfer all corporate, official, educational and civil administrative personnel, and fix and determine their salaries in accordance with salary schedules adopted by the Board of Governors and approved by the State Board of Education. Such salary schedules shall prescribe qualifications for the various classifications and shall limit the percentage of the educational staff that may be appointed or promoted to any given classification;

(9) In accordance with the provisions of the budget, appoint, remove, promote and transfer all other officers, agents, or employees, assign their duties, determine their salaries, and prescribe qualifications for all positions, and in accordance with the salary schedules of the State Civil Service Commission wherever possible; and

(10) Authorize any new educational department or school which will require, at the time of establishment or thereafter, an additional expenditure of money, if the establishment thereof is approved by the State Board of Education and provision is made therefor in the annual or a supplemental appropriation act or a special act of the Legislature or otherwise.

19. I. The Board of Trustees.

(1) Shall act in an over-all advisory capacity;

(2) Shall (a) control (i) properties, funds and trusts vested as of August 31, 1956, in the Corporation in possession, or remainder, or expectancy (other than and expressly excluding properties and funds owned by or title to which is in the State of New Jersey or which are held upon an express trust for the use of the State, or which have been acquired by the use of moneys appropriated by the State or by the Federal Government to the use of the Corporation or the Land Grant College of New Jersey, including but not limited to real estate, buildings, improvements, fixtures, and appurtenances thereto, and tangible personal property); and (ii) properties, funds and trusts received by the Corporation on or after September 1, 1956, by private gift, donation, bequest or transfer, in any manner, under the terms of any applicable trust, gift, bequest or donation dated or delivered (aa) prior to September 1, 1956, unless otherwise designated, or (bb) on or after September 1, 1956, if so designated; provided, however, that all property, educational facilities, rights and privileges which are impressed with a public trust for higher education of the people of the State of New Jersey shall continue to be so impressed; and (b) make available (after meeting all expenses of its administration) to the Board of Governors the income from such funds and the use of or income from such properties, subject to the provisions stated hereinafter in Section 20;

(3) Shall have sole authority over the investment of funds under its control;

(4) Shall have power to maintain such administrative staff and incur and pay such expenses as it deems reasonably necessary to the effective exercise of its functions and responsibilities under this Act or by reason of any other fiduciary responsibilities to which it is subject; and

(5) Shall be represented on the membership of the committees of the several colleges.

20. I. It is hereby declared to be the public policy of the State of New Jersey that

(i) the University shall be and continue to be given a high degree of self-government and that the government and conduct of the Corporation and the University shall be free of partisanship, and

(ii) that resources be and continue to be provided and funds be and continue to be appropriated by the State adequate for the conduct of a State University with high educational standards and to meet the cost of increasing enrollment and the need for proper facilities.

II. In consideration of the utilization by the State for the purposes of public higher education of privately donated properties and funds valued as at September 1, 1956 at approimately $50,000,000, and the prospect of future private donations, the State by this Act agrees with the Board of Trustees and its successors that

(i) if the properties and funds controlled by the Trustees shall not be properly applied in accordance with the provisions of Section 18 (4) for the purpose of public higher education and in accordance with the terms of any applicable testamentary, trust, or other special provision; or

(ii) if, without the consent of the Board of Trustees,

(a) the University is not continued to be designated and maintained as the State University of New Jersey, or

(b) the name of the University shall be changed, or

(c) a vacancy in the office of the President of the University shall be filled otherwise than by appointment of the Board of Governors with the advice and consent of the Board of Trustees, or

(d) the provisions for the essential self-government of the University, viz., the provisions of Sections 5, 6, 7, 8, 9, 12, 17, 18, 19, 21, 22 (b), 23, 27 (c), 29, 30, 35, 37, or any of them or of this Section 20, are amended or altered in any substantial respect or repealed; or

(iii) if provision shall not be made by the State sufficient to enable the Board of Trustees to discharge its trust to apply the trust assets described in Section 19 I (2) for public higher education through the conduct of a University with high educational standards,

the Board of Trustees, after careful consideration and on not less than 60 days' prior written notice to the Board of Governors and to the State Board of Education or its successors, shall have and may exercise the right to withhold or withdraw the use of the properties and funds above described in Section 19 I (2), or any part of them, (aa) subject to adjudication by the courts of the State, and (bb) subject to their proper application for the

purpose of public higher education and in accordance with the terms of any applicable testamentary, trust or other special provision.

21. The Boards shall have and exercise the powers, rights and privileges that are incident to their respective responsibilities for the government, conduct and management of the Corporation, and the control of its properties and funds, and of the University, and the powers granted to the Corporation or the Boards or reasonably implied, may be exercised without recourse or reference to any department or agency of the State, except as otherwise expressly provided by this Act or other applicable statutes. The provisions of R. S. 52:17A–11 and 13 shall not be deemed or construed to be applicable to the Corporation or the University.

22. (a) The Boards may meet in joint session for the purpose of consultation and discussion, or to act upon any matter which requires joint or concurrent action of both Boards.

(b) The Boards by joint or concurrent action may adopt, and from time to time amend, by-laws, ordinances, statutes, rules, regulations and orders applicable to such matters as require or are subject to the exercise of joint responsibility or action, and each Board may adopt, and from time to time amend, by-laws, ordinances, statutes, rules, regulations and orders applicable to such matters as require or are subject to the exercise of its responsibility or its action, subject, in either case, to the provisions of this Act and other applicable statutes.

23. Each Board shall have the power to appoint and regulate the duties, functions, powers and procedures of committees, standing or special, from its members, and such advisory committees or bodies, as it may deem necessary or conducive to the efficient management and operation of the Corporation and the University, consistently with this Act and other applicable statutes. The Board of Governors may appoint Trustees who are not Governors to membership on its committees, without vote.

24. The seal of the Corporation in use at August 31, 1956, shall continue to be the common seal of the Corporation, unless and until a new or different seal be adopted by joint or concurrent action of the Boards.

25. Any appointment, and any confirmation of any appointment, pursuant to the provisions of this Act, and any act or proceeding convenient or expedient in preparation for the reorganization of the Board of Trustees and for the organization of the Board of Governors, may be made or done or taken at any time after the enactment and adoption of this Act by the Board of Trustees in conformity with the provisions of Section 37 of this Act; provided that the initial appointment of Governors by the Governor of the State with the advice and consent of the Senate, and by the Board of Trustees of the Corporation, respectively, shall be made as soon as practicable after the enactment of this Act, and before the adoption of this Act by the Board of Trustees, and shall be conditioned upon and take effect upon such adoption, which shall confirm and effectuate the constitution of the Board of Governors and the reorganization of the Board of Trustees as of September 1, 1956.

26. (a) The members of the Board of Governors shall meet and organize as soon as reasonably possible after their appointment and the confirmation by the Senate of those members appointed by the Governor of the State and the adoption of this Act by the Board of Trustees, and shall, if feasible, prior to September 1, 1956, take all such action (including the preparation of by-

laws, ordinances, statutes, rules, regulations, and orders, effective on or after September 1, 1956) as the Board shall then deem necessary, convenient or expedient to effect the organization of the Board of Governors, the constitution of its committees, and the assumption and exercise by it on and after September 1, 1956, of the functions, powers and duties conferred upon it by this Act. It shall have power to incur such expenditures as are deemed reasonably necessary in preparation therefor, which shall be payable from such operating or corporate funds as are available. The officers and staff of the Corporation shall render such service and assistance for such purposes as are reasonably necessary.

(b) The Board of Trustees shall similarly, prior to September 1, 1956, take such action as the Board shall deem advisable in preparation for its reorganization, the reconstitution of its committees, and the exercise by it on and after September 1, 1956, of its functions and powers under the provisions of this Act.

(c) The Board of Governors and the Board of Trustees, shall, prior to September 1, 1956, if feasible, through a joint committee of the Boards or otherwise, co-operate in effectuating the reorganization of the Board of Trustees and the organization of the Board of Governors and of the committees of the Boards in a timely and practicable manner.

27. (a) There shall be a President of the Corporation and of the University.

(b) He shall be responsible to the Boards, and shall have such powers as shall be requisite, for the executive management and conduct of the Corporation and the University in all departments, branches and divisions, and for the execution and enforcement of the by-laws, ordinances, rules, regulations, statutes and orders governing the management, conduct and administration thereof. He shall hold office at the pleasure of the Board of Governors.

(c) In case of a vacancy in the office, the President shall be elected by the Board of Governors, with the advice and consent of the Board of Trustees.

28. The Corporation shall on or before September 30, 1956, and annually thereafter on or before July 31, file in the office of the Secretary of State a report (a) of the election and appointment of the, and the names and residences of the, members of the Board of Governors and of the Board of Trustees, and (b) of the election and appointment of the executive officers of the Corporation, including the President, Provost, Vice-President if any, Secretary, Assistant Secretaries, Treasurer and Assistant Treasurers, and the Comptroller and Assistant Comptroller, at the time in office.

29. Every gift, grant, legacy, bequest, devise, endowment, estate, remainder, or expectancy, contained in any will, deed, declaration of trust, transfer, or other instrument, to or for or inuring to the benefit of the Corporation or the University, or any constituent unit thereof, whenever established or acquired, and every chose in action, to which the Corporation is or shall be entitled, in whatever name and under whatever title, made heretofore or hereafter to become effective or to be made, shall continue to be vested or shall vest in and shall inure to the benefit of the Corporation as completely and effectually as though expressly made to it in its name and for its use and benefit; and none of the same shall lapse, terminate or revert by reason of the enactment of this Act; subject, however, to the provisions of this Act and other applicable laws, and to all of the rights, obligations,

relations, conditions, terms, trusts, duties and liabilities to which the same are subject; and it may effectually execute and give receipts and discharges therefor and other instruments in its name or in the name in which the same may have been made or given for its use and to its benefit. The unexpended balances at the effective date of this Act of the appropriations for the University or any department or unit thereof shall not be affected or restricted by reason of the enactment of this Act.

30. Nothing herein contained shall impair, annul or affect any vested rights, grants, charter rights, privileges, exemptions, immunities, powers, prerogatives, franchises or advantages heretofore obtained or enjoyed by the Corporation or the University or any constituent unit thereof, under authority of its Charter or any act of this State or under any grant, deed, conveyance, transfer, lease, estate, remainder, expectancy, trust, gift, donation, legacy, devise, endowment or fund, all of which are hereby ratified and confirmed except in so far as the same may have expired or have been repealed or altered or may be inconsistent with this Act or with existing provisions of law; subject, however, thereto and to all of the rights, obligations, relations, conditions, terms, trusts, duties and liabilities to which the same are subject.

31. The enactment and adoption of this Act shall not of itself affect the official status of any officer of the Corporation or the University, or any outstanding authorization of any officer, agent or employee to take any specified action, or any outstanding commitment or undertaking of or by the Corporation or the University, except to the extent that any of the same may be inconsistent with this Act.

32. Nothing in this Act shall be construed so as to deprive any person of any right of tenure, or under civil service, or under any retirement system, or to any pension, disability or social security or similar benefits, to which he is entitled by law or contractually.

33. Nothing in this Act shall be construed to abrogate or derogate from the powers of the State Board of Education of supervision and control of the University in accordance with existing law.

34. No provision in this Act contained shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, of the State of New Jersey.

35. This Act being deemed and hereby declared necessary for the welfare of the State and the people of New Jersey to provide for the development of public higher education in the State and thereby to increase the efficiency of the public school system of the State, shall be liberally construed to effectuate the purposes and intent thereof.

36. (a) Section 3 of Chapter 49 of the Laws of 1945, approved March 26, 1945 (R. S. 18:22–15.3), is hereby repealed effective September 1, 1956;

(b) The resolutions adopted by the Corporation on February 18, 1927 and on April 8, 1932, certificates of which were filed in the office of the Secretary of State on February 21, 1927 and April 25, 1932, respectively, increasing the number of ex-officio Trustees, shall, effective September 1, 1956, be of no further force or effect, except so much thereof as applies to the Commissioner of Education; and

(c) All acts and parts of acts inconsistent with the provisions of this Act are hereby repealed, effective September 1, 1956; and all provisions of the Charter and resolutions of the Board of Trustees of the Corporation

inconsistent with the provisions of this Act shall be of no further force or effect on and after September 1, 1956.

37. This Act shall take effect, except in so far as hereinabove otherwise provided, upon the adoption by the Board of Trustees of the Corporation of a resolution accepting the provisions, benefits and obligations hereof, including the provisions changing its name and effectually amending its Charter, and the filing of a certificate of the adoption thereof in the office of the Secretary of State, provided, that if such resolution shall not be adopted and such certificate be not filed before September 1, 1956, this Act shall thereupon become void and of no effect.

38. This Act shall take effect immediately, except in so far as hereinabove otherwise expressly provided.

Approved June 1, 1956.

Chapter 77, Laws of 1956

An Act to entitle elected members of boards of trustees and commissions of certain pension funds to time off from State, county, municipal or school district duties, with pay, during attendance upon meetings of such boards of trustees or commissions.

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

1. Any person who is an elected member of any board of trustees or commission established under chapter 13 of Title 18 of the Revised Statutes, chapter 37 of the laws of 1955, chapter 220 of the laws of 1941, chapter 16 of Title 43 of the Revised Statutes, chapter 255 of the laws of 1944, chapter 423 of the laws of 1953 and chapter 84 of the laws of 1954, shall be entitled to time off from his State, county, municipal or school district duties, with pay, during the periods of his attendance upon regular or special meetings of the board of trustees or its duly appointed committees, and such time off shall include reasonable travel time required in connection therewith.

2. This act shall take effect immediately.

Approved June 7, 1956.

Chapter 89, Laws of 1956

An Act concerning certain veteran pensioners, and supplementing chapter 3 of Title 43 of the Revised Statutes.

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

1. Nothwithstanding any provision of sections 43:3–1 and 43:3–5 of the Revised Statutes, a person who retires or has retired under sections 43:4–1, 43:4–2 or 43:4–3 of the Revised Statutes may receive in compensation from public employment not more than $1,200.00 in any calendar year while employed as a substitute teacher in any public educational institution without forfeiting his pension.

2. This act shall take effect immediately.

Approved June 11, 1956.

AN ACT concerning taxation, and amending sections 54:4–48 and 54:4–49 of the Revised Statutes.

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

1. Section 54:4–48 of the Revised Statutes is amended to read as follows:

54:4–48. The county board of taxation shall enter all changes or additions on the various tax lists and duplicates, and, upon ascertaining the total amount of tax to be raised, fix and adjust the amount of State school, State and county tax to be levied in each taxing district in the county in proportion to the respective values thereof, and the amount to be levied in each taxing district for local purposes as certified to it. *The county board of taxation shall also apportion the amount to be levied in each taxing district for purposes of consolidated and regional school districts and school districts comprising 2 or more taxing districts.* It shall cause each assessor to enter in appropriate columns upon the tax lists and duplicates for his respective taxing district the net corrected value assessed to each person for both real and personal property, and to enter the addition of the items of each column at the foot thereof, on every page, the rates per dollar, which shall be such as according to the valuation on the duplicate will be sufficient to produce the sum required, and to extend on the duplicates the amount of tax computed on each assessment at that rate.

2. Section 54:4–49 of the Revised Statutes is amended to read as follows:

54:4–49. Except as to any State tax at a fixed rate provided for in sections 54:4–50 and 54:4–51 of this Title, each county board of taxation in apportioning the amount of money to be raised in the various taxing districts for State, State school or county purposes *and for purposes of consolidated and regional school districts and school districts comprising 2 or more taxing districts,* after having received the tax lists and duplicates of the local assessors and having revised, corrected and equalized the assessed value of all the property in the respective taxing districts, shall deduct from the total valuations of each taxing district as so revised, corrected and equalized an amount equal to the ratables of the preceding year or years of such district represented by the reduction or all reductions made in the assessments of such districts subsequent to the apportionment of the preceding year or years in consequence of any appeal or appeals, complaint or other application, to the county board of taxation or to the *Division* of Tax Appeals, or by reason of the decision of any court, and shall add to such total valuations an amount equal to any increase made in the assessment of such districts during the same period in consequence of like action by such board, *Division* or any court, and the total valuations as ascertained after the assessments in the various assessment lists and duplicates have been revised, corrected and equalized, and after the deductions and additions herein provided for shall have been made, shall form the basis for the apportionment of State, State school or county taxes *and for the apportionment of moneys to be raised for consolidated and regional school districts and school districts comprising 2 or more taxing districts. The total valuation for each taxing district, so ascertained, shall be known as the "apportionment valuation."* When an

assessment has been reduced, or added to, or increased, on appeal, complaint or other application, and the decision on that appeal, complaint or other application has been further appealed, no deduction or increase as herein provided for shall be made with respect to the appealed assessment until the further appeal has been finally determined.

3. This act shall take effect January 1, 1957.

Approved June 13, 1956.

CHAPTER 94, LAWS OF 1956

AN ACT to amend "An act concerning villages which have been or shall become separated from the township in which they were or are contained and which have been or shall be given complete autonomy of local government," approved March 28, 1904 (P. L. 1904, c. 153).

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

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

3. Every such village shall be and remain a part of the school district of the township in which it was or is contained, and all school taxes in said village shall be levied, assessed and collected by the village assessor and collector, respectively, and the treasurer of said village shall pay the same to the custodian of the school funds of such school district as provided by law; and there shall be levied, assessed and collected within said village such proportion of any moneys appropriated or raised for school purposes within said district as the *apportionment* valuation, *as defined in section 54:4–49 of the Revised Statutes,* of said village shall bear to the *apportionment* valuation of the entire district. *Such apportionment shall be made by the county board of taxation.*

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

Approved June 13, 1956.

CHAPTER 127, LAWS OF 1956

AN ACT to amend and supplement "An act to limit and regulate child labor in this State; to provide for examinations and inspections under the provisions of this act; to provide for the enforcement of this act and regulations made thereunder; to prescribe penalties for the violation thereof; and to repeal other acts," approved June 25, 1940 (P. L. 1940, c. 153).

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

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

2. No minor under 16 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation at any time; provided, that minors between 14 and 16 years of age may be

employed, permitted or suffered to work outside school hours and during school vacations but not in or for a factory or in any occupation otherwise prohibited by law or by order or regulation made in pursuance of law; and provided, further, that minors under 16 years of age may engage outside school hours and during school vacations in *theatrical productions, as provided in section 2 of this amendatory and supplementary act and in* agricultural pursuits or in street trades as defined in this act, in accordance with the provisions of section 15 of this act. Nothing in this act shall be construed to apply to the work of a minor engaged in domestic service or agricultural pursuits performed outside of school hours or during school vacation in connection with the minor's own home and directly for his parent or legal guardian.

No minor under 16 years of age not a resident of this State shall be employed, permitted or suffered to work in any occupation or service whatsoever at any time during which the law of the State of his residence requires his attendance at school, or at any time during the hours when the public schools in the district in which employment in such occupation or services may be available are in session.

2. Notwithstanding the minimum age or hours of work provisions of the act to which this act is a supplement, any minor of at least 8 years of age may be employed in theatrical productions during the school summer vacation period upon the obtaining of a theatrical vacation employment permit therefor.

In addition to the information required to be furnished in connection with issuance of special permits pursuant to section 15 of the act to which this is a supplement, any application for a theatrical vacation employment permit shall show the nature and location of the proposed theatrical employment; that such employment will not exceed 2 performances a day or a total of 8 performances in any week; that such employment is not for more than 6 days in any week, 5 hours in any day or a total of 24 hours, including rehearsal time, in any week; that the minor will not be employed after 11:30 o'clock P. M.; that the minor, if not accompanied by a parent or guardian, will during employment be under the care of an adult specially designated by the employer for such duty to the exclusion of other duties during the hours of such employment.

If upon investigation the issuing officer finds the facts set forth in the application are true and that the theatrical employment contemplated will not be detrimental to the minor's health or morals he shall issue such certificate.

3. This act shall take effect immediately.

Approved July 3, 1956.

AN ACT concerning motor vehicles, and amending section 39:1–1 of the Revised Statutes.

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

1. Section 39:1–1 of the Revised Statutes is amended to read as follows:

39:1–1. As used in this subtitle, unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

"Alley" means a public highway wherein the roadway does not exceed 12 feet in width.

"Authorized emergency vehicles" means vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety when operated in response to an emergency call.

"Automobile" includes all motor vehicles except motor cycles.

"Berm" means that portion of the highway exclusive of roadway and shoulder, bordering the shoulder but not to be used for vehicular travel.

"Business district" means that portion of a highway and the territory contiguous thereto, where within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on 1 side or 300 feet collectively on both sides of the roadway.

"Commercial motor vehicle" includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Commissioner" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety of this State.

"Crosswalk" means that part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the shoulder or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Dealer" includes every person actively engaged in the business of buying, selling or exchanging motor vehicles or motor cycles and who has an established place of business.

"Department" means the Division of Motor Vehicles in the Department of Law and Public Safety of this State acting directly or through its duly authorized officers or agents.

"Deputy commissioner" means deputy director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Deputy director" means deputy director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety acting directly or through its duly authorized officers or agents.

"Driver" means the rider or driver of a horse, bicycle or motor cycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

"Flammable liquid" means any liquid having a flash point below 200° Fahrenheit, and a vapor pressure not exceeding 40 pounds.

"Gross weight" means the combined weight of a vehicle and any load thereon.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Horse" includes mules and all other domestic animals used as draught animals or beasts of burden.

"Inside lane" means the lane nearest the center line of the roadway.

"Intersection" means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of 2 or more highways which join one another at an angle, whether or not 1 such highway crosses another.

"Laned roadway" means a roadway which is divided into 2 or more clearly marked lanes for vehicular traffic.

"Limited-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway; and includes any highway designated as a "freeway" or "parkway" by authority of law.

"Local authorities" means every county, municipal and other local board or body having authority to adopt local police regulations under the constitution and laws of this State, including every county board of chosen freeholders with relation to county roads.

"Magistrate" means any municipal court, county district court, criminal judicial district court, County Court and the Superior Court, and any officer having the powers of a committing magistrate and the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Manufacturer" means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

"Motor cycle" includes all motor operated vehicles of the bicycle or tricycle type, whether the motive power be a part thereof or attached thereto, and having a saddle or seat with driver sitting astride or upon it, or a platform on which the driver stands.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks.

"Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this subtitle placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

"Omnibus" includes all motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire.

"Operator" means a person who is in actual physical control of a vehicle or street car.

"Outside lane" means the lane nearest the curb or outer edge of the roadway.

"Owner" means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this subtitle.

"Parking" means the standing or waiting on a street, road or highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

"Passenger automobile" means all automobiles used and designed for the transportation of passengers, other than omnibuses and school buses.

"Pedestrian" means a person afoot.

"Person" includes natural persons, firms, co-partnerships, associations, and corporations.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

"Private road or driveway" means every road or driveway not open to the use of the public for purposes of vehicular travel.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

"Residence district" means that portion of a highway and the territory contiguous thereto, not comprising a business district, where within any 600 feet along such highway there are buildings in use for business or residential purposes which occupy 300 feet or more of frontage on at least 1 side of the highway.

"Right of way" means the privilege of the immediate use of the highway.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes 2 or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways collectively.

"Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians, which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

"School bus" means every motor vehicle *operated by, or under contract with,* a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school *for secular or religious education which complies with the regulations of the Department of Education affecting school buses.*

"School zone" means that portion of a highway which is contiguous to territory occupied by a school building upon which are maintained appropriate "school signs" in accordance with specifications adopted by the director and in accordance with law.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Shoulder" means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

"Sidewalk" means that portion of a highway intended for the use of pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway, and the adjacent right of way line.

"Sign." See "Official traffic control devices."

"Slow moving vehicle" means a vehicle run at a speed less than the maximum speed then and there permissible.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Street" means the same as highway.

"Street car" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

"Stop," when required, means complete cessation from movement.

"Stopping or standing," when prohibited, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

"Trackless trolley" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly, or together, while using any highway for purposes of travel.

"Traffic control signal" means a device whether manually, electrically, mechanically, or otherwise controlled by which traffic is alternately directed to stop and to proceed.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designated, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

2. This act shall take effect immediately.

Approved July 12, 1956.

CHAPTER 145, LAWS OF 1956

AN ACT to amend the "Teachers' Pension and Annuity Fund-Social Security Integration Act," approved June 1, 1955 (P. L. 1955, c. 37)

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

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

4. The membership of the retirement system shall consist of:

(a) all members of the Teachers' Pension and Annuity Fund enrolled as such as of December 31, 1955;

(b) any person becoming a teacher on or after the effective date of this act;

(c) every teacher veteran as of the effective date of this act who is not a members of the Teachers' Pension and Annuity Fund as of such date and who shall not have notified the board of trustees within 30 days of such date that he does not desire to become a member;

(d) any teacher employed on the effective date of this act who is not a member of the Teachers' Pension and Annuity Fund and who elects to become a member under the provisions of section 10.

No person in employment, office or position, for which the annual salary or remuneration is fixed at less than $500.00 shall be eligible to become a member of the retirement system.

2. Section 8 of the act of which this act is amendatory is amended to read as follows:

8. If a teacher is dismissed by his employer by reason of a reduction in number of superintendents of schools, assistant superintendents, principals or teachers employed in the school district when in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause; or if a teacher becomes unemployed by reason of the creation of a regional school district or a consolidated school district; or if a teacher is on a leave of absence granted by his employer or permitted by any law of this State; and if such teacher has not withdrawn his accumulated contributions, his membership may continue in the retirement system notwithstanding any provisions of this act, but such continuation shall not extend beyond a period of 5 years from the date of such dismissal, or the beginning of such unemployment or leave of absence, *and no credit for retirement purposes shall be allowed except as provided hereinafter in this section. In computing the service or in computing final compensation no time after September 1, 1919, during which a member was employed as a teacher at an annual salary or remuneration fixed at less than $500.00 shall be credited, except that in the case of a veteran member credit shall be given for service rendered prior to January 1, 1955, in an employment, office or position if the annual salary or remuneration therefor was fixed at not less than $300.00 and such service consisted of the performance of the full duties of such employment, office or position.* In computing service for retirement purposes *or in computing final compensation* no time during which such teacher was absent on such leave shall be credited *unless the service was allowed for retirement purposes within 1 year following his return to service after completion of such leave, both by his employer and by the board of trustees, or* unless *the* service rendered to *an* employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State. *Any such member shall be required to contribute, either in a lump sum or by installment payments, an amount calculated, in accordance with the rules and regulations of the board of trustees, to cover the contributions he would have paid for any service or compensation credited for the period of such official leave of absence without pay, unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State.*

3. Section 10 of the act to which this act is amendatory is amended to read as follows:

10. Any person who was employed as a teacher prior to the effective date of this act, and who did not join the Teachers' Pension and Annuity Fund, may join at any time upon paying such arrears over a period of not more than 10 years in regular installments, with interest, as the board of trustees shall determine to be due, in order to give to such person prior service credit for all or any part of his service as a teacher in the State of New Jersey, or he shall have the option of joining as a new member upon application to the board of trustees, with no credit for previous service.

In the case of any person coming under the provisions of this section, full annuity credit for the period of employment for which arrears are being paid shall be given upon the payment of the total amount due, and full pension credit for such period of employment shall be given upon the payment of at least ½ of the total arrearage obligation and the completion of 1 year of making arrears payments, except in the case of retirement for service, in which case the total membership credit for such service shall be in direct proportion to the amount paid of the total amount of the arrearage obligation, upon the completion of 1 year of making arrears payments.

Any person coming under the provision of this section shall not be allowed any of the death benefits established by *sections 38, 41, 42, 44, 46 and 53 of* this act unless he becomes a member within *12* months after the effective date of this act, or furnishes satisfactory evidence of insurability.

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

18. The accumulated reserves in the former pension accumulation fund are hereby transferred to the contingent reserve fund, which shall be the fund in which shall be credited contributions made by the State and other employers.

a. Upon the basis of such tables as the board of trustees adopts, and regular interest, the actuary of the board shall compute annually the amount of contribution, expressed as a proportion of the compensation paid to all members, except veteran members who were employed as teachers on January 1, 1955, which, if paid monthly during the entire prospective service of such members, will be sufficient to provide for the pension reserves required at the time of discontinuance of active service, to cover all pensions to which they may be entitled or which are payable on their account, and to provide for the amount of the death and accidental disability benefits payable on their account, and which amount is not covered by contributions to be made as provided in paragraphs "b" and "c" hereof and the funds in hand available for such benefits.

b. Upon the basis of such table as the board of trustees adopts, and regular interest, the actuary of the board shall compute, annually, the amount of the liability which has accrued by reason of the establishment of Class B credit by nonveteran members and which has not already been covered by State contributions to the retirement system. Using the total amount of this liability remaining as a basis, he shall compute the amount of the flat annual payments which, if paid in each succeeding fiscal year commencing with July 1, 1957, for a period of 30 years, will provide for this liability.

c. The actuary of the board shall compute, annually, a "deficiency contribution" which shall not be less than an amount which, if paid in each succeeding fiscal year commencing with July 1, 1956, for a period of 11 years, will be sufficient to liquidate the accrued liability of the pension fund which has not already been covered by previous deficiency contributions and is not covered by other prospective contributions on account of members.

d. Upon the basis of such tables as the board of trustees adopts, and regular interest, the actuary of the board shall compute annually the amount of the total liability for past service and all prospective service for veteran members who were employed as teachers on January 1, 1955, which has not already been covered by State and employer contributions to the retirement

system and, except as provided by section 70 of this act, by past or prospective contributions by such veteran members and which will be sufficient to provide for the pension reserves required at the time of discontinuance of active service, to cover all pensions to which they may be entitled or which are payable on their account, and to provide for the amount of death and accidental disability benefits payable on their account. Using the total amount of this liability remaining as a basis, he shall compute the amount of the flat annual payment, which, if paid in each succeeding fiscal year commencing with July 1, 1957, for a period of 30 years, will provide for this liability.

e. The board of trustees shall estimate and certify annually the aggregate amount payable to the contingent reserve fund in the ensuing year, which amount shall be equal to the sum of the amounts described in paragraphs "a," "b," "c," and "d" hereof, and which shall be paid into the contingent reserve fund in the manner provided by section 33 of this act.

f. Except as provided in sections 26 and 53 of this act, the death benefits payable under the provisions of this act upon the death of a member in active service shall be paid from the contingent reserve fund.

g. Any other provision of this act notwithstanding, no payment shall be made to the contingent reserve fund on behalf of service of veteran members until the fiscal year commencing July 1, 1957. This shall not affect the payment of benefits to, and on behalf of, veteran members prior to said date, and any such disbursements for benefits not covered by reserves in the system on account of veterans shall be met by direct contribution of the State.

5. Section 21 of the act of which this act is amendatory is amended to read as follows:

21. The reserves held as of the effective date of this act in the former annuity reserve fund for beneficiaries other than beneficiaries of the pension fund, and those held in the former pension reserve fund are hereby transferred to the retirement reserve fund. The retirement reserve fund shall be the fund from which all retirement allowances shall be paid except those payable from the pension fund as provided in section 22. Upon the retirement of a member other than a present-entrant, the accumulated deductions of the member *together with regular interest after January 1, 1956*, shall be transferred to the retirement reserve fund from the annuity savings fund. The reserve needed to produce the balance of the retirement allowance shall be transferred from the contingent reserve fund.

Any surplus or deficit developing in the retirement reserve fund shall be adjusted from time to time by transfer to or from the contingent reserve fund by appropriate action of the board of trustees.

6. Section 25 of the act of which this act is amendatory is amended to read as follows:

25. The board of trustees at the end of each fiscal year shall allow interest on the balance of the contingent reserve fund, *the annuity savings fund*, the retirement reserve fund, pension fund and the members' death benefit fund as of the beginning of said fiscal year at the regular interest rate applicable thereto to cover the interest creditable to the respective funds for the year. The amount so allowed shall be due and payable to said funds and shall be credited annually thereto by the board.

7. Section 35 of the act of which this act is amendatory is amended to read as follows:

35. After January 1, *1959*, any member who has at least 3 years of service as a member to his credit may borrow from the retirement system, with the approval of the board of trustees, an amount equal to not more than 50% of the amount of his accumulated deductions, but not less than $50.00; provided, that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from compensation, not in excess of 25% of the member's compensation, made at the same time compensation is paid to the member, but not after the attainment of age 60. The amount so borrowed, together with interest at the rate of 4% per annum on any unpaid balance thereof, shall be repaid to the retirement system in equal installments by deduction from the compensation of the member at the time the compensation is paid *or in some other manner* and in such amounts as the board of trustees shall approve, but such installments shall be at least equal to the member's contribution to the retirement system and at least sufficient to repay the amount borrowed with interest thereon by the time the member attains age 60. Not more *than* 2 loans may be granted to any member in any fiscal year. Notwithstanding any other law affecting the salary or compensation of any person or persons to whom this act applies or shall apply, the additional deductions required to repay the loan shall be made. Any unpaid balance of a loan at the time any benefit may become payable before the attainment of age 60 shall be deducted from the benefit otherwise payable.

Loans may be *made* to a member from his accumulated deductions. In addition the board of trustees is hereby authorized to set aside moneys within the contingent reserve fund from which loans to members may be made. If *such* moneys are used for the purpose of making loans, the interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

8. Section 37 of the act of which this act is amendatory is amended to read as follows:

37. Should a member resign after having completed 25 years of service before reaching service retirement age, he may elect "early retirement," on which he shall receive, in lieu of the payment provided in section 34 of this act, a total retirement allowance of $\frac{1}{70}$ of his final compensation for each year of service credited as Class A service and $\frac{1}{60}$ of his final compensation for each year of service credited as Class B service, calculated in accordance with section 44 of this act, reduced by $\frac{1}{2}$ of 1% for each month that the member lacks of being age 60 at the time of resignation, except that in the case of a member who has not attained age 53 at the time of resignation, the reduction is equal to 42% plus $\frac{1}{6}$ of 1% for each month the member lacks of being age 53 at the time of resignation, and with the optional privileges provided for in section 47 of this act*; provided, however, that upon the receipt of proper proofs of the death of such a member after the member shall have reached 60 years of age there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 3/16 of the compensation received by the member in the last year of creditable service.*

9. Section 38 of the act of which this act is amendatory is amended to read as follows:

38. Except as provided in section 69, upon the receipt of proper proof of the death of a member in service on account of which no accidental death benefit is payable under section 46, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate:

(a) His accumulated deductions at the time of death together with regular interest after January 1, 1956; and

(b) An amount equal to 1½ times the compensation *upon which his contributions are based or* received by the member in the last year of creditable service*; provided, however, that if such death shall occur on or after July 1, 1956, and after the member shall have attained age 70, the amount payable shall equal 3/16 of the compensation received by the member in the last year of creditable service instead of 1 1/2 times such compensation.*

A member may file with the board of trustees, and alter from time to time during his lifetime, as desired, a duly attested written new nomination of the payee of the death benefit provided under this section. Such member may also file, and alter from time to time during his lifetime, as desired, a request with the board of trustees directing payment of said benefit in 1 sum or in equal annual installments over a period of years or as a life annuity. Upon the death of such a member a beneficiary to whom a benefit is payable in 1 sum may elect to receive the amount payable in equal annual installments over a period of years or as a life annuity.

For the purposes of this section and section 53 of this act, a member shall be deemed to be in service for a period of no more than 2 years while on official leave of absence without pay; provided, that satisfactory evidence is presented to the board of trustees that such leave of absence without pay is due to illness. For the purposes of this section and section 53 of this act, a member shall be deemed to be in service for a period of no more than 93 days while on official leave of absence without pay when such leave of absence is due to any reason other than illness. In order for a member to be covered for the optional death benefits *provided* by section 53 of this act, he shall continue to make contributions for same during the period such member is on official leave of absence without pay.

10. Section 40 of the act of which this act is amendatory is amended to read as follows:

40. Once each year the board of trustees may, and upon his application shall, require any disability beneficiary who is under the age of 60 years to undergo medical examination by a physician or physicians designated by the board. The examination shall be made at the residence of the beneficiary or any other place mutually agreed upon. If the physician or physicians thereupon report and certify to the board that the disability beneficiary is not totally incapacitated either physically or mentally for the performance of duty and that he is engaged in or is able to engage in a gainful occupation, and if the board concurs in the report, then the amount of his pension shall be reduced to an amount which, when added to the amount then earned by him, shall not exceed the amount of his final compensation. If subsequent

medical examination of such a beneficiary shows that his earning capacity has changed since the date of his last examination, then the amount of his pension may be further altered; but the new pension shall not exceed the amount of pension originally granted or an amount which, when added to the amount earned by the beneficiary, shall not exceed the amount of his final compensation.

If a disability beneficiary, while under age of 60 years, refuses to submit to at least 1 medical examination in any year by a physician or physicians designated by the board, his pension shall be discontinued until withdrawal of his refusal, and if his refusal continues for 1 year, all his rights in and to the pension shall be forfeited.

Upon application to the employer by whom he was employed at the time of his retirement, any beneficiary, while under the age of 60 years, may, in the discretion of the employer, be restored to active service. No disability beneficiary restored to service shall be compelled or permitted to become a member, or to receive any benefits other than those previously awarded to him, as long as his annual rate of compensation is less than his final compensation at the time of his retirement. Any beneficiary under the age of 60 years, who is restored to active service at an annual rate of compensation equal to or greater than his final compensation at the time of his retirement, or whose annual rate of compensation is increased at any time after his restoration to service, to a rate equal to or greater than his final compensation at the time of his retirement, shall thereupon again become a member of the retirement system. His retirement allowance shall be canceled, and notwithstanding anything in this act to the contrary, the appropriate reserves shall be transferred as provided in section 23. Deductions shall be made from his compensation at the rate applicable to him prior to his retirement. Any service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and he shall be credited with all service as a member standing to his credit at the time of his retirement; except that such a beneficiary again becoming a member after having attained the age of 50 years shall receive a *retirement allowance* on subsequent retirement based on all his service as a member since his last return to membership, and in addition he shall receive a *retirement allowance* equal to the *retirement allowance* on which he was retired at the time of his last retirement, but the total *retirement allowance* upon subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement.

11. Section 41 of the act of which this act is amendatory is amended to read as follows:

41. Subject to the provisions of section 68 of this act, a member upon retirement for ordinary disability shall receive a retirement allowance of the sum of 1/70 of his final compensation for each year of service credited as Class A service and 9/10 of the sum of 1/60 of his final compensation for each year of service credited as Class B service, calculated in accordance with section 44 of this act; and provided further, that in no event shall the allowance be less than 3/10 of final compensation, except that in no case shall

the rate of allowance exceed 9/10 of the rate of allowance which the member would have received had he remained in service to age 60.

Except as provided in section 69, upon the receipt of proper proofs of the death of a member who has retired on an ordinary disability retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 1 1/2 times the compensation received by the member in the last year of creditable service if such death occurs before the member shall have reached 60 years of age but if such death occurs thereafter an amount equal to 3/16 of the compensation received by the member in the last year of creditable service. The death benefits provided in this section shall apply to any member who has retired or shall retire on or after January 1, 1956.

12. Section 42 of the act of which this act is amendatory is amended to read as follows:

42. Subject to the provisions of section 68 of this act, a member upon retirement for accident disability shall receive a service retirement allowance if he has attained the age of 70; otherwise he shall receive a retirement allowance which shall consist of:

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his retirement together with regular interest after January 1, 1956; and

(b) a pension, in addition to the annuity, of 2/3 of his actual annual compensation for which contributions were being made at the time of the occurrence of the accident.

Except as provided in section 69, upon the receipt of proper proofs of the death of a member who has retired on an accident disability retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 1 1/2 times the compensation received by the member in the last year of creditable service if such death occurs before the member shall have reached 60 years of age but if such death occurs thereafter an amount equal to 3/16 of the compensation received by the member in the last year of creditable service. The death benefits provided in this section shall apply to any member who has retired or shall retire on or after January 1, 1956.

13. Section 44 of the act of which this act is amendatory is amended to read as follows:

44. Subject to the provisions of section 68 of this act, a member, upon retirement for service, shall receive a retirement allowance consisting of:

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions, *together with interest after January 1, 1956,* less any excess contributions as provided in section 20; and

(b) a pension which, when added to the annuity, will produce a retirement allowance of $\frac{1}{70}$ of his final compensation for each year of service credited as Class A service and $\frac{1}{60}$ of his final compensation for each year of service credited as Class B service.

In the case of a member who was age 60 or over on the effective date of this act, who if he had retired immediately would have had an annuity in excess of $\frac{1}{140}$ of his *final* compensation for each year of membership service, the amount of such excess annuity determined as of such date shall not be used in determining the pension on immediate or subsequent retirement.

Except as provided in section 69, upon the receipt of proper proofs of the death of a member who has retired on a service retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to $\frac{3}{16}$ of the compensation received by the member in the last year of creditable service.

14. Section 53 of the act of which this act is amendatory is amended to read as follows:

53. *a. Each member who is a member on the date this amendment takes effect and each person who thereafter becomes a member, will be eligible to purchase the additional death benefit coverage hereinafter described, provided that he selects such coverage within 1 year after the effective date of this section as amended or after the effective date of membership, whichever date is later.*

b. The board of trustees shall establish schedules of contributions to be made by the members who elect to purchase the additional death benefit coverage. Such contributions shall be so computed that the contributions made by or on behalf of all covered members in the aggregate shall be sufficient to provide for the cost of the benefits established by subsection c of this section. Such schedules of contributions shall be subject to adjustment from time to time, by the board of trustees, as the need may appear.

c. Upon the receipt of proper proofs of the death in service of any such member while covered for the additional death benefit coverage there shall be paid to such person, if living, as the member shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 1 1/2 times the compensation received by the member in the last year of creditable service or some lesser amount as may be provided by the board of trustees and elected to purchase by the member; provided, that if such death in service shall occur on or after July 1, 1956, and after the member has attained age 70, the amount payable shall equal 3/16 of the compensation received by the member in the last year of creditable service instead of 1 1/2 times such compensation.

d. The board of trustees may also establish additional supplemental contributions to be paid by such members as express their desire to have the additional death benefit coverage continued after retirement in the form of paid-up coverage for the amount hereinafter set forth, and to pay the in-

creased cost therefor. Such supplemental contributions shall also be subject to adjustment from time to time by the board.

e. Upon the receipt of proper proofs of the death of a member retired on a service retirement allowance who is covered for paid-up coverage as provided by this section at time of death, there shall be paid to such person, if living, as the member shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 3/16 of the compensation received by the member in the last year of creditable service.

f. Upon the receipt of proper proofs of the death of a member retired on ordinary or accident disability retirement allowance who is covered for paid-up coverage as provided by this section at time of death, there shall be paid to such person, if living, as the member shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to 1 1/2 times the compensation received by the member in the last year of creditable service or such lesser amount as may be provided by the board of trustees and purchased by such member if such death occurs before the member shall have reached 60 years of age, but if such death occurs thereafter an amount equal to 3/16 of the compensation received by the member in the last year of creditable service.

g. The contributions of a member for the additional death benefit coverage, including the supplemental contributions of a member electing to make such contributions, shall be deducted from his compensation, but if there is no compensation from which such contributions may be deducted it shall be the obligation of the member to make such contributions directly to the board of trustees or as directed by the board; provided, however, that no contribution shall be required while a member remains in service after attaining age 70 but that his employer shall be required to pay into the fund on his behalf in such case an amount equal to the contribution otherwise required by the board of trustees in accordance with this section.

h. Any other provision of this act notwithstanding, the contributions of a member for the additional death benefit coverage under this section shall not be returnable to the member or his beneficiary in any manner, or for any reason whatsoever, nor shall any contributions made for the additional death benefit coverage be included in any annuity payable to any such member or to his beneficiary.

i. A member who has elected to purchase the additional death benefit coverage provided by this section may file with the board of trustees, and alter from time to time during his lifetime, as desired, a duly attested, written, new nomination of the payee of the death benefit provided under this section. Such member may also file and alter from time to time during his lifetime, as desired, a request with the board of trustees directing payment of said benefit in 1 sum or in equal annual installments over a period of years or as a life annuity. Upon the death of such a member, a beneficiary to whom a benefit is payable in 1 sum may elect to receive the amount payable in equal annual installments over a period of years or as a life annuity.

j. All other provisions of this section notwithstanding, this section and the benefits provided under this section shall not come into effect until a

required percentage of the members shall have applied for the additional death benefit coverage under this section. This required percentage shall be fixed by the board of trustees. Any such percentage may be made applicable to male or female members only or to other groupings as determined by the board of trustees. Applications for such additional death benefit coverage shall be submitted to the secretary of the board of trustees in such manner and upon such forms as the board of trustees shall provide.

k. Any person becoming a member of the retirement system after the benefits provided under this section shall have come into effect, who is, by sex or other characteristic, within the grouping to which the additional death benefit coverage under this section is applicable, for the first year of his membership in the retirement system shall be covered by the additional death benefit coverage provisions of this section with the benefit in the event of death, in the first year of membership only, being based upon contractual salary instead of compensation actually received and shall make contributions as fixed by the board of trustees during such period. Such member shall have the right to continue to be covered by the benefits of this section and to contribute therefor after his first year of membership has been completed. This subsection shall not apply in the case of such a member who has already attained his sixtieth birthday prior to becoming a member of the retirement system unless he shall furnish satisfactory evidence of insurability at the time of becoming a member.

15. Section 61 of the act of which this act is amendatory is amended to read as follows:

61. The board of trustees shall be and are hereby constituted trustees of the various funds and accounts established by this act; provided, however, that all functions, powers and duties relating to the investment or reinvestment of moneys of, and purchase, sale or exchange of any investments or securities, of or for any fund or account established under this act, shall be exercised and performed by the Director of the Division of Investment in accordance with the provisions of chapter 270, P. L. 1950, as amended and supplemented. Before any such investment, reinvestment, purchase, sale or exchange shall be made by said director for or on behalf of the board of trustees, the Director of the Division of Investment shall submit the details thereof to such board of trustees, which shall, itself or by its finance committee, within 48 hours, exclusive of Sundays and public holidays, after such submission to it, file with the director its written acceptance or rejection of such proposed investment, reinvestment, purchase, sale or exchange; and the director shall have authority to make such investment, reinvestment, purchase, sale or exchange for or on behalf of such board of trustees, unless there shall have been filed with him a written rejection thereof by such board of trustees *or its finance committee* as herein provided. The board of trustees shall determine from time to time the cash requirements of the various funds and accounts established by this act and the amount available for investment, all of which shall be certified to the State Treasurer and the Director of the Division of Investment.

A member of the board of trustees to be designated by a majority vote thereof shall serve on the State investment council as a representative of said board of trustees, for a term of 1 year and until his successor is elected and qualified.

The finance committee of the board of trustees shall be appointed on or before July 1 of each calendar year by the chairman of the board of trustees to serve through June 30 of the ensuing calendar year and until their successors are appointed. The finance committee of the board of trustees shall consist of 3 members of the board of trustees, 1 of whom shall be the State Treasurer.

16. Section 70 of the act of which this act is amendatory is amended to read as follows:

70. a. Each veteran member shall have returned to him, except as provided in subsection "d" of this section, his accumulated deductions as of January 1, 1956, less contributions based on his compensation for the year 1955 at the rate of contribution provided in subsection "b." All service rendered in office, position, or employment of this State or of a county, municipality, or school district, board of education or other employer by such veteran member previous to January 1, 1955, for which evidence satisfactory to the board of trustees is presented within 1 year of the effective date of this section, shall be credited to him as a "Class B" member and the accrued liability for such credit shall be paid by the employer as provided in section 33.

b. Each veteran member as of the effective date of this section shall make contributions to the retirement system at the rates of contribution applicable to Class B members of the Public Employees' Retirement System as of January 2, 1955, except that the board of trustees may from time to time adopt for employees becoming members after the effective date of this section new proportions of compensation to be determined as provided in section 29. Each veteran member shall pay the proportion of compensation applicable to his age at the commencement of employment, position or office with the State, any county, municipality or school district, board of education or other employer, except that where such service has not been continuous, the veteran member shall pay the proportion of compensation applicable to the age resulting from the subtraction, as of January 1, 1955, of his years of service from his age. No veteran member shall be required during the continuation of his membership to increase the proportion of compensation certified on the effective date of this section or at the time of becoming a member, if later, as payable by him, except as required by changes in the rate of contributions to the Social Security fund.

c. In the event that a veteran who prior to the effective date of this section rendered service in office, position, or employment of this State or of a county, municipality, or school district, board of education or other employer, but who is not in such office, position or employment on the effective date of this section shall later become a member of the retirement system, such veteran member shall receive service credit for service rendered prior to January 1, 1955, for which evidence satisfactory to the board of trustees is presented, and shall pay the proportion of compensation applicable to the age resulting from the subtraction of his years of such prior service from his age on the date of his becoming a member of the retirement system.

The State shall pay the liability on behalf of such prior service, and such liability shall be paid in such *a* manner that the total obligation will be met within the period of time fixed for the liquidation of all accrued liabilities under this act.

d. Any veteran who has contributed to the Teachers' Pension and Annuity Fund on account of any prior teaching service outside of New Jersey shall have the option, within 1 year of the effective date of this act, of receiving, at his request, the return of such *contributions*, and if such contributions are returned to him, he shall not have service credit based upon such prior service.

17. This act shall take effect immediately.

Approved July 26, 1956.

SCHOOL LAW DECISIONS

1955 - 1956

SCHOOL LAW DECISIONS

1955-1956

I

WHERE A SUPERVISOR OF INSTRUCTION IS REINSTATED BEFORE A DECISION IS MADE BY THE COMMISSIONER OF EDUCATION, QUESTION IS CONSIDERED MOOT

PATRICK E. TEDESCO

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF LODI, BERGEN COUNTY,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Schiaffo, Peraino & Azzolino.
(August A. Azzolino, of Counsel)

For the Respondent, Martin & Fox.
(Jacob Fox, of Counsel)

The petitioner in this case requests the Commissioner to set aside the action of the respondent Board of Education in the elimination of the position of Supervisor of Instruction, the establishment of Heads of Departments, and re-assigning him as a full-time classroom teacher, and to order the respondent Board of Education to restore the petitioner to the office of Supervisor of Instruction and to determine the seniority of the petitioner and to notify him as to his seniority status.

The stipulated facts in the case indicate the following:

The petitioner was appointed by the respondent as a teacher in the Lodi High School in 1938. On June 28, 1948, he was appointed by the respondent as Supervisor of Instruction in the Lodi High School, serving in that position until the end of the contract year 1952-1953. On June 23, 1953, the respondent adopted a resolution approving and putting into effect the following recommendations of the committee of the respondent board of education: that the high school staff of respondent be calculated on the basis of a table of organization which "eliminates the position of Supervisor of Instruction and creates Heads of Departments to absorb administrative and supervisory duties as delegated by the principal," that "The Supervisor of Instruction should be returned as a teacher in the Commercial Department without

reduction in salary," and that the duties theretofore performed by him "be reassigned by the principal to the various newly created department heads"; that "a department head should be created in each major academic group" and that "each newly appointed head should be placed at a salary level of $200 above the teacher level in the salary guide."

After the petition in this case was filed, the Secretary of the Lodi Borough Board of Education certified and sent to the Commissioner of Education the following resolution which was adopted by the respondent on April 6, 1955:

"RESOLUTION

BOARD OF EDUCATION

BOROUGH OF LODI

"OFFERED BY TRUSTEE Theodore Tucci.

"SECONDED BY TRUSTEE Joseph J. Brigandi

"WHEREAS, the position of Supervisor of Instruction at the Lodi High School was abolished in June, 1953, AND WHEREAS, the Board feels said position should be re-established, NOW THEREFORE, BE IT RESOLVED by the Board of Education of the Borough of Lodi, New Jersey, as follows:

"1. That the position of Supervisor of Instruction at the Lodi High School be and is hereby re-created and re-established.

"2. That Patrick E. Tedesco be and is hereby appointed and reinstated to said position of Supervisor of Instruction at the Lodi High School at the annual salary of $6,500.00, beginning July 1st, 1955.

"3. That this appointment shall not adversely affect the teacher tenure status of said appointee.

"4. That all resolutions and other actions of the Board inconsistent herewith are hereby rescinded."

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

In a similar situation, the State Board of Education in the case of *Worthy, et al.* vs. *Board of Education of the Township of Berkeley, Ocean County, 1938 S. L. D. 689 at page 691*, said:

"In the brief of the Petitioners-Respondents, it is suggested that the controversy is at an end because it is public knowledge that since the opening of the 1927-1928 school year the Berkeley Township Board of Education has provided for all of its children from the first to the seventh grades, inclusive, including the petitioners, in its own school building. We are informed to the same effect by a memorandum from the Commissioner, and at the argument before us, counsel for the Dover Township Board of Education admitted that such was the case. It therefore appears that the said Board is no longer required to furnish any school facilities to the petitioners so that no order that can now be made pursuant to our decision can have any effect. Consequently, this is a moot question and

following the rule universally applied by appellate tribunals in this country, this Board, which, by direction of the School Law takes this case only as a judicial tribunal, should not in our opinion pass upon this appeal. The principle which must be applied is thus stated by the United States Supreme Court:

> 'The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact when not appearing on the record, may be proved by extrinsic evidence.'

Mills v. Green, 159 U. S. 653.

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

Accordingly, the petition is dismissed.

July 21, 1955.

II

BOARD OF EDUCATION REQUIRED TO WAIVE MINOR IRREGULARITIES AND AWARD CONTRACT TO LOWEST RESPONSIBLE BIDDER

WILLIAM H. TAYLOR, JR., INDIVIDUALLY AND TRADING AS W. H. TAYLOR AND SON,

Petitioner,

vs.

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

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Bennett and Wingate.
(Leon A. Wingate, Jr., of Counsel)
For the Respondent, Albert E. Heal, Jr.

The petitioner in this case prays that an order be issued by the Commissioner of Education rescinding and cancelling a painting contract awarded to Paul Mitchell and directing the respondent to award the contract to the petitioner.

A conference of counsel for petitioner and respondent was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes on June 15, 1955. The facts in the case were stipulated between the parties. There were no questions raised by the respondent as to the qualification or responsibility of the petitioner to complete the contract, following the award to the said Paul Mitchell.

The facts in the case are as follows:

The petitioner, pursuant to public notice by the Board of Education of the Township of Gloucester, submitted a bid to the Board on May 3, 1955, for painting the interior of the Glendora School located at Station Avenue, Glendora, New Jersey. Said bid was in the amount of $3100 and was accompanied by a certified check to the order of the Board of Education for $310, and complied in all other respects to the specifications and proposal of said Board, except that it was not accompanied by a letter from a surety company agreeing to furnish to the petitioner a completion bond if he were awarded the contract. The Board of Education also received a bid from Paul Mitchell in the amount of $3900 and awarded the contract to the said Paul Mitchell.

Mrs. Taylor, wife of the petitioner, was present at the Board of Education meeting on May 3, 1955. When the petitioner's bid was opened it was discovered that the bid did not contain the required bid letter and Mrs. Taylor explained to the Board that her husband had a letter from a surety company indicating that a bond had been furnished. Mrs. Taylor left the meeting, returned before the adjournment of the meeting, and presented the following letter to the Board of Education:

"May 2, 1955

"Wm. H. Taylor & Son
Chews Landing
Blackwood, New Jersey

Re: Bid Bond running to
Glendora Township Board of Education

"Gentlemen:

"Enclosed herewith is duly executed bid bond as above captioned together with a copy for your records.

"Bill for the premium of $2.50 will be charged to your account, with broker, L. C. Joyce.

"Thanking you for favoring us with this business, and we trust the enclosures will be found in order.

"Very truly yours,

/s/ CLAUDE F. DEAMER
Claude F. Deamer
Bond Department."

At the conference between counsel in Trenton on June 15, 1955, it was further agreed that the only issue in this case is whether or not the respondent Board of Education acted within its legal rights in awarding a painting contract to a higher bidder on the ground that the petitioner was not the

lowest responsible bidder because he failed to comply with the instructions and the published notice to bidders.

The instructions to bidders in paragraphs 6 and 7 contained the following language:

> "6. Each bid must be accompanied by cash, certified check, or cashier's check to the order of the Gloucester Township Board of Education in an amount equal to ten percentum of the sum of the bid, and a bid letter from a surety company licensed to conduct business in New Jersey, engaging to furnish a completion bond upon the contract's award.
>
> "7. The Gloucester Township Board of Education reserves the right to accept or reject any or all bids."

The petitioner argues that his failure to furnish the bid letter from the surety company at the time the bid was opened is not sufficient reason to justify the award of the contract to a higher bidder for the following reasons: The language of the proposal sheet furnished by the respondent and used by the petitioner made no reference to the bid letter; the only reference being contained in the instructions to bidders, and that any bidder would feel that he had fully complied with the requirement when he had completed the form of the proposal and followed the language contained in the second paragraph:

> "Accompanying this proposal, under separate cover, is a certified check for three hundred ten dollars ($310.00) payable to the Gloucester Township Board of Education. In case this proposal is accepted by your Board and the undersigned shall fail to execute the contract with, and to give Bond to the Gloucester Township Board of Education according to the published notice to contractors, then the said certified check shall become the property of the Gloucester Township Board of Education"; otherwise it shall be returned to the undersigned; that since there are no questions raised with regard to the responsibility or qualifications of the petitioner, the Board was amply protected by the receipt of a certified check for $310.00 which was specifically deposited with the Board as a guarantee that it would be forfeited if the bidder failed to produce a satisfactory bond pursuant to the requirements of the specifications and form of proposal; that the question of mere irregularities in a form of a bid was reviewed by the Superior Court, Appellate Division in 1954 in the case of *Bryan Construction Co. Inc. v. Board of Trustees, 31 N. J. Super. 200; 106 A. 2d. 303.* In that case the successful bidder submitted a bid accompanied by a bid bond instead of a certified check. There appeared to be some confusion between the advertisement and the instruction to bidders. The Court commented with regard to this situation as follows:
>
> "Mere irregularity of a bid will not justify its rejection by a municipal body charged with a duty of awarding a contract to the lowest bidder. The form of bid, not being embodied in the statute, is a regulation prescribed by the city, and failure to technically comply with the form required will not defeat the right of the lowest bidder to have the contract, if, after the bids are opened, it appears there has been a substantial compliance with the requirements, and he tenders himself ready to execute the requisite contract and furnish responsible bondsmen or good security, as was the fact in this case. The statute is intended to secure to the city

the contracting of the work to the lowest responsible bidder, and mere irregularities in the form of the bid, or details of statement, which do not in any way mislead or injure, are not sufficient to justify the rejection of such a bid. It is in the interest of the public that the lowest bid, though it be irregular, be accepted and if necessary, that the bidder have opportunity to correct any irregularities, while not changing the substance of his bid. 'Faist v. City of Hoboken, 72 N. J. L. 361, 60 A. 1120, 1121 (Sup. Ct. 1905)'."

"In conclusion, it may be said that, at most, a mere technical irregularity existed, which was waivable and which would be to the substantial interest of the defendant board of education and the municipality to waive.

"It is not any kind of irregularity in specifications of proposed public work to be done that will have the effect of voiding the award. The irregularity must be of a substantial nature—such as will operate to affect fair and competitive bidding. 'Phifer v. City of Bayonne, supra'."

The respondent argued that the omission of the letter was with respect to a most material item of the bid and that, therefore, the petitioner was not the lowest responsible bidder within the meaning of the law; that the purpose of competitive bidding would be defeated if one bidder were permitted to submit a bid which failed in any material respect to comply with instructions and the published notice to bidders; that decisions by the courts have held that the term "lowest responsible bidder" means the lowest bidder who complies with the requirement; and that appropriate language dealing with the subject is found in the case of *Tufano* vs. *Cliffside Park, 110 N. J. L. 370* (N. J. Supreme Court 1933):

"The transportation certificates did not accompany the bid, although they were filed later.

"The failure of the trucking company to comply with the specifications in the respects indicated deprived it of the right to the award. Public policy underlies the requirements of competitive bidding. The purpose of the statute is that each bidder, actual or possible, shall be put upon the same footing. The municipal authorities should not be permitted to waive any substantial variance between the conditions under which bids are invited and the proposals submitted. If one bidder is relieved from conforming to the conditions which impose some duty upon him, or lays the ground for holding him to a strict performance of his contract, that bidder is not contracting in fair competition with those bidders who propose to be bound by all the conditions. ..... the lowest bidder, within the intendment of the statute, is one whose bid is not 'only the lowest for the work to be done or the articles to be furnished, but conforms to the requirements of the notice to the bidders. .....' Their obvious purpose was to compel the bidder to establish before the award was made, his ability to perform the contract. To permit one bidder to ignore these requirements would give him an advantage over the others, and to permit him to supply the deficiency later, and after the bids were opened, would open the door to fraud and favoritism and defeat the statutory purpose of protection to the taxpayers."

The Commissioner, after considering all of the facts in this case, is not unmindful of the fact that section 18:7–64 of the Revised Statutes, which reads in part as follows:

> "No contract for the building of a new schoolhouse or for the enlargement of an existing schoolhouse shall be entered into without first advertising for proposals therefor. No contract for the repairing of an existing schoolhouse at a cost of more than one thousand dollars ($1,000.00) shall be entered into without first advertising for proposals therefor.
>
> "The advertisements required by this section shall be made under such regulations as the board may prescribe."

requires a board of education to advertise for bids and permits the board to prescribe regulations for the bidding. Furthermore, the Commissioner is cognizant of the fact that the respondent board of education was faced with a time element since the work had to be completed during the summer vacation period, and that the Commissioner of Education in previous decisions has looked to court decisions affecting municipalities for guidance, although they are not binding upon boards of education. Therefore, the Commissioner in this case will refer to the decision of the Superior Court in the case of *Bryan Construction Co.* vs. *Board of Trustees, supra.,* wherein the Court said:

> "Further, a municipal body has a greater function in dealing with irregularities in such matters than merely exercising a ministerial and perfunctory role. It has the inherent discretionary power, and what is more, a duty to secure, through competitive bidding the lowest responsible offer, and to effectuate that accomplishment it may waive minor irregularities."

It is the opinion of the Commissioner that the respondent Board of Education not only had the right but also the duty to secure through competitive bidding the lowest responsible offer, but to effectuate that accomplishment it had the right to waive minor irregularities which are within the board's power to prescribe and not in violation of the statutory requirements. Therefore, the Board of Education of the Township of Gloucester, Camden County, is directed to cancel the contract for painting in the Glendora School, awarded to Paul Mitchell on May 3, 1955, and to either award the contract to the petitioner, who was the lowest responsible bidder, or to exercise its right under paragraph 7 of "Instruction to Bidders" to reject all bids.

July 21, 1955.

Affirmed by State Board of Education without written opinion on December 13, 1955.

WILLIAM H. TAYLOR, INDIVIDUALLY AND TRADING AS
W. H. TAYLOR & SON,

Petitioner-Respondent,

vs.

BOARD OF EDUCATION OF THE TOWNSHIP OF GLOUCESTER IN THE
COUNTY OF CAMDEN,

Respondent-Appellant.

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
A-180-55

Argued May 7, 1956. Decided May 17, 1956.

Before Judges Clapp, Jayne and Francis.

Mr. Leon A. Wingate, Jr., argued the cause for William H. Taylor, individually and trading as W. H. Taylor & Son (Messrs. Bennett & Wingate, attorneys).

Mr. Albert Heal, Jr., argued the cause for the Board of Education of the Township of Gloucester.

The opinion of the Court was delivered by CLAPP, S. J. A. D.

The Board of Education of the Township of Gloucester advertised for bids for a painting contract. *N. J. S. A.* 18:7–64; 18:7–65. William H. Taylor, trading as W. H. Taylor & Son, submitted the low bid, but because of his alleged non-compliance, in a certain particular, with the instructions and notice to bidders, the contract was awarded by the Gloucester Board to the only other bidder. Taylor appealed to the State Commissioner of Education, and the Commissioner held that the award to the other bidder should be cancelled and that either the contract should be given to Taylor or all bids should be rejected. The State Board later affirmed the Commissioner's decision, and the Gloucester Board of Education thereafter appealed to us.

On the oral argument it appeared that the other bidder on receiving the award performed the contract, completing it just about the time the State Commissioner handed down his decision.

Under the circumstances, the issues presented to us are moot. *Union Paving Company* vs. *Borough of Haddonfield* (App. Div. A-170-53).

Appeal dismissed.

III

INCREMENTS GRANTED BY PREVIOUS BOARDS OF EDUCATION DO NOT RELIEVE BOARD OF EDUCATION FROM MEETING MANDATORY INCREMENTS REQUIRED UNDER THE STATE MINIMUM SALARY SCHEDULE

MARY H. FORSYTH,

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF FREEHOLD,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Respondent, Arnold Tanner.

The petitioner asked the Commissioner of Education to issue an Order directing the respondent Board of Education of the Borough of Freehold to grant her the annual increment and the adjustment increment in accordance with the provisions of Chapter 249 of the Laws of 1954.

A conference was held between the petitioner, attorney for the respondent, and the Assistant Commissioner in charge of Controversies and Disputes in the office of the County Superintendent of Schools, 80 Broad Street, Freehold, New Jersey, at which the following facts were stipulated:

1. The petitioner does not hold a degree from any college or university.

2. The annual salary of petitioner for year 1954-55 was $4,500 which was the maximum of the local salary guide for the year 1954-55.

3. The petitioner has been employed in the respondent district for 38 years.

4. The 1954-55 Board of Education of the Borough of Freehold granted to all teachers who had been employed by the Board of Education of the Borough for 30 years or more an increment for the year 1954-55 sufficient to place said teachers on the maximum of the local guide. The increment granted to the petitioner for the year 1954-55 was $600. The normal increment in accordance with the local salary guide was $300. There was no agreement between the Board of Education and petitioner that the additional increment was to be considered as the increment for year 1955-56.

5. Salary of petitioner as established by respondent Board for 1955-56 is $4,550 in accordance with the local guide adopted by respondent Board for 1955-56.

The respondent Board of Education claims that when the Board of Education granted the additional increment of $300 to the petitioner for the year 1954-55, it was the intent of the Board of Education that the additional increment would be considered as the increment for the following year and that no additional increment for the year 1955-56 would be granted to any teacher who received this additional increment. The respondent argues that

the granting of the aforesaid increment was "good cause," within the meaning of the statute (P. L. 1954, c. 249, s. 7), for withholding any further increment for the year 1955-56. However, the respondent stipulated to the fact that there was no agreement made between petitioner and the Board of Education regarding the salary of petitioner for future years.

Chapter 249 of the Laws of 1954 provides as follows:

"2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
2	3,150.00	$150.00
3	3,300.00	150.00
4	3,450.00	150.00
5	3,600.00	150.00
6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17.

"3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act."

"5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

"7. The schedule set forth in this act is intended to prescribe a minimum salary at each step, and any increment prescribed shall also be considered a minimum. Boards of education shall have the power to increase for any teacher or classification of teachers included in any schedule, the initial salary or the amount of any increment or the number of increments. Any board of education may withhold for inefficiency or other good cause, the employment increment and the adjustment increment or both of any teacher in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the teacher concerned. The teacher may appeal from such action to the Commissioner of Education under rules prescribed by him. The Commissioner of Education shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

It is the opinion of the Commissioner that in accordance with the provisions of the above statute, the salary of the petitioner for the school year 1955-56 should be $4,800. Sections 2, and 3, and 5 provide a schedule and increments which are mandatory regardless of whether or not increments had been voluntarily given by previous boards. The reasons given by the respondent Board of Education for not granting the required increment do not constitute "other good cause" within the meaning of Chapter 249, P. L. 1954 supra.

The petition is sustained and the respondent Board of Education is hereby ordered to grant the petitioner the employment increment as required by Section 5, Chapter 249 of the Laws of 1954, supra.

October 3, 1955.

IV

INCREMENTS GRANTED BY PREVIOUS BOARDS OF EDUCATION DO NOT RELIEVE BOARD OF EDUCATION FROM MEETING MANDATORY INCREMENTS REQUIRED UNDER THE STATE MINIMUM SALARY SCHEDULE

IRENE C. OTTERSON

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF FREEHOLD,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Respondent, Arnold Tanner.

The petitioner asked the Commissioner of Education to issue an Order directing the respondent Board of Education of the Borough of Freehold to grant her the annual increment and the adjustment increment in accordance with the provisions of Chapter 249 of the Laws of 1954.

A conference was held between the petitioner, attorney for the respondent, and the Assistant Commissioner in charge of Controversies and Disputes in the office of the County Superintendent of Schools, 80 Broad Street, Freehold, New Jersey, at which the following facts were stipulated:

1. The petitioner does not hold a degree from any college or university.

2. The annual salary of petitioner for year 1954-55 was $4,500 which was the maximum of the local salary guide for the year 1954-55.

3. The petitioner has been employed in the respondent district for 37 years.

4. The 1954-55 Board of Education of the Borough of Freehold granted to all teachers who had been employed by the Board of Education of the Borough for 30 years or more an increment for the year 1954-55 sufficient to place said teachers on the maximum of the local guide. The increment granted to the petitioner for the year 1954-55 was $600. The normal increment in accordance with the local salary guide was $300.00. There was no agreement between the Board of Education and petitioner that the additional increment was to be considered as the increment for year 1955-56.

5. Salary of petitioner as established by respondent Board for 1955-56 is $4,550.00 in accordance with the local guide adopted by respondent Board for 1955-56.

The respondent Board of Education claims that when the Board of Education granted the additional increment of $300.00 to the petitioner for the year 1954-55, it was the intent of the Board of Education that the additional increment would be considered as the increment for the following year and that no additional increment for the year 1955-56 would be granted to any teacher who received this additional increment. The respondent argues

that the granting of the aforesaid increment was "good cause," within the meaning of the statute (P. L. 1954, c. 249, s. 7), for withholding any further increment for the year 1955-56. However, the respondent stipulated to the fact that there was no agreement made between petitioner and the Board of Education regarding the salary of petitioner for future years.

Chapter 249 of the Laws of 1954 provides as follows:

"2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
2	3,150.00	$150.00
3	3,300.00	150.00
4	3,450.00	150.00
5	3,600.00	150.00
6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17."

"3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act."

"5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

"7. The schedule set forth in this act is intended to prescribe a minimum salary at each step, and any increment prescribed shall also be considered a minimum. Boards of education shall have the power to increase for any teacher or classification of teachers included in any schedule, the initial salary or the amount of any increment or the number of increments. Any board of education may withhold for inefficiency or other good cause, the employment increment and the adjustment increment or both of any teacher in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the teacher concerned. The teacher may appeal from such action to the Commissioner of Education under rules prescribed by him. The Commissioner of Education shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

It is the opinion of the Commissioner that in accordance with the provisions of the above statute, the salary of the petitioner for the school year 1955-56 should be $4,800.00. Sections 2, 3, and 5 provide a schedule and increments which are mandatory regardless of whether or not increments had been voluntarily given by previous boards. The reasons given by the respondent Board of Education for not granting the required increment do not constitute "other good cause" within the meaning of Chapter 249, P. L. 1954 supra.

The petition is sustained and the respondent Board of Education is hereby ordered to grant the petitioner the employment increment as required by Section 5, Chapter 249 of the Laws of 1954, supra.

October 3, 1955.

V

INCREMENTS GRANTED BY PREVIOUS BOARDS OF EDUCATION DO NOT RELIEVE BOARD OF EDUCATION FROM MEETING MANDATORY INCREMENTS REQUIRED UNDER THE STATE MINIMUM SALARY SCHEDULE

PHOEBE H. SMITH,

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF FREEHOLD,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Respondent, Arnold Tanner.

The petitioner asked the Commissioner of Education to issue an Order directing the respondent Board of Education of the Borough of Freehold to grant her the annual increment and the adjustment increment in accordance with the provisions of Chapter 249 of the Laws of 1954.

A conference was held between the petitioner, attorney for the respondent, and the Assistant Commissioner in charge of Controversies and Disputes in the office of the County Superintendent of Schools, 80 Broad Street, Freehold, New Jersey, at which the following facts were stipulated:

1. The petitioner does not hold a degree from any college or university.

2. The annual salary of petitioner for year 1954-55 was $4,500.00 which was the maximum of the local salary guide for the year 1954-55.

3. The petitioner has been employed in the respondent district for 41½ years.

4. The 1954-55 Board of Education of the Borough of Freehold granted to all teachers who had been employed by the Board of Education of the Borough for 30 years or more an increment for the year 1954-55 sufficient to place said teachers on the maximum of the local guide. The increment granted to the petitioner for the year 1954-55 was $600.00. The normal increment in accordance with the local salary guide was $300.00. There was no agreement between the Board of Education and petitioner that the additional increment was to be considered as the increment for year 1955-56.

5. Salary of petitioner as established by respondent Board for 1955-56 is $4,550.00 in accordance with the local guide adopted by respondent Board for 1955-56.

The respondent Board of Education claims that when the Board of Education granted the additional increment of $300.00 to the petitioner for the year 1954-55, it was the intent of the Board of Education that the additional increment would be considered as the increment for the following year and that no additional increment for the year 1955-56 would be granted to any teacher who received this additional increment. The respondent argues that

the granting of the aforesaid increment was "good cause," within the meaning of the statute (P. L. 1954, c. 249, s. 7), for withholding any further increment for the year 1955-56. However, the respondent stipulated to the fact that there was no agreement made between petitioner and the Board of Education regarding the salary of petitioner for future years.

Chapter 249 of the Laws of 1954 provides as follows:

"2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
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6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17."

"3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act."

"5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

"7. The schedule set forth in this act is intended to prescribe a minimum salary at each step, and any increment prescribed shall also be considered a minimum. Boards of education shall have the power to increase for any teacher or classification of teachers included in any schedule, the initial salary or the amount of any increment or the number of increments. Any board of education may withhold for inefficiency or other good cause the employment increment and the adjustment increment or both of any teacher in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the teacher concerned. The teacher may appeal from such action to the Commissioner of Education under rules prescribed by him. The Commissioner of Education shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

It is the opinion of the Commissioner that in accordance with the provisions of the above statute, the salary of the petitioner for the school year 1955-56 should be $4,800.00. Sections 2, 3, and 5 provide a schedule and increments which are mandatory regardless of whether or not increments had been voluntarily given by previous boards. The reasons given by the respondent Board of Education for not granting the required increment do not constitute "other good cause" within the meaning of Chapter 249, P. L. 1954 supra.

The petition is sustained and the respondent Board of Education is hereby ordered to grant the petitioner the employment increment as required by Section 5, Chapter 249 of the Laws of 1954, supra.

October 3, 1955.

VI

INCREMENTS GRANTED BY PREVIOUS BOARDS OF EDUCATION DO NOT RELIEVE BOARD OF EDUCATION FROM MEETING MANDATORY INCREMENTS REQUIRED UNDER THE STATE MINIMUM SALARY SCHEDULE

MARION SYMMES

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF FREEHOLD,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Respondent, Arnold Tanner.

The petitioner asked the Commissioner of Education to issue an Order directing the respondent Board of Education of the Borough of Freehold to grant her the annual increment and the adjustment increment in accordance with the provisions of Chapter 249 of the Laws of 1954.

A conference was held between the petitioner, attorney for the respondent, and the Assistant Commissioner in Charge of Controversies and Disputes in the office of the County Superintendent of Schools, 80 Broad Street, Freehold, New Jersey, at which the following facts were stipulated:

1. The petitioner does not hold a degree from any college or university.
2. The annual salary of petitioner for the year 1954-55 was $4,500.00 which was the maximum of the local salary guide for the year 1954-55.
3. The petitioner has been employed in the respondent district for 36 years.
4. The 1954-55 Board of Education of the Borough of Freehold granted to all teachers who had been employed by the Board of Education of the Borough for 30 years or more an increment for the year 1954-55 sufficient to place said teachers on the maximum of the local guide. The increment granted to the petitioner for the year 1954-55 was $600.00. The normal increment in accordance with the local salary guide was $300.00. There was no agreement between the Board of Education and petitioner that the additional increment was to be considered as the increment for year 1955-56.
5. Salary of petitioner as established by respondent Board for 1955-56 is $4,550.00 in accordance with the local guide adopted by respondent Board for 1955-56.

The respondent Board of Education claims that when the Board of Education granted the additional increment of $300.00 to the petitioner for the year 1954-55, it was the intent of the Board of Education that the additional increment would be considered as the increment for the following year and that no additional increment for the year 1955-56 would be granted to any teacher who received this additional increment. The respondent argues that the granting of the aforesaid increment was "good cause," within the meaning of the statute (P. L. 1954, c. 249, s. 7), for withholding any further increment for the year 1955-56. However, the respondent stipulated to the fact that there was no agreement made between petitioner and the Board of Education regarding the salary of petitioner for future years.

Chapter 249 of the Laws of 1954 provides as follows:

"2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
2	3,150.00	$150.00
3	3,300.00	150.00
4	3,450.00	150.00
5	3,600.00	150.00
6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17."

"3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act."

"5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

"7. The schedule set forth in this act is intended to prescribe a minimum salary at each step, and any increment prescribed shall also be considered a minimum. Boards of education shall have the power to increase for any teacher or classification of teachers included in any schedule, the initial salary or the amount of any increment or the number of increments. Any board of education may withhold for inefficiency or other good cause, the employment increment and the adjustment increment

or both of any teacher in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the teacher concerned. The teacher may appeal from such action to the Commissioner of Education under rules prescribed by him. The Commissioner of Education shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay such denied increment in any future year as an adjustment increment."

It is the opinion of the Commissioner that in accordance with the provisions of the above statute, the salary of the petitioner for the school year 1955-56 should be $4,800.00. Sections 2, 3, and 5 provide a schedule and increments which are mandatory regardless of whether or not increments had been voluntarily given by previous boards. The reasons given by the respondent Board of Education for not granting the required increment do not constitute "other good cause" within the meaning of Chapter 249, P. L. 1954 supra.

The position is sustained and the respondent Board of Education is hereby ordered to grant the petitioner the employment increment as required by Section 5, Chapter 249 of the Laws of 1954, supra.

October 3, 1955.

VII

INCREMENTS GRANTED BY PREVIOUS BOARDS OF EDUCATION DO NOT RELIEVE BOARD OF EDUCATION FROM MEETING MANDATORY INCREMENTS REQUIRED UNDER THE STATE MINIMUM SALARY SCHEDULE

VERNA R. WITMAN

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF FREEHOLD,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Respondent, Arnold Tanner.

The petitioner asked the Commissioner of Education to issue an Order directing the respondent Board of Education of the Borough of Freehold to grant her the annual increment and the adjustment increment in accordance with the provisions of Chapter 249 of the Laws of 1954.

A conference was held between the petitioner, attorney for the respondent, and the Assistant Commissioner in charge of Controversies and Disputes in the office of the County Superintendent of Schools, 80 Broad Street, Freehold, New Jersey, at which the following facts were stipulated:

1. The petitioner does not hold a degree from any college or university.

2. The annual salary of petitioner for year 1954-55 was $4,500.00 which was the maximum of the local salary guide for the year 1954-55.

3. The petitioner has been employed in the respondent district for 33 years.

4. The 1954-55 Board of Education of the Borough of Freehold granted to all teachers who had been employed by the Board of Education of the Borough for 30 years or more an increment for the year 1954-55 sufficient to place said teachers on the maximum of the local guide. The increment granted to the petitioner for the year 1954-55 was $600.00. The normal increment in accordance with the local salary guide was $300.00. There was no agreement between the Board of Education and petitioner that the additional increment was to be considered as the increment for year 1955-56.

5. Salary of petitioner established by respondent Board for 1955-56 is $4,550.00 in accordance with the local guide adopted by respondent Board for 1955-56.

The respondent Board of Education claims that when the Board of Education granted the additional increment of $300.00 to the petitioner for the year 1954-55, it was the intent of the Board of Education that the additional increment would be considered as the increment for the following year and that no additional increment for the year 1955-56 would be granted to any teacher who received this additional increment. The respondent argues that the granting of the aforesaid increment was "good cause," within the meaning of the statute (P. L. 1954, c. 249, s. 7), for withholding any further increment for the year 1955-56. However, the respondent stipulated to the fact that there was no agreement made between petitioner and the Board of Education regarding the salary of petitioner for future years.

Chapter 249 of the Laws of 1954 provides as follows:

"2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
2	3,150.00	$150.00
3	3,300.00	150.00
4	3,450.00	150.00
5	3,600.00	150.00
6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17."

"3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act."

"5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

"7. The schedule set forth in this act is intended to prescribe a minimum salary at each step, and any increment prescribed shall also be considered a minimum. Boards of education shall have the power to increase for any teacher or classification of teachers included in any schedule, the initial salary or the amount of any increment or the number of increments. Any board of education may withhold for inefficiency or other good cause, the employment increment and the adjustment increment or both of any teacher in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the teacher concerned. The teacher may appeal from such action to the Commissioner of Education under rules prescribed by him. The Commissioner of Education shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

It is the opinion of the Commissioner that in accordance with the provisions of the above statute, the salary of the petitioner for the school year 1955-56 should be $4,800.00. Sections 2, 3, and 5 provide a schedule and increments which are mandatory regardless of whether or not increments had been voluntarily given by previous boards. The reasons given by the respondent Board of Education for not granting the required increment do not constitute "other good cause" within the meaning of Chapter 249, P. L. 1954 supra.

The petition is sustained and the respondent Board of Education is hereby ordered to grant the petitioner the employment increment as required by Section 5, Chapter 249 of the Laws of 1954, supra.

October 3, 1955.

VIII

ASSISTANT SUPERINTENDENT OF SCHOOLS MUST BE APPOINTED IN ACCORDANCE WITH STATUTES IN ORDER TO HAVE SENIORITY STATUS

JOHN F. X. LANDRIGAN,

Petitioner,

vs.

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

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, George W. King.

For the Respondent, H. Hugh Cohen.

The petitioner in the case prays that an Order be issued by the Commissioner of Education for his reinstatement to the position from which he was transferred; for the determination that he lawfully holds the position of either Assistant Superintendent of Schools or of an assistant to the Superintendent of Schools; and for the determination of his seniority rights.

A hearing was held in the office of the County Superintendent of Schools of Hudson County on February 24, 1955, by the Assistant Commissioner in Charge of Controversies and Disputes.

The facts in this case are as follows:

On December 1, 1949, the respondent board of education approved the assignment by the Superintendent of Schools, Dr. Howard E. Merity, of the petitioner, John Landrigan, part-time to the office of the Superintendent of Schools in addition to his regular duties as Vice-Principal of the Woodrow Wilson School. Mr. Landrigan was to be assigned special administrative and supervisory duties outlined by the Superintendent from time to time.

On July 12, 1951, the respondent board of education approved the recommendation of the Superintendent of Schools, Dr. Howard E. Merity, that several transfers be made in the school system including the petitioner "John Landrigan—from part-time to full-time Administrative Assistant."

On April 8, 1954, the respondent Board of Education passed the following resolution:

> "RESOLVED, that John F. X. Landrigan be relieved of his assignment in the office of the Superintendent of Schools and returned to his regular duties as elementary school Vice-Principal and assigned to School No. 5, effective as of April 12, 1954."

The petitioner claims that:

(1) the respondent unlawfully removed him from his office, position and duties, which were in reality the duties of an Assistant Superintendent of Schools even though the nomenclature assigned by the board to the position was Administrative Assistant to the Superintendent;

(2) that the Manual of Rules and Regulations adopted by the respondent, which were in force and effect on April 8, 1954, prohibited the transfer of petitioner without recommendation of the Superintendent of Schools to make such assignment;

(3) that the transfer under his tenure rights amounts to a reduction in rank;

(4) that the transfer was not made in good faith nor was it made as a result of due deliberation and consideration for the need of the school system, and it was not done with advice of professional staff, nor was it done in the interest of economy, but was an attempt by subterfuge to destroy his seniority rights;

(5) the duties to which he had been assigned had heretofore been performed by assistant to the Superintendent or an Assistant Superintendent of Schools. The titles and positions, which had never been abolished, and the duties thereof have been performed by the petitioner by direct assignment to such duties.

The first question which the Commissioner must consider is, "Did the petitioner hold the position of Assistant Superintendent of Schools?"

R. S. 18:6–40 provides as follows:

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

The communication of the Superintendent of Schools on July 12, 1951 said "I hereby recommend the following transfers effective immediately . . . John Landrigan from part time to full time Administrative Assistant."

The petitioner argues that this constitutes a recommendation on the part of the Superintendent of Schools and that the requirements of R. S. 18:6–40 supra were in essence complied with when the petitioner became attached full time to the Superintendent's Office—in substance, the job given him was that of Assistant Superintendent of Schools; in fact, the modifier "administrative" merely serves to exclude any connotation of clerical, secretarial or janitorial aspects.

The respondent claims that the recommendation of the Superintendent for a transfer of the petitioner from part time to full time administrative assistant did not meet the requirement of a nomination by the Superintendent for an Assistant Superintendent. Dr. Merity, Superintendent of Schools, in his testimony stated that he did not nominate Mr. Landrigan to be an Assistant Superintendent of Schools; furthermore that subsequent to July 12, 1951, he had advised Mr. Landrigan, upon the retirement of Mr. Berman, Assistant Superintendent of Schools, that if he was interested in being an Assistant Superintendent of Schools he should file an application.

Dr. Merity's testimony also shows that the petitioner did not meet the requirement of the local board of education for an Assistant Superintendent of Schools and that he had not been on the salary schedule for an Assistant Superintendent of Schools.

In the case of *Valente* vs. *Board of Education of Hoboken* (April 12, 1951), the petitioner was appointed by the Board of Education of Hoboken as an Assistant Superintendent of Schools and presumably was performing

the duties thereof without prior nomination of the Superintendent. The Commissioner of Education said:

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

'The Board may, on the nomination of the superintendent of schools, appoint assistant superintendents and shall fix their salaries . . .'

". . . The Commissioner concludes that the appointment . . . was illegal at its inception and continues to be illegal. . . ."

The evidence in this case clearly shows that the petitioner was not nominated by the Superintendent as an Assistant Superintendent of Schools and therefore under R. S. 18:6–40 supra could not have been legally an Assistant Superintendent of Schools.

The second question to be considered is, "Did the board of education create a position of Administrative Assistant to the Superintendent of Schools on July 12, 1951?"

The facts clearly indicate that there was no formal action of the respondent board of education to create such a position. However, they approved the recommendation of the Superintendent for the transfer of the petitioner from part time to full time administrative assistant and continued to pay the petitioner for such services until April 12, 1954. This action of the respondent and the testimony of members of the board of education at the hearing clearly indicate to the Commissioner that the petitioner was employed by the respondent in the position of Administrative Assistant to the Superintendent of Schools from July 12, 1951 to April 12, 1954.

The petitioner claims that he was unlawfully removed from this position and that his transfer under his tenure rights was a reduction in rank.

In the case of *Lascari* vs. *Board of Education of the Borough of Lodi, in the County of Bergen and State Board of Education, 36 N. J. Super. 426,* the Court decided:

"a. Status of Appellant's Employment Immediately Prior to His Re-Assignment to Teaching Duties on June 23, 1953:

"Appellant would have us treat this case as though both co-ordinator and vice-principal were tenure categories. He is not entitled to this concession. R. S. 18:13–16 gives tenure to only four categories—teaching, principal, assistant superintendent and superintendent—and no rights of tenure attach to a gradation within any one of those categories. *Lange v. Board of Education of Borough of Audubon, 26 N. J. Super. 83 (App. Div. 1953).* There being no tenure status as vice-principal, appellant's tenure is merely that of teacher and he has not been deprived of such status, nor has his salary been reduced. In *Greenway v. Board of Education of Camden, 129, N. J. L. 461, 465 (E. & A. 1943)* our former Court of Errors and Appeals held:

'The district boards are expressly invested with authority to transfer principals and teachers. R. S. 18:6–20. The exercise of the power rests in sound discretion, conditioned by the provisions of sec. 18:13–17. *Chees-*

man v. Board of Education of Gloucester City, 1 N. J. Misc. 318; Downs v. Board of Education of Hoboken, 12 N. J. Misc. 345, affirmed 113 N. J. L. 401. The transfer was in no sense a demotion; * * *'

"A transfer is not a demotion or dismissal. *Cheesman v. Board of Education of Gloucester City, 1 N. J. Misc. 318, 319 (Sup. Ct. 1923).*"

The Commissioner must conclude that the petitioner did not have tenure rights as Administrative Assistant to the Superintendent and that his transfer did not constitute a demotion or dismissal.

The petitioner asked the Commissioner to determine his seniority rights to the position from which he was transferred. Under R. S. 18:13–19, as amended, the pertinent part reads as follows:

". . . All persons *dismissed* shall be placed on a preferred eligible list to be prepared by the board of education of the school district, and shall be re-employed by the board of education of the school district in order of seniority as determined by the said board of education. . . . Should any superintendent of schools, assistant superintendent, principal or teacher under tenure be *dismissed as a result of such reduction* such person shall be and remain upon a preferred eligible list in the order of seniority for re-employment whenever vacancies occur and shall be re-employed by the body causing *dismissal* in such order when and if a vacancy in a position for which such superintendent, assistant superintendent, principal or teacher shall be qualified. Such re-employment shall give full recognition to previous years of service."

It has been clearly established that the petitioner did not have tenure rights in the position from which he was transferred. The petitioner further contends that under Rule 6 of the standards established pursuant to R. S. 18:13–19, which reads as follows:

"6. Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed."

he has seniority rights in the position from which he was transferred.

In the opinion of the Commissioner, it has been clearly established that the position held by the petitioner was not that of Assistant Superintendent of Schools and, therefore, the petitioner has no seniority rights as an Assistant Superintendent of Schools. The duties assigned to the petitioner as testified by Dr. Howard E. Merity, Superintendent of Schools, were of a special nature; thus they would not constitute a category as determined under the standards established pursuant to R. S. 18:13–19 supra, and therefore it is not incumbent upon the board of education to determine the petitioner's seniority rights insofar as the duties which were performed during a special assignment.

The petitioner further claims that his transfer was not made in good faith, nor was it a result of due deliberation and consideration for the needs of the

school system. The facts and the testimony clearly indicate that the action taken by the respondent board of education on April 8, 1954 was not recommended or discussed with the Superintendent of Schools prior to the meeting on April 8, 1954. The matter was not listed upon the announced agenda for the meeting. Although the board of education did not discuss this transfer with the Superintendent of Schools prior to its meeting on April 8, 1954, the Superintendent was present at the public meeting when the resolution was presented to the board of education for consideration. There is no evidence to indicate that the Superintendent objected to this transfer and the minutes of the board of education and testimony show that the resolution was adopted by a majority of all members of the board of education as required by R. S. 18:6–20, which reads as follows:

> "No principal or teacher shall be appointed, transferred, or dismissed, nor the amount of his salary fixed, no school term shall be determined, and no course of study shall be adopted or altered, nor textbooks selected, except by a majority vote of the whole number of members of the board."

For the above reasons, the Commissioner finds and determines that the petition should be dismissed.

November 18, 1955.

Appeal pending before State Board of Education.

IX

DOROTHY GIBBS,

Petitioner,

vs.

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE TOWNSHIP OF MIDDLE, CAPE MAY COUNTY,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Clifford R. Moore.

For the Respondent, Donald A. Gaver.

The petitioner was suspended from the Township of Middle High School by the principal and on December 15, 1954 was expelled from the school by the Board of Education of the Township of Middle. The petitioner claims that a request for reconsideration of the action of said Board of Education was made on her behalf, but said application was denied, that said expulsion from the high school was based upon hearsay reports, that the petitioner was not permitted to be confronted by her accusers, that said Board of Education at no time questioned any person who was alleged to be a direct witness to any of the occurrences upon which the Board acted in expelling the petitioner from high school, that a request was made on behalf of the petitioner to

have the Board of Education produce eyewitnesses of the offenses allegedly committed by the petitioner, but said Board refused.

The petitioner demands that an order be issued by the Commissioner of Education reversing the action of the Board of Education of the Townhip of Middle in expelling the petitioner from said high school and directing the Board of Education of the Township of Middle to re-admit the petitioner into said high school or such other relief as the Commissioner in his discretion may deem best and advisable.

The Board of Education in its answer admitted that the petitioner was expelled by said Board on December 15, 1954; however, it claimed that there had been full investigation and detailed consideration of all the facts. The Board of Education further claimed that it did reconsider its action of December 15, 1954 in regard to the petitioner on February 14, 1955. March 10, 1955, and heard counsel for the petitioner on March 31, 1955. The respondent further denies that the expulsion of the petitioner from high school was on hearsay reports and that it did not grant the petitioner an opportunity to be heard at a later date.

In separate defenses the respondent claimed the following:

1. The principal of the Middle Township High School made a full investigation of each incident of misconduct.
2. The breaches of misbehavior requiring disciplinary action occurred on October 1, 1954, October 27, 1954, November 1, 1954, November 17, 1954, and November 22, 1954.
3. The action of the principal and said Board of Education were based not on hearsay, but on reports of actual witnesses to each incident, and the petitioner was in each case given an opportunity to be heard by the principal of the school and the school board.
4. There is no duty or obligation upon any board of education to confront a student being disciplined with witnesses to the acts of misconduct.

A hearing was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Cape May County on August 31, 1955. at which a record of 206 pages of testimony was taken. The facts, as produced through testimony and documentary evidence, are as follows:

1. The petitioner was a junior in the Township of Middle High School.
2. On December 15, 1954, the petitioner was expelled from the Middle Township High School upon the recommendation of Mr. Robert Dotti, principal.
3. Excerpts from certified copies of the minutes of the Board of Education reveal the following:

"*Meeting of December 15, 1954.* In a letter to the Board of Education, Robert Dotti, high school principal, recommended that Dorothy Gibbs, a pupil, be expelled from high school for the following reasons:

1. Dorothy was suspended on two occasions and cautioned about her attitude and conduct.

2. Defiance of authority.
3. Willful disobedience.
4. Disorderly conduct in, to and from school and at school activities. Mr. Beidel recommended that the Board take action as requested."

"*Meeting of February 14, 1955.* After explaining the action of the Board of Education taken on December 15 to the new members, it was moved and seconded that no action be taken to rescind the previous action of the Board of Education and that the expulsion of Dorothy Gibbs be continued. Motion was unanimously passed."

"*Meeting of March 10, 1955.* Mr. Dotti reviewed the events leading up to Dorothy's suspension and later expulsion. After considerable discussion it was moved by Mr. Schafer and seconded by Mr. Metz that the former decision of the Board of Education with regard to the expulsion of Dorothy Gibbs was not to be rescinded. The motion was unanimously carried."

At the meeting of March 31, 1955, the case of Dorothy Gibbs was again discussed. The attorney for the petitioner was present at the Board meeting. The Board of Education again unanimously refused to change its action regarding the expulsion of Dorothy Gibbs.

The petitioner further contends:

1. The respondent Board of Education was under a duty to grant the petitioner a hearing at which time she could be confronted by her accusers prior to effecting her expulsion.

R. S. 18:7–57 provides as follows:

"A board may:

. . . . f. Suspend or expel pupils; . . . ."

Section 18:14–50 of the Revised Statutes provides:

"Pupils shall comply with the regulations established in pursuance of law for government of such schools, pursue the prescribed course of study and submit to the authority of the teacher. Continued and willful disobedience, open defiance of authority of the teacher or the habitual use of profanity or obscene language shall be good cause of suspension or expulsion of any pupil from school."

Section 18:13–116 of the Revised Statutes provides:

"A teacher shall hold every pupil accountable in school for disorderly conduct on the way to and from school, on the playgrounds of the school during recess and may suspend any pupil from school for good cause, which suspension shall be reported forthwith by the teacher to the board of education. In any school in which more than one teacher is employed, the principal alone may suspend a pupil."

Mr. Douglas Beidel, Superintendent of Schools, who was on December 15, 1954, acting secretary of the Board of Education due to the illness of the regular secretary, testify that on December 15, 1954 he had telephoned to Mrs. Gibbs, mother of the petitioner. After she identified herself and he identified himself, he informed her that at the meeting of the Board of Education to be held that evening the recommendation of the principal of the high school that her daughter should be expelled from school was to be considered by the Board of Education and he invited her to be present at the meeting.

Mr. Robert Dotti, principal of the high school, also testified that at 12:30 on December 15, 1954, he had informed Mrs. Gibbs by telephone that the matter of Dorothy's expulsion would be considered by the Board of Education, and she informed him that she would not be there.

Mr. George W. Dawson, President of the Board of Education, testified that on December 15, 1954, the Board of Education had before it various papers and statements regarding the petitioner, which were present in folder form, and that the Board of Education gave consideration and discussed the various incidents; that further on the evening of March 10th a Mr. Adams and Mrs. Mack appeared on behalf of Dorothy Gibbs and that Dorothy Gibbs was also present; that the various charges against her were read at this meeting, and that Dorothy Gibbs did not deny any of the charges except the one made by Mr. Beidel that she was swearing at a football game. He stated that Dorothy was asked whether the accusations and reports read were true and that she did not deny any except the one regarding the swearing on the football field.

The petitioner on cross examination admitted that she was given an opportunity to tell the Board of Education what her position was on March 10th and that she did avail herself of that opportunity. She denied the charge by Mr. Beidel that she had been swearing at a football game, and the charge by Mr. Dotti that she was involved in a stoning incident.

Sections 18:7–57, 18:13–116 and 18:14–50 *supra* of the Revised Statutes do not require a board of education to hold a public hearing before acting upon the recommendation of a principal or a superintendent in the suspension or expulsion of a pupil. However, a determination in such a case should be made only after a pupil has been given notice of the proceeding and reasonable opportunity to participate therein.

In the present case, the action to review the suspension and the expulsion of the petitioner was taken at a regular meeting of the Board of Education. The testimony of the superintendent of schools, who was also acting secretary of the Board of Education, and the high school principal clearly indicate that the parents were notified that the matter of the expulsion of the petitioner would be discussed at the meeting of the Board of Education to be held December 15th, and that they were given an opportunity to be present and to be heard by the Board of Education.

The petitioner further contends that the expulsion was based upon hearsay reports, and therefore, the action of the Board was without legal justification.

The President of the respondent Board of Education testified that the Board had before it for consideration the report of the high school principal dated December 1, 1954, which contained a summary of the misconduct of Dorothy Gibbs, the reasons for her suspension from school on October 26th

and November 23, 1954, statements from the physical education teacher, the social science teacher, statements signed by a student captain of the cheer leaders, another student, and a confirming statement from the superintendent of schools.

The testimony of the President of the Board clearly indicates that the Board had taken all of the foregoing evidence into account. Whether or not it was hearsay, it was admissible in this administrative proceeding, and the Board of Education was entitled to rely thereon if, as here, the petitioner waived her right to participate in the proceedings and to demand the presence of the witnesses for cross-examination. Once having waived that right, she could not complain if the Board denied her later request for confrontation of witnesses and opportunity to cross-examine them, particularly since she admitted her guilt as to most of the charges made against her.

Mr. Robert Dotti, principal of the high school, testified that the petitioner had been a trouble-maker, she had been defiant, antagonistic, and had a belligerent attitude toward the faculty, that the faculty and principal were always wondering what would happen next; that he had been forced to suspend the petitioner from school on October 26th, due to an incident involving some other girls, and that he had been forced to suspend her from school on November 23rd, and that in addition there had been other disciplinary problems; that in his opinion there had been a defiance of authority of the teacher; of willful disobedience on the part of the petitioner because she had refused to take tests, and to carry out the assignments and requests of teachers. On October 26th, Dorothy was suspended for being one of a group of girls that hit a small freshman girl, and at that time the petitioner and her mother were emphatically told that such conduct would not be tolerated. On October 1st, Dorothy was one of a group of girls involved in a stoning incident with the Hammonton football team; that while walking outside the building on November 17th she had spoken disrespectfully of Mr. Lazzaro, a social science teacher, when he had spoken to her regarding her conduct and informed her that she must conform to rules and regulations, she would leave the office muttering under her breath, and that he had written letters to her mother informing her that Dorothy must conform to school rules and regulations.

Miss Ella Doughty, physical education teacher, testified that she had asked a Miss Patsy Reid to go into the locker room and lock the lockers, a practice which she followed in all classes. When Miss Reid attempted to lock the locker assigned to the petitioner, she was told by the petitioner: "You better not touch my locker or I'll bend your fingers back." The next day in the study hall the petitioner came in and asked for Patsy Reid. Miss Doughty replied: "She isn't in school," so Dorothy turned and said in a voice so that the whole study hall could hear her: "It's a good thing she isn't. When I get hold of her I'll kill her."

Mr. Anthony Lazzaro, a social studies teacher, testified that on the evening of November 11th he had encountered difficulty with the petitioner, who, as an upper classman, had attempted to enter a freshman dance which was limited in attendance to members of the freshman class. He further testified that on the following Monday afternoon Dorothy made the following statement as she walked outside his room: "Look, there's old bald-headed Lazzaro," and immediately there was an uproar of laughter among a group of students.

Mrs. Mary Brown, secretary to the principal, testified that the petitioner had been in the office on several occasions for disciplinary reasons.

The testimony of the superintendent, principal and teachers supported the documentary evidence which was before the Board of Education on the night of December 15, 1954. Therefore, it is the opinion of the Commissioner that the action of the Board of Education was fully justified by the evidence.

The petitioner further contends that the action of the Board of Education was unduly harsh under the circumstances. It was stated by the Commissioner of Education in the case of *Hoey* vs. *Board of Education of Lakewood, 1938 S. L. D. 678 at 680:*

> "The high school education is of tremendous value to a boy or a girl. No girl or boy should be deprived, for such a long period of time, of the right to such an education without most serious consideration."

The Commissioner recognizes the seriousness of the question involved and feels compelled to review carefully the testimony of the petitioner.

On direct question from the attorney for the petitioner:

"Q. Did you egg this Brown girl on to fight with some youngsters there?

"A. Yes. I told her if she called me a name I would slap the devil out of her.

"Q. Now, with regard to the incident of Patsy Reid, did you have some difficulty with her?

"A. Yes.

"Q. How did that come about?

"A. We was in gym class and Miss Doughty told her to come and lock all of the lockers that were not locked and I told her not to lock mine because I would not be able to open it and I would be late for class because the locker did not work. Anyhow, after gym class I saw her lock my locker and I told her if she touched it again I would break her fingers and she went and told Miss Doughty and Miss Doughty told me that she had told her to lock it, but I said I didn't care, if she touched my locker again I would still break her fingers."

"Q. Did you make any statement regarding Mr. Lazzaro?

"A. Yes, I said: 'There's old bald-headed Lazzaro'."

"Q. Then what happened?

"A. The girls with me started to laugh so I laughed too.

"Q. There was some statement by Mr. Bidel about jumping a fence at a game and you are alleged to have sworn. Did you know anything about that at all?

"A. Yes, I jumped the fence.

"Q. Did you do any swearing?

"A. No. I didn't."

On cross-examination regarding the Patsy Reid incident:

"Q. What did you say to Miss Doughty?
"A. I said: 'It's a good thing she wasn't in school because, if she was I'd kill her.'
"Q. You said that to Miss Doughty and members of the study hall?
"A. That's right. I was going to try my best to kill her."
"Q. You were going to try to kill her—to attempt to kill her?
"A. Yes."

The local board of education has been given extensive power by the Legislature. Section 18:7–57 *supra* provides that a board of education may suspend or expel pupils. In granting this authority to a board of education, the Legislature did not relieve the board of the responsibility of carrying out the mandate of section 18:14–1 of the Revised Statutes which provides:

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

It is, therefore, incumbent upon the Board of Education to consider judiciously any action which will deny a pupil the right to continue public education. However, it is inconceivable that any school system could operate without proper discipline. It is the responsibility of the superintendent and principal to see that proper discipline is maintained in the school system. The principal is given the right to suspend a pupil, but only the Board of Education may expel a pupil.

After reviewing the testimony and all of the exhibits, the Commissioner cannot discern from the circumstances of the proceedings in this case anything to persuade him that the Board of Education of Middle Township in any respect abused its extensive discretionary authority as granted to it by the Legislature. The petition is dismissed.

February 2, 1956.

X

Joseph S. Lotarski,

In Re Recount of Ballots Cast at the Annual School Election in the Township of Lyndhurst, Bergen County on February 14, 1956

Decision of the Commissioner of Education

For the Petitioner, Anthony C. Meola.

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members to the Board of Education of the Township of Lyndhurst, Bergen County:

School Election, February 14, 1956, Full Term (3 Years)

DISTRICTS

	Military and Absentee	1	2	3	4	5	6	7	8	9	10	Total	
Joseph S. Lotarski	124	149	177	120	176	58	64	43	45	69	1,025	Tie	(3)
Daniel Coranoto	156	105	79	59	261	65	67	64	55	114	1,025	Tie	(3)
James W. Herwig	149	153	151	96	205	95	83	69	99	116	1,216		(2)
Ralph Polito	264	262	163	107	252	127	106	79	90	122	1,572		(1)
Peter A. Grisafi	249	123	67	42	107	75	68	49	43	76	899		
VOTES CAST	369	313	256	177	411	161	140	117	119	200	2,263		

A recheck of the voting machines disclosed the following results:

School Election, February 14, 1956, Full Term (3 Years)

DISTRICTS

	Military and Absentee	1	2	3	4	5	6	7	8	9	10	Total
Joseph S. Lotarski	124	149	171	120	176	58	64	43	45	69	1,019	
Daniel Coranoto	156	105	79	59	261	65	66	64	55	114	1,024	
James W. Herwig	149	153	151	96	205	95	83	69	99	116	1,216	
Ralph Polito	264	262	163	107	252	127	106	79	90	122	1,571	
Peter A. Grisafi	249	123	67	42	107	75	68	49	43	76	899	
VOTES CAST	369	313	256	——	411	161	——	117	119	200		

This recheck of the voting machines was held in the Warehouse of the Bergen County Election Board in Hackensack and was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Wednesday, February 29, 1956.

The Commissioner finds and determines that Ralph Polito, James W. Herwig and Daniel Coranoto were duly elected to membership on the Board of Education of the Township of Lyndhurst, Bergen County, for the term of three years.

March 13, 1956.

XI

In Re Recount of Ballots Cast in the Annual School Election in the Borough of Bloomingdale, Passaic County.

Decision of the Commissioner of Education

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members for the three-year term on the Board of Education of the Borough of Bloomingdale, Passaic County:

Asa Davenport	85 votes
Howard Boob	64 votes
E. Annesley Wade	89 votes
Gordon Struble	71 votes

Howard Boob petitioned the Commissioner for a recount of the ballots for the following reasons:

> "On at least 12 ballots which, if declared void, would alter the results of the election, I having lost by 7 votes to Gordon Struble who ran on a 'write-in' campaign, a pencil line was drawn through my name and Gordon Struble's name was either written alongside or on the bottom of the ballot. If these ballots were counted or had not been erroneously counted, they would have changed the results of the election."

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on February 29, 1956, in the office of the County Superintendent of Schools of Passaic County.

The following shows the results of the recount of the uncontested ballots:

Asa Davenport	72 votes
Howard Boob	63 votes
E. Annesley Wade	76 votes
Gordon Struble	57 votes

One ballot could not be counted because the voter had failed to place a cross (×) plus (+) or check (√) mark in the square at the left of the name of any candidate.

Sixteen ballots were referred to the Commissioner for determination. These ballots were divided into the following categories:

Exhibit A—8 ballots, which were properly marked with a cross (×) plus (+) or check (√) mark in the square to the left of the names of three candidates. A line was drawn through the name of Howard Boob.

Exhibit B—4 ballots which were voted with a cross (×) plus (+) or check (√) mark in the square to the left of the names of three candidates. A line was drawn through the name of Howard Boob and the name of Gordon Struble was writtten to the right of the printed name of Howard Boob.

Exhibit C—1 ballot with a check mark in the square to the left and before the names of two candidates. A line was drawn through the name of Howard Boob and Gordon Struble was written on the line to the right of the name of Howard Boob. The ballot was not voted for either Howard Boob or Gordon Struble.

Exhibit D—1 ballot with the name of Gordon Struble written on the line available for personal choice candidates. After the name "Gordon Struble" the words "three years" were written.

Exhibit E—1 ballot with the name "Gordon Struble" written on the line for personal choice candidates and an (×) placed in the square to the left of the name of Gordon Struble with an additional (×) placed to the left of the square.

Exhibit F—1 ballot with a cross (×) in the square to the left of the names of two candidates and an (×) outside the square for a third candidate.

Section 18:7–31 of the Revised Statutes reads in part as follows:

"To vote for any person whose name appears on this ballot mark a cross (×) plus (+) or check (√) mark with black ink or black pencil in the place or square at the left of the name of such person.

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

The Commissioner has held that in the absence of any provision in the School Law regarding other marks on ballots or erasures, ballots should be counted if properly marked in the square even though other marks or erasures appear on the ballots, unless the other markings are extremely irregular with the intention to make it other than a secret ballot. *In re East Rutherford Annual School Election*, 1938 S. L. D. at p. 186. While the General Election Law is not binding in any school election, the Commissioner of Education in counting and voiding ballots in school election controversies can look to the General Election Law for guidance. Referred ballots have been examined in the light of the foregoing.

Exhibit A—8 ballots properly marked for three candidates with a line drawn through the name of Howard Boob. The Commissioner of Education *In re Recount of Ballots Cast in the Annual School Election in the Township of Union, 1939 S. L. D. 92,* said:

"This ballot is properly marked for three candidates but a line was drawn through the name of a fourth candidate. This ballot must be counted. See *In re Middlesex Borough Annual School Election, 1938 S. L. D. at p. 162.*"

It is the opinion of the Commissioner that this line did not identify or distinguish the ballot and, therefore, having reached that conclusion, the ballot must be counted.

Exhibit B—4 ballots where a line was drawn through the name of Howard Boob and the name of Gordon Struble written in. The ballot was properly marked with a cross (×) plus (+) or check (√) mark in the square to the left of the name.

Section 18:7–31 supra, clearly states: "To vote for any person whose name is not printed upon this ballot, write or paste the name in the blank space and mark a cross (×) plus (+) or check (√) mark with black ink or black lead pencil in the space or square to the left of the name of such person."

In re Edward Stanton vs. *Englewood Cliffs Annual School Election*, 1938 S. L. D. 166, the Commissioner said:

"While it is the opinion of the Commissioner that a line drawn through the name did not affect the votes of other candidates for the three-year term, there could be no grounds for rejecting the entire ballot and thereby depriving candidates of votes which they received for the term of two years when such votes were legally recorded."

It is the opinion of the Commissioner that these ballots were not properly voted in accordance with section 18:7–31, *supra*, and, therefore, cannot be counted as a vote for either Howard Boob or Gordon Struble. However, the ballots must be counted for the other properly marked candidates.

Exhibit C—1 ballot with a line drawn through the name of Howard Boob, the name of Gordon Struble written on the same line with no cross (×) plus (+) or check (√) mark in the square to the left of the name of Howard Boob or Gordon Struble.

This ballot cannot be counted as a vote for either Howard Boob or Gordon Struble since the ballot is not properly marked. However, the ballot will be counted for those candidates for which it is properly marked. *Stanton* vs. *Englewood Cliffs Annual School Election, supra.*

Exhibit D—1 ballot with the name of Gordon Struble written in the space provided for personal choice candidates and properly marked with a cross (×) in the squares to the left of the names. The words "three years" were written after the name of Gordon Struble.

It is the opinion of the Commissioner that such markings could be used to identify or distinguish the ballot and thereby make it other than a secret ballot. After reaching this conclusion, the ballot cannot be counted. *Section 19:16–3b of the Revised Statutes.*

Exhibit E—1 ballot properly marked with a cross (×) inside the square outside of the name of Gordon Struble and an additional cross (×) was placed to the left of the square. The Commissioner held *In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of Union, Union County:*

"This ballot is properly marked with a cross mark in the square but also is marked with a cross mark to the left of

the candidates' names. This ballot must be counted because, in the opinion of the Commissioner, the extra cross marks were not intended to distinguish the ballot."

Exhibit F—1 ballot with two names properly marked with an (×) inside the square, one (×) not in the square.
It is the opinion of the Commissioner that this ballot is properly marked for two candidates and the cross (×) outside the square to the left of the name of the third candidate cannot be considered as a mark to identify or distinguish the ballot. Having reached that conclusion, the ballot must be counted. Section 19:16–3b *supra*.

The following is a tabulation of the results with the exhibits counted:

	End of Recount	*Exhibits* A	B	C	D	E	F	*Total*
Asa Davenport	72	7	4	1			1	85
Howard Boob	63	1					1	65
E. Annesley Wade	76	6	4	1				87
Gordon Struble	57	8				1		66

The Commissioner finds and determines that Asa Davenport, E. Annesley Wade and Gordon Struble were elected to the Board of Education of the Borough of Bloomingdale, Passaic County, for the term of three years.

March 23, 1956.

XII

In Re Recount of Ballots Cast in the Annual School Election in the Township of South Hackensack, Bergen County

Decision of the Commissioner of Education

For Anthony Zisa, George W. Weleck.

Following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members of the Board of Education of the Township of South Hackensack, in the County of Bergen:

Anthony Zisa	174 votes
Fred Vincent	182 votes
Ann Kennis	185 votes
Wanda Fritsch	161 votes
Lillian Furbacher	175 votes
Dominick Gallitano	168 votes

Anthony Zisa petitioned the Commissioner for a recount on the grounds that 3 ballots, which had been voted for him, were not counted by the election board, and this was a sufficient number, if counted, to change the results of the election.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on February 27, 1956, in the office of the County Superintendent of Schools of Bergen County.

The following shows the results of the recount of the uncontested ballots:

Anthony Zisa	177 votes
Fred Vincent	181 votes
Ann Kennis	187 votes
Wanda Fritsch	163 votes
Lillian Furbacher	173 votes
Dominick Gallitano	167 votes

Twelve ballots were disputed during the recount. Nine of these ballots were voided by agreement, one of which the voter had voted for six candidates, and 8 ballots had no cross (×) plus (+) or check (√) mark in the square to the left of the name of any candidate. They were marked with check (√) marks to the right of the names of candidates. Three ballots were referred to the Commissioner for determination.

Section 18:7–31 of the Revised Statutes reads in part as follows:

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

The Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×) plus (+) or check (√) mark appears in the square before the name because this is explicitly required by statute. See *In re Annual School Election in Tabernacle Township, Burlington County*, 1938 S. L. D. at p. 190. The Commissioner has held also that in the absence of any provision in the School Law regarding other marks on ballots or erasures, ballots should be counted when properly marked in the squares even though other marks or erasures appear on the ballot, unless the other markings are extremely irregular with intention of making it other than a secret ballot. *In re East Rutherford Annual School Election*, 1938 S. L. D. at p. 186. While the General Election Law is not binding in any school election, Commissioners of Education in counting and voiding ballots in school election controversies have looked to the General Election Law for guidance. Section 19:16–3a and c of the General Election Law provide:

> "In canvassing the ballots the district board shall count the votes as follows:
>
> a. If proper marks are made in the squares to the left of the names of any candidates in any column and the total number voted for, for each office, does not exceed the number of candidates to be elected to each office, a vote shall be counted for each candidate so marked.

c. If no marks are made in the squares to the left of the names of any candidates in any column, but are made to the right of said names, a vote shall not be counted for the candidates so marked, but shall be counted for such other candidates as are properly marked; but if the district board canvassing the ballot or the county board, justice of the Supreme Court or other judge or officer conducting a recount thereof, shall be satisfied that the placing of the marks to the right of the names was intended to identify or distinguish the ballot, the ballot shall be declared null and void."

The three ballots were referred to the Commissioner with the irregular markings in the square at the left of the names of three candidates. One ballot was marked with a diagonal line, a second ballot with a check and cross, and a third ballot with checks which were not inside the squares opposite the names of candidates. It is not necessary for the Commissioner to determine in this election whether these ballots should be counted or not. If all the ballots with these marks were added to the above tabulation, there would be no change in the relative order of the candidates.

It is the opinion of the Commissioner that Ann Kennis, Fred Vincent and Anthony Zisa were elected to the Board of Education of the Borough of South Hackensack for the three-year term at the Annual School Election held on February 14, 1956.

March 27, 1956.

XIII

In Re Recount of Ballots Cast at the Annual School Election in the Borough of Union Beach, Monmouth County

Decision of the Commissioner of Education

Following are the announced results of the Annual Meeting of the legal voters held on February 14, 1956, for the election of members on the Board of Education of the Borough of Union Beach, County of Monmouth:

William F. Schober	287 votes
Ethel Varlese	250 votes
Frederick L. Everson, Jr.	250 votes
Elinore Jouaneau	296 votes
Walter L. L'Hotta	177 votes

Frederick L. Everson, Jr., petitioned the Commissioner of Education for a recount of the ballots cast at the Annual School Election based on the fact that he was one of the candidates who tied for election to the three-year term.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on February 27, 1956, in the office of

the County Superintendent of Schools, Freehold. The following shows the result of the recount of the uncontested and absentee ballots:

William F. Schober	283 votes
Ethel Varlese	247 votes
Frederick L. Everson, Jr.	248 votes
Elinore Jouaneau	296 votes
Walter L. L'Hotta	173 votes

One ballot was declared void by the election board for improper printing and another ballot was given to a voter as a replacement. Verification of this was made by checking the poll list and ballot numbers. Nine ballots were contested during the recount. One ballot was voided by agreement because the voter had voted for six people while the instructions called for voting for three. Two ballots were declared void because the voter had voted for five, and two ballots were declared void because the voter had voted for four candidates. One ballot was voided because no cross (×) plus (+) or check (√) appeared in the square to the left of the name of the candidate. Check marks were placed to the right of the name.

Section 18:7–31 of the Revised Statutes reads as follows:

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

Section 19:16–3 of the Revised Statutes reads in part as follows:

"In canvassing the ballots the district board shall count the votes as follows:

(a) If proper marks are made in the squares to the left of the names of any candidates in any column and the total number voted for, for each office, does not exceed the number of candidates to be elected to each office, a vote shall be counted for each candidate so marked. . . .

(c) If no marks are made in the squares to the left of the names of any candidates in any column, but are made to the right of said names, a vote shall not be counted for the candidates so marked, but shall be counted for such other candidates as are properly marked; but if the district board canvassing the ballot or the county board, judge of the Superior Court or other judge or officer conducting a recount thereof, shall be satisfied that the placing of the marks to the right of the names was intended to identify or distinguish the ballot, the ballot shall be declared null and void."

The three ballots referred to the Commissioner were classified in the following categories:

Exhibit A—A check mark placed in the square to the left of the names of two candidates with a check (√) mark to the right of the name of one of the candidates.

It is the opinion of the Commissioner that this ballot must be counted, and that this additional check (√) mark was not used as a device to distinguish the ballot with the intention of making it other than a secret ballot. Having reached this conclusion, this ballot must be counted. This determination is in line with previous decisions of Commissioners of Education referred to in this decision and section 19:16–3b of the Revised Statutes.

Exhibit B—1 ballot properly voted for three candidates with an erasure to the left of one of the other candidates.

It is the opinion of the Commissioner that the erasure was not used as a device to distinguish or identify this ballot. Therefore, the ballot must be counted. The Commissioner has held that in the absence of any provision in the School Law regarding other markings on ballots or erasures, ballots should be counted if properly marked in the square even though other marks or erasures appear on the ballot, unless such other markings are extremely irregular with the intention to make it other than a secret ballot. *In re East Rutherford Annual School Election*, 1938 S. L. D. 186. Section 19:16–4 of the Revised Statutes reads as follows:

"In counting the ballots the board shall deem null and void ballots which are wholly blank, or on which more names have been marked for every office than there are persons to be elected to such office, and on which both 'Yes' and 'No.' . . .

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

Exhibit C—1 ballot marked with both a check (√) mark and cross (×), in the square at the left of the names of two candidates.

It is the opinion of the Commissioner that this ballot was properly marked with a cross (×) in the square to the left of the name of the candidate and that the additional check (√) mark was not used to identify or distinguish the ballot, and, therefore, it must be counted. *In re East Rutherford Annual School Election*, *supra*, Section 19:16–4 of the Revised Statutes, *supra*.

The following is the tabulation of the ballots counted at the recount and the ballots referred to the Commissioner:

	End of Recount	*Exhibits* A	B	C	*Total*
William F. Schober	283		1	1	285
Ethel Varlese	247	1		1	249
Frederick L. Everson, Jr.	248		1		249
Elinore Jouaneau	296	1			297
Walter L. L'Hotta	173		1		174

The Commissioner finds and determines that Elinore Jouaneau and William Schober were elected for a term of three years and that a tie exists between Ethel Varlese and Frederick L. Everson, Jr., for membership on the Board of Education of the Borough of Union Beach. Therefore, the County Superintendent of Schools of Monmouth County is authorized, pursuant to section 18:4–7d of the Revised Statutes to appoint a member to the Union Beach Board of Education to serve until the organization meeting after the next annual school election.

March 27, 1956.

XIV

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

Decision of the Commissioner of Education

For Mary D. Chiara, Mr. Henry Handleman.

For Lillian Morrison, Mr. Irving W. Rubin.

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members of the Board of Education of the Borough of Jamesburg, Middlesex County:

Three-Year Term

Robert E. Jeffery	167 votes
Guido J. Brigiani	168 votes
Mary D. Chiara	148 votes
Lillian Morrison	145 votes

Mrs. Lillian Morrison petitioned the Commissioner for a recount of the ballots cast on the grounds: That 16 ballots were set aside and not counted and that it was her belief that at least 4 or 5 of these ballots should have been counted in her favor.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Wednesday, March 14, 1956, in the office of the County Superintendent of Schools in New Brunswick, New Jersey.

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

Robert E. Jeffery	145 votes
Guido J. Brigiani	149 votes
Mary D. Chiara	137 votes
Lillian Morrison	127 votes

Forty-five ballots were referred to the Commissioner for determination. These were arranged in the following categories:

Exhibit A—12 ballots marked with a cross (×) plus (+) or check (√) mark in the square before the names of 4 candidates for three-year term.

Exhibit B—2 ballots with no cross (×) plus (+) or check (√) mark in the square to the left of the names of any candidates for the three-year term—marking at the left of the names of the candidates.

Exhibit C—24 ballots with a name written as a personal choice for the two-year term without the voter voting for the person in the square to the left of the names of the candidates.

Exhibit D—1 ballot marked with a cross (×) in the square to the left of the names of three candidates, the square to the left of the name of the fourth candidate blocked out with pencil.

Exhibit E—2 ballots with a name written in as personal choice, no cross (×) plus (+) or check (√) mark in the square to the left of the written name.

Exhibit F—1 ballot properly marked for two candidates for the three-year term with the word "Yes" written in the square for membership for the unexpired two-year term.

Exhibit G—1 ballot properly voted for three candidates for the three-year term with the name of Mrs. M. Leif written in for the two-year unexpired term with a cross (×) in the square to the left of Mrs. Leif's name, and a line drawn after the name.

Exhibit H—1 ballot properly marked for three candidates for the three-year term and in the space provided for a name to be written for the unexpired two-year term heavy black crayon marking appears.

Exhibit I—1 ballot not marked with a cross (×) plus (+) or check (√) mark in the square for two candidates for the three-year term. The mark appears to be a poorly made letter or careless combination of symbols.

The attorney representing the petitioner at the recount requested that the Commissioner give consideration to invalidating the election because of an irregularity in the ballot. The ballot used at the election was at variance in some particulars with the illustration of the form of ballot in section 18:7–31 of the Revised Statutes. There was no square printed at the left of the line provided for names to be written for candidates for membership on the Board of Education for the unexpired two-year term. The election board, upon finding that the ballots were lacking the square, before the election, drew a square in black ink in the space on the line where the name of a candidate for the two-year term could be written. Although the square was not perfectly drawn, it provided a space for the voter to cast his vote. The directions for voting conform to the illustration of the form of ballot.

It is well established that irregularities which are not shown to affect the results of an election will not vitiate the election. The following is quoted from *15 Cyc. 372* in the decision of the Commissioner in the case of *Mundy* vs. *Board of Education of the Borough of Metuchen*, 1938 S. L. D. at 194, quoted in the decision of the Commissioner *In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of Ocean, Monmouth County*, decided March 22, 1950:

> "It is well established that irregularities which are not shown to affect the results of an election will not vitiate the election. The following is quoted from *15 Cyc. 372*, in a decision of the Commissioner in the case of *Mundy vs. Board of Education of the Borough of Metuchen*, 1938 Edition of School Law Decisions, at p. 194:
>
> > 'Where an election appears to have been fairly and honestly conducted, it will not be invalidated by mere irregularities which are not shown to have affected the result, for in the absence of fraud the courts are disposed to give effect to elections when possible. And it has been held that gross irregularities when not amounting to fraud do not vitiate an election.'
>
> "The following is quoted from Hackett vs. Mayhew, 62 N. J. L. 481, similarly quoted *In re Canvassers' Returns*, 125 N. J. L. 115, excerpts from which are found on pages 148 and 149, respectively, of N. J. S. A. Title 19:
>
> > 'It was never the legislative intent, nor is it the proper statutory construction, to defeat the vote of the citizen by an act for which he was neither directly nor indirectly responsible, nor for a negligent or willful act of a municipal official, nor for the misconception of any legal duty or form required in the preparation of ballots issued by such an official for distribution to the voters.'
>
> "In the decision of the Supreme Court *In re Clee*, 119 N. J. L. 310, at page 330, it was said:
>
> > 'It is the duty of the court to uphold an election unless it clearly appears that it was illegal. *Love vs. Freeholders*, 35 N. J. L. 269, 277; public policy so ordains. *Cleary vs. Kendall*, supra.'

"The following is quoted from *In re Smock*, 68 A. (2d), 508:

'Obviously not every infraction of the election laws will invalidate the contest.'

"At page 322 of *In re Clee, supra,* it is said:

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

"The Commissioner is convinced by the authorities quoted above that he must uphold this election for the reason that, in his opinion, the failure to print a square at the left of the candidates' names did not affect the result of the election. To hold otherwise would be unfair to the candidates who ran for office and to the citizens who voted for them. Furthermore, to hold otherwise would make it possible for an unscrupulous official, when he thought an election might go against the candidates of his choice, to invalidate the election by causing ballots to be printed which are not technically correct."

Section 18:7–31 of the Revised Statutes reads in part as follows:

"To vote for any person whose name appears on this ballot mark a cross (×) or plus (+) or check (√) mark with black ink or black pencil in the place or square at the left of the name of such person.

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

The Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×) plus (+) or check (√) mark appears in the square before the name because this is explicitly required by law. See *In re Annual School Election in Tabernacle Township, Burlington County,* 1938 S. L. D. 190. The Commissioner has held also that in the absence of any provision in the School Law regarding other marks on the ballot or erasures, ballots should be counted if properly marked in the square even though other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the intent to make it other than a secret ballot. See *In re East Rutherford Annual School Election,* 1938 S. L. D. at p. 186.

While the General Election Law is not binding at any school election, the Commissioner of Education in counting and voiding ballots in school election controversies has looked to this law for guidance. The referred ballots have been examined in the light of the foregoing.

Exhibit A—12 ballots marked with a cross (×) plus (+) or check (√) mark in the square before the names of four candidates. These ballots cannot be counted. See *In re Clementon Township Annual School Election*, 1938 S. L. D. at p. 181; also see *section 19:16–3a* of the Revised Statutes and 18:7–31 *supra.*

Exhibit B—2 ballots with no cross (×) plus (+) or check (√) mark in the square to the left of the names of any candidates for the three-year term—marking at the left of the names of the candidates. These ballots cannot be counted because there is no (×) plus (+) or check (√) mark in the square to the left of the name. See *In re Clementon Township Annual School Election*, 1938 S. L. D. at p. 181; also see *section 19:16–3a* of the Revised Statutes.

Exhibit C—24 ballots properly marked with a cross (×) plus (+) or check (√) mark in the square to the left of the name of three candidates for the three-year term with the name written in as a personal choice for the unexpired two-year term without putting a cross (×) plus (+) or check (√) mark before the name written in for the two-year term. It is the opinion of the Commissioner that the name written in as a personal choice for the two-year term was not used as a device to distinguish the ballots with the intention of making them other than secret ballots. Having reached this determination, these ballots must be counted. This conclusion is in line with previous decisions of the Commissioner of Education referred to in this decision and in section 19:16–4 of the Revised Statutes, which reads in part as follows:

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

Exhibit D—1 ballot properly voted for three candidates for the three-year term. The square at the left of the fourth candidate was marked out with black pencil. It is the opinion of the Commissioner that this marking in the square was not used as a device to distinguish the ballot with the intention of making it other than secret. Having reached this conclusion, the ballot must be counted. See section 19:16–4 of the Revised Statutes, *supra.*

Exhibit E—2 ballots where the name was written on the line for personal choice candidate for three years, but no cross (×) plus (+) or check (√) mark was placed in the square before the name. The ballots were properly voted for other candidates for the three-year term. It is the opinion of the Commissioner that writing a name in the personal choice space was not intended as a device to distinguish the ballot with the intention of making it other than secret. Having reached this conclusion, this ballot must be counted. See section 19:16–4 of the Revised Statutes, *supra.*

Exhibit F—1 ballot properly marked for two candidates for the three-year term. The word "yes" written in the square to the left of the space provided for the unexpired two-year term. It is the opinion of the Commissioner that this was not used as a device to distinguish this ballot to make it other than secret. Having reached this conclusion, the ballot must be counted. See section 19:16–4 *supra.*

Exhibit G—1 ballot properly marked for the three-year term with a name written in for the two-year term with a cross (×) in the square to the left of the name for the two-year term with a straight line drawn after the name. It is the opinion of the Commissioner that this mark was not used to distinguish the ballot with the intention of making it other than secret. Having reached this conclusion, the ballot must be counted. See section 19:16–4 of the Revised Statutes, *supra.*

Exhibit H—1 ballot properly marked for three candidates for the three-year term; however, in the space provided for a candidate for the unexpired two-year term having a black crayon or pencil marking appear. It is the opinion of the Commissioner that such marking could have been used as a device to identify or distinguish the ballot and, having reached this conclusion, the ballot cannot be counted.

Exhibit I—1 ballot not marked with a cross (×) plus (+) or check (√) mark but marked with a marking which in the opinion of the Commissioner was either a poorly made letter or a careless combination of symbols. The Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×) plus (+) or check (√) mark appears in the square before the name because this is explicitly required by law. *Annual School Election in Tabernacle Township, Burlington County*, 1938 S. L. D. 190. This ballot cannot be counted.

A check was made with the Middlesex County Board of Elections office in New Brunswick and the following letter was received by the Commissioner:

"Mr. Rowland Oliver, Sec.
Board of Education
Jamesburg, New Jersey.

"Dear Mr. Oliver:

The following is a statement of the results of the Civilian and Military Absentee Ballots, voted in the School Election, February 15, 1956:

Robert E. Jeffery		—
Guido J. Brigiano		—
Mary D. Chiara		—
Lillian Morrison		1
Questions:	1 Yes	1
	No	—
	2 Yes	—
	No	—
	3 Yes	—
	No	1

Middlesex County Board of Elections,
WALTER J. RIELLEY, Secretary."

The following is the tabulation of the referred ballots:

	Military Absentee	*End of Recount*	*Exhibits* *C*	*D*	*E*	*F*	*G*	*H*	*I*	*Total*
Robert E. Jeffery		145	16	1	2	1	1	1		167
Guido J. Brigiano		149	17	1	1		1			169
Mary D. Chiara		137	9	1				1		148
Lillian Morrison	1	127	16		1		1	1		147

The Commissioner finds and determines that Robert E. Jeffery, Guido J. Brigiano and Mary D. Chiara were elected to membership on the Board of Education of the Borough of Jamesburg, Middlesex County, for the three-year term.

March 28, 1956.

XV

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWN OF HAMMONTON, ATLANTIC COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

For Mrs. Jeanne Cutler, Clarence J. Mattioli.

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members of the Board of Education of the Town of Hammonton, Atlantic County:

SCHOOL ELECTION, FEBRUARY 14, 1956, THREE-YEAR TERM

	Mil. and Absentee	*Polling Districts* 1	2	3	*Total*
P. A. Spinelli		34	161	56	251
Carl G. Monastra	2	76	260	102	440
Samuel S. Perrone		64	141	52	257
Charles B. Scoia	2	67	204	92	265
Joseph R. Palma		104	281	125	510
Helen Willis Klitch	1	79	287	119	486
Frank S. Gazzara		47	87	79	213
Jeanne Cutler	3	74	257	103	437

Mrs. Jeanne Cutler and Mr. Samuel Perrone petitioned the Commissioner for a recheck of the voting machines on the grounds that there was a great deal of confusion at the time of the reading of the voting machines by those in attendance.

A recheck of the voting machines was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Warehouse of the Atlantic County Board of Elections in Atlantic City on March 22, 1956, which recheck disclosed the following results:

SCHOOL ELECTION, FEBRUARY 14, 1956, THREE-YEAR TERM

	Mil. and Absentee	*Polling Districts* 1	2	3	*Total*
P. A. Spinelli		34	161	56	251
Carl G. Monastra	2	76	260	102	440
Samuel S. Perrone		64	141	52	257
Charles B. Scoia	2	67	204	92	265
Joseph R. Palma		104	281	125	510
Helen Willis Klitch	1	79	287	119	486
Frank S. Gazzara		47	87	79	213
Jeanne Cutler	3	74	257	103	437

The Commissioner finds and determines that Joseph R. Palma, Helen Willis Klitch and Carl G. Monastra were duly elected to membership on the Board of Education of the Town of Hammonton, Atlantic County, for the term of three years.

April 2, 1956.

XVI

Eleanor DiPietro

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

Decision of the Commissioner of Education

For the Petitioner, Charles Rizzi, Esq.

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for election of members to the Board of Education of the Township of Stratford:

Leon N. Schultz	119 votes
Eleanor DiPietro	140 votes
John W. Mattson	142 votes
Frederick W. Clark	126 votes
Eleanor I. Townsend	160 votes
Peter Prychka	167 votes

Eleanor DiPietro, a candidate for election for the three-year term, petitioned the Commissioner for a recount of the ballots for the following reasons: 6 ballots were marked by voters in dark blue ink and the election board members, upon examination of said ballots, declared the 6 ballots to be void by reason of the fact that they were not marked with black ink in accordance with school laws; 5 of the 6 ballots contained votes for the petitioner, and if these ballots had been counted in favor of the petitioner by the election board members the petitioner would have obtained a plurality over John W. Mattson and would have, therefore, been successfully elected a member of the Stratford Township Board of Education for the three-year term.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Friday, March 16, 1956, in the office of the County Superintendent of Schools of Camden County.

The following shows the results of the recount of the uncontested ballots:

Leon N. Schultz	118 votes
Eleanor DiPietro	138 votes
John W. Mattson	139 votes
Frederick W. Clark	120 votes
Eleanor I. Townsend	158 votes
Peter Prychka	163 votes

Twenty ballots were contested during the recount. These 20 ballots were divided into the following categories:

Exhibit A—4 ballots which did not contain any cross (×) plus (+) or check (√) mark in the square to the left of the candidates' names. They did contain a cross (×) plus (+) or check (√) mark to the right of the candidates' names.

Exhibit B—4 ballots where the voter had placed a cross (×) plus (+) or check (√) mark in the squares opposite the names of four candidates with the instructions indicating that only three candidates were to be elected.

Exhibit C—1 ballot where the voter voted for five candidates where the instructions indicated to vote for only three.

Exhibit D—5 ballots marked with a cross (×) plus (+) or check (√) mark in the square to the left of the names of the candidates with blue ink instead of black as required in the instructions to voters.

Exhibit E—1 ballot voted with a cross (×) in the squares to the left of the names of three candidates for the three-year term with an additional plus (+) to the left of the square also voted in blue ink when the instructions to voters called for black ink.

Exhibit F—1 ballot with a cross (×) to the left of the names of three candidates and with a check (√) mark immediately preceding the names of the same three candidates.

Exhibit G—3 ballots with irregular markings.

Exhibit H—1 ballot voted for four people with a line drawn through the name of one.

Section 18:7–31 of the Revised Statutes reads in part as follows:

"To vote for any person whose name appears on this ballot mark a cross (×) or plus (+) or check (√) mark with black ink or black pencil in the place or square to the left of the name of such person.

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

The Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×) plus (+) or check (√) mark appears before the name because this is explicitly required by statute. See *In re Annual School Election in Tabernacle Township, Burlington County*, 1938 S. L. D. p. 190. The Commissioner has held also that in the absence of any provisions of School Law regarding other marks on the ballots or erasures, ballots should be counted if properly marked in the squares even though other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the intention to make it other than a secret ballot. *In re East Rutherford Annual School Election, 1938 S. L. D. at p. 186.* While the General Election Law is not binding at any school election, the Commissioners of Education in counting and voiding ballots in school controversies have looked to the General Election Law for guidance.

The referred ballots have been examined in light of the foregoing. The Commissioner concurs in the agreement reached at the recount to void *Exhibits A, B, C and H,* since in *Exhibit A* 4 ballots had no cross (×) plus (+) or check (√) mark made in the square to the left of the candidates' names as required by statute. Exhibit B—4 ballots where the voter placed a cross (×) plus (+) or check (√) mark in the square in front of the names of four candidates when only three were to be voted for. Exhibit C, where the voter placed a check (√) mark in the square before the names of five candidates with only three to be elected. Exhibit H where the voter voted for four candidates. See *In re Clementon Township Annual School Election, 1938 S. L. D. at p. 181;* also section 19:16–3c of the Revised Statutes. Exhibit D—5 ballots referred to the Commissioner which are voted in blue ink. Section 18:7–31 *supra* provides that a ballot must be voted in black ink or black lead pencil. These ballots were rejected by the election board since the board was of the opinion that they did not conform to the requirements of the School Law. The General Election Law, which is not binding upon school elections but which the Commissioner has relied upon for reference in deciding school election controversies, provides that no ballot shall be declared invalid by reason of the fact that a mark made with ink or with lead pencil appears to be other than black. It is the opinion of the Commissioner that section 18:7–31 is directory and not mandatory legislation; furthermore, that the ballots in question were voted with blue-black ink and that they are not voted with a color which would tend to identify or distinguish the ballots. Having reached this conclusion, the ballots must be counted. Section 19:16–4. *Exhibit E* 1 ballot voted with a cross (×) in the square to the left of the names of three candidates for the three-year term with an additional plus (+) to the left of the square also voted in blue ink when the instructions to voters called for black ink, and *Exhibit F* the ballot with an (×) in the square before the names of three candidates and a check mark after the square before the names of the candidates. In the decision *In the Matter of Recount of Ballots Cast in the Annual School Election in the Township of Union,* 1939 S. L. D. 95, the Commissioner said:

> "*Exhibit F*—this ballot is properly marked with a cross mark in the square, but also is marked with cross marks to the left of the candidates' names. This ballot must be counted because, in the opinion of the Commissioner, the extra cross marks were not intended to distinguish the ballot."

It is the opinion of the Commissioner that these checks were not placed as a device to distinguish or identify the ballot to make it other than a secret ballot. See 19:16–4. *Exhibit G*—3 ballots with irregular markings. It is the opinion of the Commissioner that these ballots should be counted.

They are marked with a cross (×) and a check (√) mark; however, the intent of the voter is clear and the ballots must be counted. The additional marks are not used as a means of identification or distinguishing the ballots in order to make them other than secret. *In re East Rutherford Annual School Election,* 1938 S. L. D. at p. 186; see also 19:16–4.

Following is the tabulation of referred ballots:

	Recount	Exhibits D	E	F	G	Total
Leon N. Schultz	118	1	0	1	0	120
Eleanor DiPietro	138	2	1	0	2	143
John W. Mattson	139	2	0	1	1	143
Frederick W. Clark	120	4	1	1	3	129
Eleanor I. Townsend	158	2	0	0	1	161
Peter Prychka	163	4	1	0	1	169

The Commissioner finds and determines that Peter Prychka and Eleanor I. Townsend were elected to the Board of Education of the Borough of Stratford, Camden County, for a term of three years, and that there is a tie between John Mattson and Eleanor DiPietro for membership on the Board of Education for a term of three years. Accordingly, the County Superintendent of Schools of Camden County is authorized, pursuant to section 18:7–4d of the Revised Statutes, to appoint a member to serve on the Stratford Township Board of Education until the organization meeting following the next annual school election.

April 2, 1956.

XVII

Edward Desmet

Stephen M. Patchel

In Re Recount of Ballots Cast at the Annual School Election in the Borough of West Paterson, Passaic County.

Decision of the Commissioner of Education

For Messrs. Desmet, Kelly and Pachel.
Mr. Herbert Nochumson and Mr. Joseph Harrison.

For the Board of Education, Mr. Edward A. Haffar.

The following are the announced results of the annual meeting of the legal voters held on February 14, 1956, for the election of members of the Board of Education of the Borough of West Paterson, Passaic County:

Three-Year Term

Edward G. Kelly	522 votes
Kenneth J. Hersinger	517 votes
John M. Ferarry	506 votes
Edward J. Desmet	494 votes
Eleanor C. DeStefano	470 votes
Stephen M. Patchel	468 votes

Edward Desmet and Stephen M. Patchel petitioned the Commissioner for a recount of the ballots cast on the following grounds: Certain ballots, the exact number of which were unknown to the petitioner, were discarded and declared void and of no account because the marks on the ballots were made to the right of the name instead of the left despite the fact that intention of the voter was clear; certain ballots were discarded and declared void because of certain errors allegedly made in voting on the budget items and votes for candidates as entered on said ballots were not counted; as a result of the number of ballots to be counted, the difficulty of counting paper ballots, the aforesaid discarding of ballots and the closeness of the election results, it is their belief that a mistake could have been made in the tabulation which could change the election results as it affects the petitioners.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Tuesday, March 27, 1956, in the office of the County Superintendent of Schools of Passaic County, Paterson, New Jersey.

The announced results at the close of the recount were as follows:

Edward G. Kelly	519 votes
Kenneth J. Hersinger	515 votes
John M. Ferarry	502 votes
Edward J. Desmet	491 votes
Eleanor C. DeStefano	467 votes
Stephen M. Patchel	466 votes

There were 11 ballots voided by agreement at the recount and 6 ballots were referred to the Commissioner for determination.

The Commissioner concluded that the ballots voided by agreement could not be counted for the following reasons:

1 ballot contained votes for 6 candidates, while the instructions to voters indicated that 3 were to be elected.

9 ballots had no cross (×) plus (+) or check (√) mark in the place or square to the left of the names of candidates as required by section 18:7–31 of the Revised Statutes which reads as follows:

"To vote for any person whose name appears on this ballot mark a cross (×) plus (+) or check (√) mark with black ink or black pencil in the place or square to the left of the name of such person.

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

1 ballot had a name written at the bottom of the ballot.

It is not necessary for the Commissioner to determine in this election whether the 6 ballots referred for determination should be counted or not. If all the ballots referred to the Commissioner were added to the above tabulation, there would be no change in the relative order of the first three candidates.

The Commissioner finds and determines that Edward C. Kelly, Kenneth J. Hersinger and John M. Ferarry were elected to membership on the Board of Education of the Borough of West Paterson, Passaic County, for the term of three years.

April 3, 1956.

XVIII

SCHOOL NURSE FALLS WITHIN THE PROVISIONS OF THE STATE MINIMUM SALARY SCHEDULE

KATHRYN M. McCARTHY,

Petitioner,

vs.

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

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

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

For the Respondent, Edmund J. Dwyer.

The petitioner, Kathryn M. McCarthy of the Borough of Glen Ridge, Essex County, is employed by the respondent as a school nurse. She has been employed as a school nurse for a total of twenty-six years and nine months. Petitioner's salary for the school year 1954-1955 was $4500 and was established for the school year 1955-1956 at $4500. She petitions the Commissioner of Education to order the respondent to establish her salary for the school year 1955-1956 at $4800 pursuant to the provisions of Chapter 249 of the Laws of 1954.

The respondent in its answer admitted the allegations of the petition and set forth the following separate defenses:

"FIRST SEPARATE DEFENSE

Whatever rights appellant may have in connection with employment, tenure and salary are set forth solely in Chapter 14 of Title 18 of the Revised Statutes, and more particularly, under the provisions of the Revised Statutes cumulative supplement, 18:14–56 to 18:14–56.3, inclusive, and under the provisions of Revised Statutes 18:14–64.1.

"SECOND SEPARATE DEFENSE

"The statute referred to in paragraph 4 of the petition of appeal; namely, P. L. 1954, Chapter 249, is set forth under Revised Statutes cumulative supplement 18:13–12.1 et sequi. The heading of Chapter 13 of Title 18 is 'Teachers.' The provisions of said chapter 13 apply only to teachers, and by reason thereof, said provisions cannot be construed to apply to anyone other than teachers.

"THIRD SEPARATE DEFENSE

"Commissioner of Education lacks the authority and jurisdiction to legislate so as to enlarge upon, alter, or in any other way change the meaning of the Revised Statutes cumulative supplement 18:13–13.1 et sequi to include anyone other than a member of the professional teaching staff as coming under the scope and effect of the aforesaid statute."

Counsel for respondent requested that the Commissioner render a decision in this case without hearing, based upon the facts as presented. The question raised in this petition is whether or not a school nurse qualifies for placement on the minimum salary schedule for teachers as established by Chapter 249 of the Laws of 1954.

Section 18:13–13.1 of the Revised Statutes provides:

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

" 'Employment increment' shall mean an annual increase of $150.00 granted to a teacher for 'one year of employment.'

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

Sections 18:13–13.2, 18:13–13.3 and 18:13–13.5 of the Revised Statutes provide:

"18:13–13.2. Except as hereinafter provided, the salary schedule for teachers in this State shall be as follows:

Years of Employment	*Salary*	*Employment Increment*
1	$3,000.00	
2	3,150.00	$150.00
3	3,300.00	150.00
4	3,450.00	150.00
5	3,600.00	150.00
6	3,750.00	150.00
7	3,900.00	150.00
8	4,050.00	150.00
9	4,200.00	150.00
10	4,350.00	150.00
11	4,500.00	150.00
12	4,650.00	150.00
13	4,800.00	150.00
14	4,950.00*	150.00
15	5,100.00*	150.00
16	5,250.00*	150.00
17	5,400.00*	150.00

"*Only teachers who hold a bachelor's degree or the equivalent, or a master's degree or the equivalent, as defined in this act shall be entitled to the salary set forth in steps 14 and 15, and only teachers who hold a master's degree or the equivalent as defined in this act shall be entitled to the salary set forth in steps 16 and 17.

"18:13–3.3. Any teacher now holding office, position, or employment in any school district of this State at the time of the effective date of this act shall be entitled annually to an employment increment until he shall have reached the maximum salary provided in section 2 of this act.

"18:13–13.5. On or after September 1, 1955, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than $3,000.00 a year for said year of employment shall receive an increase in his salary to $3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater."

Sections 18:14–56.1 and 18:14–56.3 of the Revised Statutes provide:

"18:14–56.1. No person shall hereafter be appointed a school nurse unless such person is the holder of an appropriate certificate issued by the State Board of Examiners under such rules and regulations as shall be prescribed by the State Board of Education.

"18:14–56.3. No board of education shall terminate the employment, or refuse to continue the employment or reemployment, of any nurse appointed prior to the effective date of this act for the reason that such nurse is not the holder of any such certificate and the State Board shall make no rule or regulation which will affect adversely the rights of any nurse under any certificate issued to her prior to the effective date of this act."

The intent of section 18:14–56.3, supra, was to eliminate the requirement of certification in the case of nurses already employed when the law became effective, thus avoiding a disruption which would ensue if the certification requirement were retroactively applied.

It is the opinion of the Commissioner that full-time nurses who hold either a permanent, limited or provisional certificate issued by the State Board of Examiners, or who are employed without a certificate pursuant to section 18:14–56.3, supra, are "teachers" within the definition of teachers as contained in Chapter 249, P. L. 1954, and are entitled to the benefits thereof. Although one does not ordinarily associate the term "teacher" with the nursing profession, a school nurse is a special kind of nurse who, in addition to receiving her basic training in that profession, is qualified to and frequently does teach in the public schools such subjects as personal hygiene, home nursing, first-aid and nutrition. In order to obtain certification by the State Board of Examiners as a school nurse, a person must have successfully completed courses in each of the several specified fields such as public school curriculum materials and methods of health education, school health services, problems in child growth and development. (See Rules Concerning Teacher Certification, issued by the State Department of Education, 18th Edition, July 1, 1951, pages 64 and 65.) Full-time nurses, holding one of these prescribed certificates, are literally included in the legislative definition of "teacher" as noted above.

The Commissioner can find no reason to narrow, by construction, the broad sweep of that definition. Nurses who hold their positions by virtue of section 18:14–56.3 do not fall within the express terms of the definition, but neither are they excluded. The act provides, as we noted, that the word "teacher" shall "include any full-time member of the professional staff" holding certificates, etc.; the word "include" denotes that other persons may also meet the description if the sense of the statute warrants it. See *State* vs. *Rosecliff Co.* 1 N. J. Super. 94, 101. (App. Div., 1948.)

Chapter 249 of the Laws of 1954 must be read in conjunction with Chapter 133 of the Laws of 1947 in order to effectuate the general legislative policy, since the statutes are in *pari materia*. *Miller* vs. *Board of Chosen Freeholders of Hudson County*, 10 N. J. 398, 415 (1952); *Lynch* vs. *Borough of Edgewater*, 8 N. J. 279, 286 (1951). Moreover, in the interpretation of statutes, "exceptions are implied to give effect to the general legislative intent shown by the context; they may arise by the law of reason, though not expressly mentioned." *Wright* vs. *Vogt*, 7 N. J. 1, 7 (1951).

The Commissioner finds and determines that the petitioner is entitled to the adjustment increment of $300.00 provided in section 18:13–13.5 supra, for the school year 1955-1956. The respondent Board of Education is hereby ordered to determine and fix the salary of the petitioner at a minimum of $4,800.00 for the school year 1955-1956.

May 1, 1956.

XIX

BOARD OF EDUCATION MAY CONDUCT ITS OWN INQUIRY INTO ALLEGED SUBVERSIVE ACTIVITIES OF ITS EMPLOYEES OR CAN INVESTIGATE THE REFUSAL OF EMPLOYEES TO TESTIFY BEFORE CONGRESSIONAL SUBCOMMITTEES

ESTELLE LABA

ROBERT LOWENSTEIN

PERRY ZIMMERMAN,

Appellants,

vs.

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

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For Appellant, Estelle Laba, Messrs. Milton and Adrian Unger.

For Appellant, Robert Lowenstein, John O. Bigelow.

For Appellant, Perry Zimmerman, Richard F. Green.

For Respondent, Board of Education, Jacob Fox.

The appellants in this case ask the Commissioner to set aside their dismissal as teachers in the Newark school system by the Board of Education on June 23, 1955, effective as of May 19, 1955, and that they be reinstated to their positions as of that date.

On May 19, 1955, the appellants were called under subpœna to testify before a Sub-Committee of the House Un-American Activities Committee in the Federal Building at Newark. On advice of counsel that certain questions were improper, they declined to answer and availed themselves of their right under the Fifth Amendment of the Constitution of the United States not to be witnesses against themselves.

Thereafter, the appellants were suspended from their employment as teachers by Dr. Edward F. Kennelly, Superintendent of Schools of Newark, with the approval of the President of the Board of Education of Newark, pursuant to R. S. 18:6–42 and 18:13–17. Dr. Kennelly preferred charges against the appellants, charging that their refusal to testify before a subcommittee of the House Committee on Un-American Activities rendered them guilty of conduct unbecoming teachers, and affected their capacity to perform the services and duties required by said position. On June 21, 1955, a public hearing on these charges was held by the Newark Board of Education, at which the appellants were given an opportunity to be heard and represented by counsel. The Newark Board of Education adopted a resolution, by a vote of five to four, which sustained said charges and dismissed the appellants from their employment as of May 19, 1955. An appeal was thereupon taken to the Commissioner, pursuant to R. S. 18:3–14.

A complete record of the proceedings before the respondent Board of Education was filed with the Commissioner, and a hearing was held on September 15, 1955, before the Assistant Commissioner in Charge of Controversies and Disputes, at which counsel for appellants presented oral argument. It was agreed by counsel for the appellants that the three cases should be considered simultaneously and that the arguments presented on behalf of one appellant should be considered as arguments for all, and that the respondent's defense would be combined for all three cases. Briefs and stipulations were filed by counsel for the three appellants, by counsel for the respondent, and a brief amicus curae was filed on behalf of the American Civil Liberties Union, Newark Church Fellowship, Essex County Chapter of Americans for Democratic Action, Essex County Chapter of the American Veterans Committee, Newark Council of Human Relations, and by the Newark Rutgers Chapter of the American Association of University Professors by Emil Oxfeld of the law firm of Rothbard, Harris and Oxfeld. Briefs were voluminous, presenting facts, arguments and statements of law regarding this case. The Commissioner has been supplied also by counsel with many quotations and voluminous material on the philosophical background of this problem. It is both impractical and impossible for the Commissioner in this decision to discuss all of the material which has been submitted to him. However, all briefs and all material have been reviewed and carefully studied in consideration of this decision.

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

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

The evidence before the respondent Board consisted of little more than the record of the testimony given (and refused) by the appellants in the aforesaid proceedings before the House Sub-Committee, together with stipulations as to the nature of the Congressional inquiry (Stenographer's Minutes, pages 18 and 12-15). The Board conducted no other inquiry as to appellants' fitness as teachers; no questions on this subject were asked of the appellants by the Board or its counsel; no evidence was adduced as to what the appellants' affiliations were in fact, or as to their reasons or justifications for exercising their constitutional privileges. The Board rested its decision squarely on the proposition that in a Congressional inquiry into Communism and subversion generally, where a witness is questioned as to his affiliations and associations, his invoking the privilege against self-incrimination is *per se* conduct unbecoming a teacher and just cause for his dismissal under R. S. 18:13–17 (Stenographer's Minutes, pages 92, 93, 100).

On this state of the record, the Commissioner believes that in view of the recent decision by the United States Supreme Court in *Slochower* vs. *Board of Education*, decided April 9, 1956, the decision of the Newark Board of Education should be reversed and the case remanded to the Board for further proceedings not inconsistent with the aforesaid opinion of the Supreme Court.

The *Slochower* decision held unconstitutional the dismissal by New York City, pursuant to Section 903 of the City Charter, of a professor in one of the city's colleges, for refusing on the plea of the Fifth Amendment to answer a question put by a United States Senate Committee as to his past membership in the Communist Party. Section 903 of the New York City Charter provides that whenever an employee of the city utilizes the privilege against self-incrimination to avoid answering a question relating to his official conduct, at any hearing or inquiry by whomsoever conducted, his employment shall automatically terminate and his office shall be vacant. The Court held by a vote of 5 to 4 that the summary dismissal of Mr. Slochower under Section 903 violated due process of law.

The majority opinion reasoned that pleading the Fifth Amendment cannot be taken, without more, "as equivalent either to a confession of guilt or a conclusive presumption of perjury"; that Section 903 of the New York City Charter nevertheless has the practical effect of taking the question asked as confessed; that since the Federal inquiry was not directed at the affairs of the City or the official conduct of its employees, no real interest of the City was shown to have been violated by Slochower's refusal to answer the Congressional interrogator; and that under these circumstances, his automatic dismissal without even a hearing and an opportunity to explain his conduct before the House Sub-Committee was arbitrary and unreasonable.

The four dissenting judges took the position that "cities, like other employers, may reasonably conclude that a refusal to furnish appropriate information in response to legally authorized official inquiries is enough to justify discharge; and that the avoidance of public duty to furnish information can properly be considered to stamp a teacher as no longer qualified for public school teaching."

On the record now before the Commissioner, it is possible to distinguish the *Slochower* case from that of the present appellants in that the former involved a mandatory, automatic and summary dismissal, while here the Board reached its decision after the appellants had been given a hearing and an opportunity to explain their refusal to give the information. However, the basis of the Board's decision was identical with that of Section 903 of the New York City Charter, i.e., that refusal, on the grounds of self-incrimination, to furnish appropriate information to a Congressional Committee is in and of itself a sufficient reason to terminate one's employment as a public school teacher. That proposition having been rejected in the *Slochower* case, it must be rejected here also. Due process of law evidently rules out any such basis for dismissal; and our statute should be construed, if possible, to allow a discharge of a teacher only for reasons which harmonize with constitutional limitations.

In view of this, the Commissioner feels that the Board of Education should be given the opportunity to make such further inquiries as its counsel may deem necessary or advisable to meet the constitutional requirements

established by the *Slochower* decision. The direction which such additional proceedings may take is suggested by the following excerpts from the majority opinion:

> "*Adler v. Board of Education*, 342 U. S. 485, upheld the New York Feinberg law which authorized the public school authorities to dismiss employees who, after notice and hearing, were found to advocate the overthrow of the Government by unlawful means or who were unable to explain satisfactorily membership in certain organizations found to have that aim.
>
> "Likewise, *Garner v. Los Angeles Board*, 341 U. S. 716, 720, upheld the right of the city to inquire of its employees as to 'matters that may prove relevant to their fitness and suitability for the public service,' including their membership, past and present, in the Communist party or the Communist Political Association.
>
> "There it was held that the city had power to discharge employees who refused to file an affidavit disclosing such information to the school authorities.
>
> "With this in mind, we consider the application of Section 903. As interpreted and applied by the State courts it operates to discharge every city employee who invoked the Fifth Amendment.
>
> "In practical effect the questions asked are taken as confessed and made the basis of the discharge. No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege. It matters not whether the plea resulted from mistake, inadvertence or legal advice conscientiously given, whether wisely or unwisely.
>
> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive. Such action falls squarely within the prohibition of *Wieman v. Updegraff*, supra.
>
> "It is one thing for the city authorities themselves to inquire into Slochower's fitness but quite another for his discharge to be based entirely on events occurring before a Federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or . . . official conduct of city employees.'
>
> "In this respect the present case differs materially from Garner, where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the board had possessed the pertinent information for twelve years, and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college functions. On such a record the board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information.
>
> "This is not to say that Slochower has a constitutional right to be an associate professor of German at Brooklyn College. The state has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest in the state. But there has been no such inquiry here."

Thus, essentially two courses, or a combination of both, are open to the Board: (1) It can conduct its own inquiry into alleged subversive activities or affiliations of the appellants and other employees of the Board; and refusal by the appellants in such an inquiry to answer pertinent questions on these subjects put to them by the respondents as their employer would, in the opinion of the Commissioner, constitute just cause for dismissal under the principles laid down in the *Adler* and *Garner* cases. (2) The Board can investigate the refusal of the appellants to testify before the House Sub-Committee, going into such factors as the subject matter of the questions, the remoteness of the period to which they are directed, the existence of justification for the exercising of the privilege, and the reason or reasons why the appellants made the plea. If this line of inquiry likewise shows that the continued employment of the appellants would jeopardize the confidence which the City should have in its school system, or would be inconsistent with a real interest of the Board or the community, the appellants' dismissal could be sustained. In either case, the *Slochower* decision would definitely not apply.

The second line of inquiry would be within the scope of the charges already made by the superintendent of schools. If the first is also pursued, the charges should be supplemented so as to specify the additional ground or grounds which may be claimed to constitute just cause for dismissal.

This case is being remanded for further proceedings not inconsistent with this decision or with the decision in the *Slochower* case. This means that the whole case may be heard anew in accordance with applicable law, and that the rehearing need not be limited to the specific issues already raised. *In re Plainfield-Union Water Co.* 14 N. J. 296, 304-305, and authorities there cited; *Ford Motor Co.* vs. *National Labor Relations Board*, 305 U. S. 364. As the New Jersey Supreme Court said in the *Plainfield-Union* case (14 N. J. at page 305):

> "Administrative determinations are subject to reconsideration and revision by the agency itself, and a rehearing and the taking of new evidence to that end, so long as it retains control of the proceeding and rights have not vested. This is an inherent power, and incident of the administrative jurisdiction of the furtherance of its essential authority."

Since this case is being remanded for further hearing, we need remark upon only one further contention of the appellants that the decision of the Newark Board of Education to dismiss them from said employment was made as a result of popular hysteria engendered by local press by prominent persons in public life in the City of Newark, and that members of the Newark Board of Education who voted to dismiss them had prejudiced the case prior to hearing, and on proper challenges made at the hearing by counsel for the appellants, they refused to disqualify themselves. The appellants argue that three members of the present Board, who were members in 1953, voted on March 24, 1953, for a Board resolution instructing the secretary of the Newark Board to write to the president of Rutgers University, stating that the Newark Board of Education commends its action in suspending a professor who refused to answer questions before a committee of the United States Congress. The appellants' counsel further contended that articles appearing in local newspapers in the City of Newark had influenced members

of the Board of Education and that at least one member had indicated an opinion regarding the case prior to the hearing. Said member was not identified in the local newspaper and the attorney requested permission to poll the Board to ask if any member had made such a statement. This request was denied by the Newark Board of Education. Newspaper articles had indicated also that the mayor of the City of Newark favored the dismissal of these teachers and that the mayor by the appointment of Board of Education members had influenced their decision. The Board of Education refused by unanimous vote to subject any of its members to examination by counsel for the appellants. and continued to hear the case.

There was no evidence produced by the appellants at the hearing to prove that any member of the Board of Education had prejudged the case. The vote of the three members in favor of the aforesaid 1953 resolution did not indicate that these members of the Board were unable to judge the present case on its own merits. The record shows that counsel requested opportunity to question members of the Board of Education. The Board was also within its right in refusing to grant counsel's request to question individual members as to their possible prejudice. The record shows that the hearing was fairly and impartially conducted, and the Commissioner has no reason to believe that a further hearing will not likewise be fair and impartial.

May 9, 1956.

Appeal to State Board of Education withdrawn.
Appeal to Superior Court, Appellate Division, Pending.

XX

BOARD OF EDUCATION REQUIRED TO ACCEPT PUPILS ON TRANSFER FROM PUBLIC SCHOOL

SHIRLEY T. SELTZER,

Petitioner,

vs.

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

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Alvin M. Panser.
For the Respondent, Harrison D. Johnson.

The question to be decided is whether a child may be transferred from a public school in another district to the public school of the district of residence when the child reaches the age of five, although the child had not reached the age required by the board of education for admission at the beginning of school for the fall term.

Donald Steven Seltzer, son of the petitioner, was born on November 15, 1950, and is domiciled with the petitioner at 1499 Westminster Road, Union Township, Union County. He was enrolled in the Seth Boyden School, a public elementary school in the School District of South Orange-Maplewood in September, 1955. On or about December 8, 1955, the petitioner sub-

mitted a written application to the Superintendent of Schools of Union Township, requesting the transfer of her son from the Seth Boyden School in South Orange-Maplewood to the Franklin School in Union Township, and on or about December 22, 1955, the petitioner received a letter from the Superintendent of Schools, denying the requested transfer.

The respondent contends that the petitioner, prior to the opening of school in September, 1955, applied for admission of Donald Steven Seltzer, who was under five years of age and had never attended school. Upon denial of said application, Donald Steven Seltzer was entered in a school in an adjoining district. Shortly after the child became five years of age, the petitioner requested his transfer to the Union Township School in a deliberate and avowed attempt to circumvent the rules and regulations of the respondent and of the State of New Jersey. The respondent contends further that the issuance of such an order by the Commissioner would discriminate against children whose parents are not financially able to pay the tuition required in other schools, and against other children who are residents of the township and have never attended school because of age and would impose the regulations of another board of education upon the respondent.

This case is presented on a Stipulation of Facts, following a conference held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes, between counsel for petitioner and respondent.

Sections 18:14–1 and 18:14–3 of the Revised Statutes provide as follows:

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

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

"18:14–3. Children who have never attended any public or private school may be admitted to a public school during the ten days immediately following the opening of the school for the fall term, and at no other time except by a majority vote of all the members of the board of education of the school district in which the school is situated."

The Commissioner in the case of *Wilcox* vs. *Board of Education of the Borough of Oceanport, Monmouth County*, decided August 12, 1954, and affirmed by the State Board of Education, said:

"Section 18:14–1 supra, clearly states that all children between the ages of five and twenty shall be admitted free to the public schools. Special provision is made in section 18:14–3 supra, in regard to all children who have *never* attended any public or private school. That section plainly does not apply where the child in question has previously attended school.

"In the instant case, the petitioner's child has attended a private school and, therefore, is not within the prohibition of section 18:14–3. There being no other exceptions provided in the law, the general rule of section 18:14–1 requires the school district of the child's place of residence to admit the child, if between the ages of five and twenty years, on a transfer from another school."

The respondent further argues that section 18:7–56 which provides:

"The board may make, amend and repeal rules and regulations and by-laws, not inconsistent with this title, or with the rules and regulations

of the State Board of Education, for its own government, the transaction of business, the government and management of the public schools and the public school property in the district, . . ."

gave the respondent ample authority to adopt its rules which provide that "a child shall be admitted at the opening of school by the superintendent if he will be five years of age on or before October 31 immediately following." This rule applies to all children of the township.

The Commissioner in the case of *Wilcox* vs. *Board of Education of the Borough of Oceanport, supra,* said:

"The respondent asserts that pursuant to the said statutory authority it was properly enabled to adopt rules and regulations pertaining to the initial entrance of students and to provide that no child shall be admitted for the first time who had not reached the age of five years at the opening of schools or did not attain such age during the ten days immediately following such opening. A board of education has no power, however, to adopt a rule or regulation in conflict with the express provisions of the statute. *Frigiola v. State Board of Education and Board of Trustees of the Teachers' Pension and Annuity Fund, 25 N. J. Super.* 75. In view of the mandatory provisions of section 18:14–1, the Commissioner cannot agree with the respondent that it is discretionary with the board of education through the adoption of regulations to admit or exclude a child on a transfer from any public or private school."

Section 18:11–1 of the Revised Statutes provides as follows:

"Each school district shall provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. Such facilities and accommodations shall include proper school buildings, together with furniture and equipment, convenience of access thereto, and courses of study suited to the ages and attainments of all pupils between the ages of five and twenty years. Such facilities and accommodations may be provided either in the schools within the district convenient of access to the pupils, or as provided in sections 18:14–5 to 18:14–9 of this Title."

The Commissioner concludes that since the petitioner's son attended a public school in the School District of South Orange-Maplewood from September, 1955 and that the request for transfer was made on December 8, 1955, the child had attained five years of age and was entitled to be transferred from the Seth Boyden School in South Orange-Maplewood to the public schools of the Township of Union. The Board of Education of the Township of Union, Union County, will in its discretion determine the grade in which the child is to be placed. (See section 18:11–1 *supra.*)

The Board of Education of the Township of Union is hereby directed to admit Donald Steven Seltzer to its schools.

May 10, 1956.

Appeal Pending before State Board of Education.

XXI

BOARD OF EDUCATION MUST HAVE APPROVAL OF COMMISSIONER OF EDUCATION BEFORE SUBMITTING TO THE VOTERS THE QUESTION OF FORMATION OF A REGIONAL DISTRICT

JOSEPH R. HOLT,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF RIDGEFIELD, BERGEN COUNTY,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For Respondent, George A. Duffy.

The petitioner, who was a signer on a petition presented to the respondent Board of Education requesting the Board to call a referendum to form a Regional High School District with the Borough of Palisades Park, asks the Commissioner to issue an order compelling the Ridgefield Board of Education to immediately call a special meeting of the voters of Ridgefield to vote on the question of establishing a Regional High School with the Borough of Palisdaes Park.

On October 13, 1955, the following petition, signed by 1,058 voters of the Borough of Ridgefield, was presented to the respondent Board of Education:

> "We, the undersigned citizens and residents of the Borough of Ridgefield, do hereby petition the honorable members of the Board of Education of Ridgefield as follows:
>
> "I. To abandon immediately the scheduled October 18, 1955 referendum on the six year high school for Ridgefield alone.
>
> "II. To proceed immediately to have a referendum to build replacement for and required elementary school housing only, and which will eliminate double sessions for all time.
>
> "III. To proceed forthwith to form a regional high school district with the Borough of Palisades Park. This will offer a far superior curriculum for students from both boroughs and reduce tremendously the costs to each borough for construction, debt service (interests) and annual operating expenses.
>
> "IV. To construct a six or a four year regional high school, whichever would best serve the needs of the two boroughs and provide for the future to the extent now necessary.
>
> "V. To hereby preserve the credit stability of both boroughs and permit continuance of other needed civic improvements, and to preserve the whole of Veterans Memorial Park for all of the people of Ridgefield as provided by Ordinance 545—June 18, 1951."

The respondent Board of Education in its answer claims that: The petition requested a referendum to build an elementary school but did not request a referendum to create a regional high school district; the petition contained 5 specific proposals, 3 of which were not germane to the request "to form a Regional High School District"; the petition was invalid because it was not so worded as to be understood by the signers; the petition requested the respondent to proceed to have a referendum to replace the elementary school. The respondent further claims that section 18:7–61, which provides that a board of education "may" call a special meeting upon the presentation of a petition signed by 50 or more legal voters, is directory and not mandatory and that it does not apply to regional high school districts which are specifically governed by N. J. S. A. 18:8–1.

A hearing in this case was conducted in Trenton by the Assistant Commissioner of Education in Charge of Controversies and Disputes on April 13, 1956.

Section 18:7–61 of the Revised Statutes reads as follows:

> "The board may call a special meeting of the legal voters of the district at any time when in its judgment the interests of the schools require it, or whenever fifty of such legal voters shall by petition so request.
>
> "In the notices of any special meeting, called upon petition as aforesaid shall be inserted the purposes named in the petition so far as the same is not in conflict with the provisions of this title.
>
> "No business shall be transacted at any special meeting except such as shall have been set forth in the notices by which the meeting was called."

In the case of *Wills* vs. *Upper Freehold Township Board of Education* 1938 S. L. D. 167, the State Board of Education held:

> "The Board of Education shall have power to call a special meeting of the legal voters of the district at any time when in its judgment the interests of the school require it, or whenever fifty of such legal voters shall request it by petition. This specifically reposes faith in the judgment of the Board as regards its own act, and implies a vesting with discretion as to the acts of any fifty petitioning voters. The intent of the law seems to be that the Board, by its own initiative, or by a reminder from fifty legal voters, could, in its judgment call a special meeting.
>
> "But as regards the calling of this special meeting on the petition of fifty voters, there is a proviso in paragraph X which seems to put still more discretion and authority in the Board of Education. This proviso requires that in the aforesaid petition 'shall be inserted the purposes named' for which said meeting is called. These purposes shall be inserted in the petition 'so far as the same are not in conflict with the provisions of this act.' Evidently the Board was clothed with authority to deny the petition if it should in its purposes prove conflicting with what has been called 'this act.' . . .
>
> "If permitted or allowed it would render nugatory or ineffective any action that the Board might take. For if the fifty petitioners were defeated on their first petition they could immediately get up a second or third or tenth petition, and thus go on indefinitely to the defeat of the law and to the rendering void of the purposes of the school system."

Section 18:8–1 of the Revised Statutes reads in part as follows:

"Whenever the boards of education of two or more school districts and the State Commissioner of Education, after study and investigation, shall deem it advisable for such school districts to unite in creating a regional school district . . . the board of education of each of such school districts shall call and conduct a special election . . . and shall submit a proposal for creation of a regional school district. . . ."

The respondent Board of Education has presented no facts to the Commissioner of Education upon which he could determine whether or not it is advisable for the School Districts of Ridgefield and Palisades Park to unite in creating a regional district as required under R. S. 18:8–1 *supra.*

The Board of Education does not have the authority to call a special meeting for the purpose of creating a regional high school district between two or more school districts until a study and investigation has been made and the Commissioner of Education has determined that it is advisable for the districts to unite.

For the foregoing reasons, the Commissioner finds and determines that the Ridgefield Board of Education was neither compelled nor had the authority to call a special meeting for the purpose of submitting the question of the creation of a regional high school district with Palisades Park as requested in the petition presented to the Board of Education on October 13, 1955.

Having reached this conclusion, it is not necessary for the Commissioner to discuss the separate defenses of the respondents. The petition is hereby dismissed.

June 13, 1956.

XXII

BID MUST BE ACCOMPANIED BY CERTIFIED CHECK IN THE TOTAL AMOUNT OF 5% OF BASE BID AND ALTERNATES

PANNA CONSTRUCTION COMPANY, A NEW JERSEY CORPORATION,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF SOMERDALE, CAMDEN COUNTY, AND KEHOE-DOWNS, INC., A NEW JERSEY CORPORATION,

Respondent.

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Vanistendal & Peel.

(William E. Peel, of Counsel.)

For the Respondent Board of Education, Edward T. Curry.

For the Respondent Kehoe-Downs, John J. Finnegan, Jr.

The petitioner in this case seeks to have the Commissioner reinstate the bid of the petitioner, declare the contract of the higher bidder null and void,

award the contract to the petitioner, and to grant such other relief as the Commissioner shall deem to be fair and equitable under the circumstances in this case.

The petitioner, the Panna Construction Company, alleges that on or about May 16, 1956, pursuant to newspaper advertisement, it submitted a sealed bid for the general construction of the Somerdale Elementary School, which newspaper advertisement provided among other things that:

> Each bid must be accompanied by a certified check to the order of the Board of Education of the Borough of Somerdale, or cash, in the amount of five per cent of the bid which it accompanies."

The petitioner states that its bid was the lowest one submitted, that the certified check which accompanied the bid was in the amount in excess of five per cent of the bid for general construction, exclusive of alternates, and that although the petitioner's bid was the lowest submitted, its bid was rejected on the ground that it was informal in that the certified check accompanying the bid was in an insufficient amount, and thus the contract was awarded to a higher bidder.

The respondent in its answer admits that the Panna Construction Company submitted its bid on the construction work and that it was the lowest bid submitted. However, the respondent denies that the action of respondent in rejecting petitioner's bid and accepting the bid of Kehoe-Downs, Inc. should be set aside as demanded by the amended petition of appeal filed in the case. The respondent contends that the base bid of the petitioner was $81,000 and the additional alternates which were accepted are as set forth in the stipulation of facts, the total of which amounted to $110,380, and 5% of that amount would be $5,519.00; whereas, petitioner's check was in the sum of $4,500. In a separate defense, the respondent sets forth that the petitioner did not comply with the advertisement for sealed proposals in that the bid was not accompanied by a certified check in the amount of its bid.

The following are the stipulated facts in this case:

"1. The sealed proposals were advertised to be opened on the 16th day of May, 1956, at 8:00 o'clock P. M. as set forth in the copy of advertisement for sealed proposals, annexed hereto, and marked EXHIBIT A.

"2. Attached to and made part of the specifications was the proposal form which was as set forth in EXHIBIT B hereto attached.

"3. At 8:00 P. M. on May 16, 1956 the bids were opened and eleven bids were received for general construction, among which were the bids of the appellant and Kehoe-Downs, Inc., one of the respondents.

"4. The bid of appellant was as follows:

Base bid			$81,000.00
Add	Alternate	No. 1	$17,300.00
"	"	No. 2	1,180.00
"	"	No. 3	1,200.00
"	"	No. 4	2,300.00
"	"	No. 5	1,700.00
"	"	No. 6	800.00
"	"	No. 7	4,200.00
"	"	No. 8	700.00
		TOTALING	$110,380.00

and was accompanied by a check for $4,500.00.

"5. The bid of Kehoe-Downs, Inc. was as follows:

Base bid			$90,444.00
Add	Alternate	No. 1	$17,000.00
"	"	No. 2	1,200.00
"	"	No. 3	800.00
"	"	No. 4	2,300.00
"	"	No. 5	2,000.00
"	"	No. 6	900.00
"	"	No. 7	4,400.00
"	"	No. 8	800.00
		TOTAL	$119,844.00

and was accompanied by a check in the amount of $6,500.00.

"6. At the time the bids were read, two of the bidders in the room protested the bid of the appellant on the ground that the check accompanying its bid was insufficient.

"7. Under the proposal the Board had the right to accept the base bid and one or more of the alternates.

"8. The respondent Board rejected the bid of the appellant on the ground that it did not comply with the advertisement for sealed proposals in that the check was not 5% of the appellant's bid."

The newspaper advertisement, referred to above, reads in part as follows:

"* * * In compliance with the laws of the State of New Jersey, separate bids will be received for General Construction, for Structural Steel, Ornamental & Miscellaneous Ironwork; for Plumbing and Drainage, for Heating and Ventilating; and for Electrical Work; all in connection with the plans and specifications which may be seen at the office of the Secretary, 104 N. Crestwood Avenue, Somerdale, New Jersey, and at the office of the Architects, Oren Thomas and Malcolm B. Wells, 122 Haddon Avenue, Collingswood, New Jersey.

"*** Each bid must be accompanied by a certified check to the order of The Board of Education of the Borough of Somerdale, or cash, in the amount of five per cent of the bid which it accompanies. . . . Each contract and each performance bond shall be subject to the approval of the solicitor of the said Board of Education, and each contract shall be substantially in the form annexed to the specifications with such completion as may be necessary for the particular contract entered into and including the terms of the bids and acceptance.

"The said Board of Education reserves the right to reject any or all bids and to waive any defects or informalities in any bid, should it be deemed for the best interests of said Board of Education to do so.

"Each bid shall be respectively marked for the type of work it covers; that is, 'Proposal for General Construction in Connection with the Construction of the School'; 'Proposal for Structural Steel, Ornamental & Miscellaneous Ironwork in Connection with the Construction of the School'; 'Proposal for Heating and Ventilating in Connection with the Construction of the School'; and shall be addressed to the Board of Education of the Borough of Somerdale, Camden County, New Jersey, c/o Violet Schock, Secretary, Somerdale School, Somerdale, New Jersey."

The Proposal Form (Exhibit B referred to above) reads in part as follows:

"Note (a) Bidders shall make an exact copy of the proposal form for their own use in submitting their bids.

(b) Whenever 'he' or 'they' or the 'undersigned' is referred to, it shall mean the bidder upon this work, whether an individual, a firm or a corporation.

"To 'THE BOARD OF EDUCATION OF THE BOROUGH OF SOMERDALE IN THE COUNTY OF CAMDEN, NEW JERSEY'

"Gentlemen:

Having carefully examined the 'Advertisement for sealed proposals,' 'Contract form,' 'General scope of work and Instruction to Bidders,' 'General Conditions,' 'Plans and Specifications' entitled Somerdale Elementary School, Somerdale, New Jersey, as well as the premises upon which it is to be erected and all conditions affecting the work covering the complete construction of the proposed building, the undersigned proposes to furnish all labor and material called for by them for .... strictly in accordance with the said
(kind of work)
documents for the sum of ..... ($)

"GENERAL CONSTRUCTION ALTERNATES

"Alternate No. 1: ADD to the base bid the sum of ($)
(This continues through to Alternate No. 8)

"Alternate No. 9: DEDUCT from the base bid the sum of ($)

Arguments of counsel for the petitioner, the respondent and the Kehoe-Downs Company were heard by the Assistant Commissioner of Education in Charge of Controversies and Disputes on Thursday, May 31, 1956, at 10:00 A. M.

The petitioner contends that the advertisement which announced that the said Board would receive "sealed proposals" for furnishing of all labor and materials for the construction of a school building was ambiguous in so far as it pertained to the subject of the amount of deposit required when construed with the specifications as prepared by the architect. The language of the advertisement was as follows:

> "Each bid must be accompanied by a certified check to the order of the Board of Education of the Borough of Somerdale, or cash, in the amount of five per cent of the bid which it accompanies."

This language lends itself to many interpretations including that placed upon it by the petitioner. It lends itself as well to the interpretation placed upon it by the respondent, as it does to the illogical interpretation that a certified check in the amount of 5% of the amount of the base bid and separate certified checks in the amount of 5% of each alternative bid should accompany the bids.

The petitioner further contends that he was following a custom established with respect to the use of identical forms of specifications as were used in the instant case. During the spring of 1955, the Board of Education of the Borough of Collingswood, Camden County, advertised for sealed proposals for the construction of an addition to a school in that borough. This advertisement used identical language with respect to the requirements of deposit as that used by the Board of Education of the Borough of Somerdale and the specifications consisted of a basic bid and four alternates. On June 20, 1955, pursuant to the invitation for sealed proposals, the petitioner submitted a bid which consisted of his bid upon the basic contract together with each of the four alternates, accompanied by his certified check in the amount of 5% of the amount of his basic bid. His bid was the lowest received, the contract was awarded to him for the general construction, he proceeded with the work, completed the structure which was accepted by the Board, and he was paid in full for his contract.

In the instant case, the petitioner did not have advice of the architect as to the meaning of the specifications relating to the amount of deposit. Paragraph 6 of the "Supplement to General Conditions," on page 12 of the specifications as prepared by the architects, provides as follows:

> "6. Explanation to Bidder:
>
> "No oral interpretation will be made to bidders as to the meaning of drawings and specifications. Request for such interpretations should be made in writing, addressed to the architect.
>
> "Any interpretation made to bidders will be in the form of an addendum to the specification, which if issued, will be sent to all bidders five days prior to the date for the opening of bids, unless the urgency of some interpretation warrants an earlier date."

The petitioner cites the following cases:

> "*Phifer v. City of Bayonne, et al.*, decided by the Supreme Court of New Jersey June 18, 1929, reported in 146 A. 463, at 465:
>
> > 'It is not any kind of an irregularity in specifications of proposed public work to be done that will have the effect of voiding the award.
> >
> > 'The irregularity must be of a substantial nature—such as will operate to affect fair and competitive bidding.'

"*Bryan Construction Co. Inc. v. Board of Trustees of Free Public Library of the Town of Montclair, Essex County, et al.* decided by the Appellate Division of the Superior Court on June 14, 1954, reported in 31 N. J. Super. 200, 106 A. 2d 303, wherein a controversy arose respecting deposits of contractors, the Court stated as follows:

> '. . . The defendant board expressly and specifically reserved 'the right to waive minor informalities' in any bid. Further, a municipal body has a greater function in dealing with irregularities in such matters than merely exercising a ministerial and perfunctory role. It has inherent discretionary power, and what is more, a duty to secure, through competitive bidding, the lowest possible offer, and to effectuate that accomplishment it may waive minor irregularities." See also *Faist v. Mayor, etc. of the City of Hoboken, et al.*, 72 N. J. L. 361, 60 A. 1120 (1905)'."

The respondent contends that when a bid is produced and it is referred to as A bid, the Board may take the base figure and add to it the amounts set opposite the particular alternates that they want to accept and the total amount of the base bid and the alternates accepted becomes then THE bid of the one bidder, and cites the following cases:

"In *Tufano v. Cliffside Park*, 110 N. J. L. 370 at 372, Justice Heher said:

> 'The failure of the trucking company to comply with the specifications in the respects indicated deprived it of the right to the award. Public policy underlies the requirements of competitive bidding. The purpose of the statute is that each bidder, actual or possible, shall be put upon the same footing. The municipal authorities should not be permitted to waive any substantial variance between the conditions under which bids are invited and the proposals submitted.'

"In *Albanese v. Machetto*, 7 N. J. Super. 188 at 191, the Court said:

> '(1, 2) The Board of Commissioners of the municipality was without authority to waive any substantial variance between the specifications and the proposal submitted.'

"In *Solomon v. Newark*, 137 N. J. L. 247 at 249, Justice Burling confirmed the language above stated in the case of Tufano v. Cliffside Park.

"In *Harris v. City of Philadelphia*, 129 Atlantic 460, the Court said:

> '(1) The shortage in the check was apparently due to the failure of the bidder to include in his aggregate the principal sum of an item in the specifications known as the "force account," amounting in all to $300,000.00. While it has been argued that this item was merely an incident to the contract, and the failure to include it therefore no ground for rejecting the bid, there is no merit in this contention, * * *'

'Pursuant to the above ordinance, the advertisement for bids contained a notice that "No bid will be considered unless accompanied by a certified check on a responsible bank or trust company in favor of the City of Philadelphia, to the amount of five (5) per centum of the sum of such bid, in accordance with the provisions of an ordinance approved July 2, 1924, and reprinted in full in the specifications."

'We accordingly conclude that the requirement of a deposit is not a mere technical irregularity which is subject to correction after the bids are open, in the discretion of the director, but a mandatory requirement imposed by ordinance, which must be fully complied with by the bidder as a condition precedent to a consideration of his bid'."

The bid of the petitioner was not accompanied by a certified check in the full amount as required by the advertised specifications. Although the Board of Education is empowered to waive minor irregularities, it is without authority to waive this substantial variance between the required specifications and the submitted proposal.

It is the opinion of the Commissioner that the Somerdale Board of Education was required either to reject all bids or to accept the bid of the Kehoe-Downs Construction Company, which was the lowest accompanied by 5% of the total of the bid and alternates. The appeal is dismissed.

June 19, 1956.