

State of New Jersey
Department of Education
Trenton

NEW JERSEY
SCHOOL LAWS
Enacted during the Legislative
Session of 1950

SCHOOL LAW DECISIONS
1949 - 1950

Keep with 1938 Edition of New Jersey School Laws

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SCHOOL LAWS, SESSION OF 1950

AMENDMENTS OF 1950*

CHAPTER 32, LAWS OF 1950

AN ACT relating to the application of the proceeds of bonds or other obligations of school districts governed by chapter seven of Title 18, Education, of the Revised Statutes, and amending section 18:7-94 and section 18:7-89 of the Revised Statutes.

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

1. Section 18:7-94 of the Revised Statutes is amended to read as follows:

18:7-94. (1) The proceeds of any bonds issued under this article shall be paid to the custodian of school moneys of the district, who shall in no event disburse them except to pay the expenses of issuing and selling the bonds and for the purpose or purposes for which the bonds were issued or except for temporary investment in bonds or notes issued by the United States of America pending the carrying out of the purpose or purposes for which the bonds were issued.

(2) Notwithstanding the provisions of paragraph (1) of this section, the legal voters of the district may, at any time not more than six years after the time of issuance or sale of such bonds, either at the annual meeting of the district or at a special meeting thereof called for that purpose, by the vote of a majority of the legal ballots cast, authorize the board and custodian of school moneys to expend all or any part of such proceeds which may be on hand one or more years after the time of issuance or sale of such bonds for a purpose (herein called "new purpose") other than the purpose or purposes for which the bonds were issued; provided, that such new purpose is one described in section 18:7-85 of this Title. The board shall frame the proposal to be submitted to the voters, which shall state the new purpose, the amount of such proceeds to be expended for such new purpose and the source of such proceeds, and such meeting or election shall be called and held and the result thereof ascertained, recorded and made known in substantially the manner or mode of procedure provided in this Title with respect to authorization of the issuance of bonds of the district; provided, however, that if any of such bonds mature beyond the period prescribed by section 18:7-91 of this Title with respect to such new purpose (computed from the date of such annual or special meeting), such proposal shall not be adopted by the legal voters unless the State Commissioner of Education shall have sooner endorsed upon a certified copy thereof his consent to the adoption thereof. The State Commissioner of Education shall endorse such consent on such certified copy if he shall be satisfied and shall record in writing his estimate (a) either that application of such proceeds to the purpose or purposes for which the bonds were issued will not satisfactorily carry out said purpose or purposes or that such purpose or purposes have been carried out, and, if such bonds were issued pursuant to a proposal a copy of which was endorsed prior to its adoption with the consent of the State Commissioner of Education provided for in section 18:5-86 of this Title, (b) that the carrying out of such new purpose is necessary in order to provide educational facilities in the district which are or within five years will be needed in the district. If the State Commissioner of Education shall not be so satisfied prior to the date of such annual or special meeting, he shall endorse his disapproval on such certified copy.

(3) If any part of such proceeds is not applied to or necessary for carrying out the purpose or purposes for which the bonds were issued or any new purpose authorized pursuant to paragraph (2) of this section, the board may transfer the balance remaining unapplied to the building and repairing account of the district.

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

18:7-89. No action, suit, or proceeding to contest the validity of any election ordering the issue of bonds or election or district meeting held pursuant to section 18:7-94 of this Title shall be instituted after the expiration of twenty days from the date of such election or meeting.

3. This act shall take effect immediately.

Approved April 11, 1950.

* Italics show amendments of 1950.

CHAPTER 92, LAWS OF 1950

AN ACT concerning the purchase of supplies and the entering into contracts for the repairing of certain schoolhouses by boards of education governed by chapter fifteen of Title 18 of the Revised Statutes, and amending section 18:15-53 of the Revised Statutes.

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

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

18:15-53. Each board of education of a county vocational school shall, prior to the beginning of each school year, cause advertisement to be made for proposals for furnishing supplies required in the school and by the board during the ensuing year. If other and further supplies shall be required during the year, they shall be purchased in like manner. The board may authorize the purchase of supplies to an amount not exceeding five hundred dollars (\$500.00) without advertisement.

No contract for the erection of any building for the use of the school, or for enlarging a building already erected, shall be entered into except after advertisement. No contract for repairing a building at a cost of more than one thousand dollars (\$1,000.00) shall be entered into except after advertisement.

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

2. This act shall take effect immediately.

Approved May 1, 1950.

CHAPTER 143, LAWS OF 1950

AN ACT concerning education, and repealing section 18:7-37 of the Revised Statutes.

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

1. Section 18:7-37 of the Revised Statutes is hereby repealed.

2. This act shall take effect immediately.

Approved May 25, 1950.

CHAPTER 209, LAWS OF 1950

AN ACT to amend "An act concerning the establishment, maintenance, control and management of public playgrounds and recreation places by boards of education, and amending sections 18:5-43 and 18:5-44 of the Revised Statutes," approved May twenty-third, one thousand nine hundred and forty-nine (P. L. 1949, c. 208).

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

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

1. Section 18:5-43 of the Revised Statutes is amended to read as follows:

18:5-43. The board of education of any school district may establish public playgrounds and recreation places of such size and dimensions and in such locations *within and without* the school district as the board shall think suitable. The board may lease, purchase, or condemn, or acquire by gift or otherwise, the lands necessary for such playgrounds and recreation places. Moneys needed for payment therefor, for erecting buildings thereon, *or for otherwise improving the same*, or for repairing the same and providing equipment therefor, in school districts subject to and operating under chapter six of this Title, shall be furnished to the board of education by the governing body of the municipality in the same way as moneys are furnished to boards of education for the purchase of lands for school purposes in such school districts; and in school districts subject to and operating under chapter seven of this Title, such moneys may be raised by the legal voters of the school district in the same manner as moneys are raised for the purchase or taking of lands for school purposes in such school districts.

2. This act shall take effect immediately.

Approved June 8, 1950.

CHAPTER 213, LAWS OF 1950

AN ACT concerning school elections, amending sections 18:7-19, 18:7-23, 18:7-30 of the Revised Statutes, and "An act concerning school elections, and supplementing article three, chapter seven, of Title 18 of the Revised Statutes," approved February first, one thousand nine hundred and forty-four (P. L. 1944, c. 3), and supplementing article three of chapter seven of Title 18 of the Revised Statutes.

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

1. Section 18:7-19 of the Revised Statutes is amended to read as follows:

18:7-19. Whenever the board shall establish two or more polling places in the district, they shall also and at the same time establish the boundaries of the polling districts. *Such boundaries shall coincide with the boundaries of one or more of the election districts of the municipality or municipalities.* No person shall vote at any such election elsewhere than at the polling place designated for the voters of the polling district in which he resides.

2. Section 18:7-23 of the Revised Statutes is amended to read as follows:

18:7-23. Each candidate must be indorsed by at least ten persons, *none of whom shall be the candidate himself*, whose signatures need not all appear upon a single petition. Any number of petitions of the same purport may be filed but no petition shall contain the indorsement of more than one candidate.

3. Section one of "An act concerning school elections, and supplementing article three, chapter seven, of Title 18 of the Revised Statutes," approved February first, one thousand nine hundred and forty-four (P. L. 1944, c. 3), to which this act is amendatory is amended to read as follows:

1. In any annual or special school election, if the duplicate permanent registration form of any person cannot be found in the signature copy register at the time he applies for a ballot and such person claims that he was permanently registered in such municipality at least *forty* days prior to such election or that he was permanently registered in another municipality within the same county and filed or forwarded a change of residence notice to the commissioner of registration of the county or the clerk of the municipality, other than the municipal clerk of the municipality in which the county seat is located, certifying that he has moved to the municipality in which he seeks to vote at least *forty* days prior to such election, one of the school election officers shall require such person to make and sign an affidavit in the form which shall have been prescribed by the Commissioner of Education, which form shall include a statement that such person was permanently registered in such municipality at least *forty* days prior to such election or that such person was permanently registered in another municipality within the same county and filed or forwarded a change of residence notice to the commissioner of registration of the county or the clerk of the municipality, other than the municipal clerk of the municipality in which the county seat is located, certifying that he has moved to the municipality in which he seeks to vote at least *forty* days prior to such election, and that such person has the qualifications required to vote at such election. If such form has been properly filled out by a school election officer and signed by such person, such person shall be eligible to receive a ballot. The number of the ballot shall be recorded on such form and the form shall be transmitted to the superintendent of schools of the county, in the sealed packet required by section 18:7-44 of the Revised Statutes. Any school election officer may take such affidavit.

4. Section 18:7-30 of the Revised Statutes is amended to read as follows:

18:7-30. All elections for members of the board shall be by ballot. Each ballot shall have at the top thereof a coupon at least one inch deep extending across the ballot above a perforated line. The coupons shall be numbered consecutively from one to the number of ballots prepared for use in such election district. Upon the coupon and above the perforated line shall be the words "To be torn off by the judge of election" and "Fold to this line." Below the perforated line shall be printed the words "School Election Ballot" and below which and extending across the ballot in one or more lines shall be the name of the municipality or municipalities comprising the district, the date of the election, and if the district is divided into two or more polling places, the number, name, or other mark or designation to distinguish the polling place, and the printed facsimile signature of the district clerk. The heading shall be set apart from the body of the ballot by a heavy diagram rule.

Below this rule shall be printed the following directions instructing the voter how to indicate his choice for the person for whom he may desire to vote and stating the maximum number of candidates he may vote for: "To vote for any person whose name appears on this ballot mark a cross (X), plus (+) or check (V) mark with black ink or black pencil in the space 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 (X), plus (+) or check (V) 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." Below these instructions shall be printed a heavy diagram rule below which shall be printed such directions to the voter as may be necessary as "Vote for one," or "Vote for two," or a greater number, as the case may be, immediately after which shall be printed the names of the candidates duly nominated by petition as they appear signed to the certificate of acceptance *in the order prescribed by law*, but no candidate who has failed to file a certificate of acceptance shall have his name printed upon the ballot. The grouping of two or more candidates upon any ballot to be used for the election of members of the board is hereby prohibited. The same size and style of type shall be used in printing the name of each candidate and between the name of each candidate shall be printed a heavy diagram rule and the space between each of the rules shall be exactly equal. Immediately after the space allotted to the names of candidates there shall be as many ruled blank spaces as there are members to be voted for. Immediately to the left and on the same line with the name of each candidate and blank space there shall be printed a square the same size of type in which the name of the candidate is printed, which type shall, in no case, be larger than twenty-four point. In case a member of a board is to be elected for a full term, and a member is to be elected to fill an unexpired term, the ballots shall designate which of the persons to be voted for is to be elected for the full term and which for the unexpired term.

5. The position which the names of candidates shall have upon the annual school election ballot shall be determined by the district clerks in the respective districts by conducting a drawing in the following manner:

The drawing of names shall take place at eight o'clock in the evening on the day following the last day for filing petitions for the annual school election at the regular meeting place of the board of education. In case the day fixed for the drawing of names falls on a Sunday, the drawing shall be held on the following day. The drawing shall be done by the district clerk, or in the event of his sickness or disability or absence from the district, by a person designated by the president of the board of education. The person making the drawing shall make public announcement at the drawing of each name, the order in which the name is drawn, and the term of office for which the drawing is made.

A separate drawing shall be made for the full term, unexpired two-year term, and unexpired one-year term, respectively. The names of the several candidates for whom petitions have been filed for each of the terms shall be written upon cards of the same size, substance and thickness. The cards shall be placed in a covered box with an aperture in the top large enough to admit a man's hand and to allow the cards to be drawn therefrom. The box shall be turned and shaken thoroughly to mix the cards and the cards shall be withdrawn one at a time.

Where there is more than one person to be elected for a given term of office, the position of the names on the ballot for each term of office shall be determined as above described. The name of the candidate for each term of office first drawn from the box shall be printed directly below the proper term for which he was nominated and the name of the candidate next drawn shall be printed next in order, and so on, until the last name shall be drawn from the box.

Any legal voter of the district shall have the privilege of witnessing the drawing.

6. If the supply of ballots shall be exhausted before the polls are closed, unofficial ballots, made as nearly as possible in the form of the official ballot, and approved by the election officials of the polling district, may be used. The mode and manner of voting such unofficial ballots shall, nevertheless, in all respects conform as nearly as possible to the mode and manner of voting herein prescribed.

7. Military service balloting shall be conducted as prescribed in "A supplement to An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing train-

ng under Army or Navy direction at places other than those of such persons' respective residences, and persons having served as soldiers, sailors, marines or nurses in the armed forces of the United States in any war, who are patients in veterans' hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing "An act to afford certain voters of this State who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans' hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes," approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes, approved February eighteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 1)," approved April twenty-eighth, one thousand nine hundred and forty-nine (P. L. 1949, c. 54).

8. This act shall take effect July first, one thousand nine hundred and fifty.
Approved June 8, 1950.

CHAPTER 254, LAWS OF 1950

AN ACT concerning the State Department of Education, and amending section 18:2-1 of the Revised Statutes.

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

1. Section 18:2-1 of the Revised Statutes is amended to read as follows:

18:2-1. There hereby is established, in the Executive Branch of the State Government a principal department which shall be known as the State Department of Education, and which shall consist of a State Board of Education and a Commissioner of Education, with such divisions, bureaus, branches, committees, officers and employees as are specifically referred to in this Title and as may be constituted or employed by virtue of the authority conferred by this Title and by any other law.

The State Board of Education established hereby shall consist of twelve members, not less than three of whom shall be women, and all of whom shall be citizens who have resided within the State for not less than five years immediately preceding their appointment, but there shall not be appointed from the residents of any one county more than one member.

The members shall be appointed by the Governor by and with the advice and consent of the Senate for terms of six years, except that of the successors of the members whose terms will expire in the year one thousand nine hundred and fifty-one, two shall be appointed for terms of one year each, one shall be appointed for a term of three years, and one shall be appointed for a term of six years, and of the successors of the members whose terms will expire in the year one thousand nine hundred and fifty-three, one shall be appointed for a term of one year, and two shall be appointed for terms of six years each, and of the successors of the members whose terms will expire in the year one thousand nine hundred and fifty-five, one shall be appointed for a term of two years, and two shall be appointed for terms of six years each.

Vacancies in said board occurring from any cause shall be filled in like manner but for the unexpired term only. All members shall continue in office after the expiration of their respective terms until their respective successors are appointed and qualified.

The general supervision and control of public instruction in this State and of the State Department of Education shall be vested in the State Board. The State Board shall be charged with the duty of planning and recommending respecting the unified, continuous and efficient development of public education including public higher education.

2. This act shall take effect immediately.

Approved June 28, 1950.

CHAPTER 268, LAWS OF 1950

AN ACT concerning the teachers' pension and annuity fund, and amending sections 18:13-52 and 18:13-55 of the Revised Statutes.

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

1. Section 18:13-52 of the Revised Statutes is amended to read as follows:

18:13-52. Any present-entrant, irrespective of his age, who so desires and who has had thirty-five years of service as a teacher to his credit, *the last twenty-five years of which service shall have been performed in this State*, shall be retired from active service and shall receive all the benefits of this article as now provided for members over the age of sixty-two years as if such member were over the age of sixty-two years; excepting that such retirement allowances, other than the additional pension provided by paragraph "d" of section 18:13-54 of this Title, shall equal one-seventieth of the average of the salary of such member, for the last five years for each year of service.

On and after July first, one thousand nine hundred and fifty, any new-entrant under the attained age of sixty-two years who so desires and who has had at least thirty-five years of service as a teacher to his credit, the last twenty-five years of which service shall have been performed in this State, shall be retired from active service, and shall receive a retirement allowance as provided by section 18:13-55 of this Title.

2. Section 18:13-55 of the Revised Statutes is amended to read as follows:

18:13-55. Upon superannuation retirement a new-entrant shall receive a retirement allowance which shall, subject to the provisions of section 18:13-56 of the Revised Statutes, consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his retirement; and

b. A pension, in addition to the annuity, of one-one-hundred-and-fortieth of his average salary multiplied by the number of years of his total service; *provided, the member shall have attained the age of sixty years or more; or*

c. In case the member shall not have attained the age of sixty years, a pension, in addition to the annuity, which shall be such percentage of one-one-hundred-and-fortieth, as the board of trustees shall prescribe, of his average salary multiplied by the number of years of his total service. The board of trustees may from time to time adopt a table of such percentages, according to age, sex and period of total service, which shall be computed so that the pension granted shall be the actuarial equivalent of such portion, as the actuary of the board of trustees shall determine to be available of the reserve computed, at the date of retirement, to meet the obligation of the pension accumulation fund, not under this paragraph "c," but under paragraph "b" of this section or upon retirement for disability.

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

Approved June 28, 1950.

CHAPTER 339, LAWS OF 1950

AN ACT concerning the fund for the retirement upon pension of certain employees of the boards of education in school districts in first-class counties in the State, amending sections 18:5-76, 18:5-77 and 18:5-79, and supplementing chapter five of Title 18, of the Revised Statutes.

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

1. Persons temporarily or provisionally employed by such boards of education who become permanent employees immediately thereafter shall be permitted to purchase credit covering the said period of temporary or provisional service immediately preceding said permanent employment, by making application therefor at the time said employee becomes a member of such pension fund, and in such case, the payments to be made by the employee and board of education, as provided for in paragraphs a, b and d of section 18:5-76 of the Revised Statutes, shall, with interest at three per centum (3%) per annum or such other legal rate as shall be determined by the board of trustees, date from the time of the beginning of the period of temporary or provisional employment.

2. Section 18:5-76 of the Revised Statutes is amended to read as follows:

18:5-76. The pension fund shall be created and sustained as follows:

a. There shall be deducted from every payment of salary of all employees who are members of the fund and who entered such service on or before the age of thirty-five years, *four per centum (4%)* of the amount of such salary.

b. There shall be deducted from every payment of salary of all employees who are members of the fund and entered such service over the age of thirty-five years, such percentage over and above the *four per centum (4%)* required to be deducted by "paragraph a," as shall be determined by the board of trustees to correspond to the risk arising by the additional age of such employee.

c. All moneys given to the fund by any person.

d. Each board of education shall pay into the fund annually an amount equal to *six per centum (6%)* of the aggregate amount of the annual salaries of its employees who are members. Such payments shall be provided for by each board in its annual appropriation for the support and maintenance of the public schools.

e. If in any year the money in the fund is insufficient to pay the pensions provided for, each board of education having employees who are members shall appropriate, in the same manner as for all other expenses, a proportionate sum sufficient to meet the requirements of the fund for the time being. The amount to be appropriated by each board shall be based upon the number of its employees who are members.

3. Section 18:5-77 of the Revised Statutes is amended to read as follows:

18:5-77. The board of trustees may, in the manner prescribed by the by-laws of the corporation, assess and collect monthly or semi-monthly from each and every member of the pension fund, the amounts required to be paid by *said member* into the fund. All moneys so collected shall be paid to the treasurer of the corporation.

The board of trustees may make it a condition of membership that each member sign an order on the custodian of school moneys, or other disbursing officer, directing the retention from his *or her* salary or wage of the amount of his *or her* assessments and the payment of the amount so retained directly to the treasurer of the corporation, and the custodian of school moneys, or other disbursing officer, shall make such retention and payments, but such right of retention and payment shall become operative only in the event of the same being authorized by the by-laws of the corporation.

Whenever any member shall die or his *or her* employment be terminated, all payments made by such employee to the fund shall be returned to the employee, *if alive; to his or her surviving named beneficiary on file with the board of trustees, and if none, then to his or her legal representative; together with simple interest at the rate of two per centum (2%) per annum, figured on such employee's contributions from the date of membership.*

Whenever any member shall die after retirement on pension, not having received in pension payments an amount equal to the total amount of his or her contributions to the fund, the difference between the amount so received and the amount of contributions shall be paid to the surviving named beneficiary on file with the board of trustees, and if none, then to his or her legal representative; together with simple interest at two per centum (2%) per annum figured on such employee's contributions from the date of membership; excepting upon such amounts received by the member during his retirement; unless said employee has made provisions with the board of trustees for optional benefits under the provisions of section 18:5-79 of the Revised Statutes. This section shall be retroactive to July one, one thousand nine hundred and forty-nine.

4. Section 18:5-79 of the Revised Statutes is amended to read as follows:

18:5-79. Pensions shall be paid from the fund in the manner following:

a. A member of the pension fund who has honorably served for thirty years or more as an employee of a board of education in a county wherein the fund has been established and maintained shall, upon application to the board of trustees of the pension fund be retired by such board of trustees and shall thereupon receive annually from the fund, for and during the remainder of his *or her* natural life, an amount equal to *one-sixtieth* of the average annual salary received by *him or her* during the five years immediately preceding his *or her* retirement *multiplied by the number of years he or she has actually served, the amount to be determined by resolution of the board and paid in the same manner and in the same installments in which such salary has been payable.*

b. Upon the retirement of a member who has reached the age of sixty year but who has been employed by such board less than thirty years, the person so retired shall be entitled to receive during his or her natural life by way of pension one-sixtieth of the average annual salary received by him or her during the five year immediately preceding his or her retirement multiplied by the number of years he or she has actually served, the amount to be determined by resolution of the board and paid in the same manner and in the same installments in which such salary has been payable.

c. A member of the fund who has served therein for fifteen years, who shall become incapacitated, either mentally or physically, and who cannot perform the regular duties of employment, or who, by reason of advanced age, is found unfit for the performance of his or her duties, shall be retired by the board of trustees of the pension fund and thereupon shall receive annually from the fund an amount equal to one-sixtieth of the average annual salary of such employee during the five year immediately preceding the retirement multiplied by the number of years of creditable service, not in excess of thirty years; however, a member who has served therein for twenty-five years who shall become incapacitated, either mentally or physically, from illness or injury incurred in the performance of his or her duties as such employee shall be retired by the board of trustees of the pension fund, and, thereupon, shall receive annually from the fund an amount equal to one-half of the average annual salary received by such employee during the five years immediately preceding the retirement.

The trustees of the pension fund shall have the power to determine whether or not any employee is permanently and totally disabled, and whether or not a disability of an employee is the result of an injury, accident or sickness arising out of and in the course of the employee's employment. The claimant shall have the right to present physicians, witnesses or other testimony in his or her behalf before the board of trustees. The chairman, or any other member of the board of trustees, may administer oaths to any physician or other persons called before the trustees regarding the employee's disability. The board of trustees shall decide, by resolution, whether the applicant is entitled to the benefit of this act.

Once in each year, the board of trustees may, and upon the member's application shall, require any member retired for disability who is under the age of sixty, to undergo medical examination by a physician or physicians designated by the board of trustees. 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 of trustees that the disabled beneficiary is not permanently and totally incapacitated, either mentally or physically, for the performance of duty, and the board finds that said member is engaged in a gainful occupation, or could be engaged in a gainful occupation, and if the board concurs in the report, then the amount of the pension shall be reduced to an amount which, when added to the amount then being earned by him or her or an amount which he or she could earn if gainfully employed, shall not exceed the amount of compensation received by him or her at the time of his or her retirement. If subsequent examination of such beneficiary shows that his or her earnings have changed since the date of his or her last examination, then the amount of the pension shall be further altered, but the new pension shall not exceed the amount of the pension originally granted, nor shall the new pension, when added to the amount then being earned by the beneficiary, exceed the salary or compensation received by him or her at the time of his or her retirement.

d. At time of retirement, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or he or she may, on retirement, elect to convert the benefits, otherwise payable to him or her, into a retirement allowance of the equivalent actuarial value computed on the basis of such mortality tables as shall be adopted by the board of trustees, in accordance with one of the optional forms following:

Option 1. A reduced retirement allowance, payable during life, with a provision that in the case of death, before the total pension payments have equalled the actuarial value computed as aforesaid, the balance shall be paid to his or her surviving designated beneficiary, duly acknowledged and filed with the board of trustees at the time of his or her retirement; and if none, then to his or her estate.

Option 2. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death it will continue during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 3. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death, an allowance at one-half of the rate of his or her reduced allowance will be continued during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 4. A reduced retirement allowance, payable during the retired member's life, with some other benefit payable after his or her death, provided, the benefit is approved by the board of trustees.

No optional selection shall be effective in case a member dies within thirty days after retirement and such a member shall be considered an active member at the time of death until the first payment on account of any benefit becomes normally due.

The board of trustees shall, from time to time and as often as they deem it necessary, employ an actuary who shall recommend, and the board shall keep in convenient form, such data as shall be necessary for actuarial valuation of the various funds created by this chapter. Once in every five-year period, beginning with the current year, the actuary shall make an actuarial investigation into the mortality, service and compensation of salary experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the various funds thereof, and upon the basis of such investigation the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary.

(b) Certify the reduced rate of contribution which shall be made by the boards of education to the pension fund thereafter as provided by paragraph d, of section 18:5-76 of the Revised Statutes and the time from which such reduced contribution is to begin.

5. This act shall take effect immediately.

Approved July 24, 1950.

SCHOOL LAWS, SESSION OF 1950
SUPPLEMENTS

CHAPTER 24, LAWS OF 1950

AN ACT to amend "An act to provide for the registration and regulation of certain private child care centers, providing penalties for violation thereof, and supplementing Title 18 of the Revised Statutes," approved May sixth, one thousand nine hundred and forty-six (P. L. 1946, c. 303).

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

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

4. Each certificate of approval shall be valid for a period of three years from the date of issue and may be revoked for good cause at any time after hearing.

2. This act shall take effect immediately.

Approved April 11, 1950.

CHAPTER 27, LAWS OF 1950

AN ACT to authorize school districts to provide jointly for the transportation of school pupils, and supplementing Title 18 of the Revised Statutes.

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

1. The boards of education of two or more school districts may provide jointly for the transportation of pupils to and from any school or schools within or outside the districts.

2. Any such joint transportation shall be provided under the terms of an agreement adopted by resolution of each of the boards of education concerned wherein shall be set forth the essential information concerning the transportation to be provided, the method of computing the proportion of the cost each party to the agreement shall assume, and the proportion of the State aid to which each district shall be entitled, and any other matters deemed necessary to carry out the purposes of the agreement.

3. Any transportation provided under the terms of this act shall be subject to all the provisions of the law and the rules and regulations of the State Board of Education governing the transportation of school pupils.

4. Each district's proportionate share for transportation provided under this act shall be paid in the manner set forth in the agreement and in the same manner as other expenses of the district are paid.

5. If the county superintendent of schools of the county in which the districts are situate shall approve the necessity, the cost, and the method of transportation to be provided and the agreement whereby such transportation is to be provided, each district shall be entitled, as State aid under section six of chapter sixty-three of the laws of one thousand nine hundred and forty-six, to seventy-five per centum (75%) of the cost of its proportionate share of the transportation pursuant to the terms of the agreement.

6. In the event that any controversy or dispute shall arise among the parties to any agreement entered into under the terms of this act, the same shall be referred to the county superintendent of schools of the county in which the districts are situate for determination and his determination thereon shall be binding, subject to appeal to the Commissioner of Education and the State Board of Education pursuant to sections 18:3-14 and 18:3-15 of the Revised Statutes. In the event that the districts are in more than one county, the controversy or dispute shall be referred to the county superintendents of the counties for joint determination, and if they shall be unable to agree upon a joint determination within thirty days, the controversy or dispute shall be referred to the Commissioner of Education for determination.

7. This act shall take effect immediately.

Approved April 11, 1950.

CHAPTER 59, LAWS OF 1950

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

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

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

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

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

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

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

(b) the sum total of such sum as will result from multiplying the number of elementary pupils in the district by three dollars (\$3.00), the number of approved special classes in the district by seventy-five dollars (\$75.00), and the number of high school and evening school pupils in the district by three dollars and seventy-five cents (\$3.75).

2. This act shall take effect immediately.

Approved April 17, 1950.

CHAPTER 81, LAWS OF 1950

AN ACT concerning education, and supplementing article twelve of chapter fifteen of Title 18 of the Revised Statutes.

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

1. All income derived from donations and from tuition fees charged for furnishing adult education courses shall be applied by the board of education receiving the same exclusively for carrying out a program of adult education.

2. The custodian of school moneys of each school district shall be the legal custodian of all funds allocated by the board of education and received from tuition fees or from any other source for the purpose of carrying out a program of adult education. He shall keep a separate account thereof and shall disburse the moneys on orders signed by the president and district clerk or secretary of the board of education.

3. Any surplus arising from the excess of receipts from donations, tuition fees or from any source other than local taxation over the actual cost of the maintenance and operation of the adult education program in any school year shall not lapse into the general current expense balance of the district, but shall remain in the separate account to be utilized exclusively for carrying out a program of adult education during the next ensuing school year. In the event that the adult education program in any district shall be discontinued for two consecutive school years, any funds remaining in the separate account shall lapse into the general current expense account of the district.

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

Approved April 25, 1950.

CHAPTER 120, LAWS OF 1950

AN ACT concerning education, providing for the issuance of promissory notes by a board of education, and supplementing article seven of chapter seven of Title 18 of the Revised Statutes.

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

1. If funds are not available to pay for school bonds maturing or interest accruing for the reason that no certified statement was transmitted to the county board of taxation as provided in section 18:7-96 of the Revised Statutes, the board of education shall execute and deliver promissory notes therefor, and pay the amount so borrowed together with interest thereon, at a rate not exceeding six per centum (6%) per annum.

2. Any such amount borrowed together with interest shall be included in the next ensuing certified statement to the county board of taxation, and the amount so certified when paid to the custodian of school moneys shall be used to pay the amount so borrowed together with the interest thereon.

3. This act shall take effect immediately.

Approved May 9, 1950.

CHAPTER 158, LAWS OF 1950

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

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

1. Any board of education may apply to the commissioner for his consent for any or all of the pupils of its district to attend the public school or schools of an adjacent school district outside the State, if said board shall deem it advisable in order to secure better school facilities for the pupils or for reasons of economy or other good cause, and if, in the judgment of the board, it is inadvisable for said pupils to attend public school in another school district within the State because of the distance to be traveled, the topography of the intervening country, the condition of the roads, or the likelihood of unusually hazardous traveling conditions during certain seasons of the year.

2. The commissioner may give his consent if he shall be satisfied that it is advisable for the pupils to attend a public school or schools of an adjacent school district outside the State in order to secure better educational facilities or for reasons of economy or other good cause, and if he shall be satisfied that it is inadvisable for said pupils to attend public school in another school district within the State because of the distance to be traveled, the topography of the intervening country, the condition of the roads, or the likelihood of unusually hazardous traveling conditions during certain seasons of the year. The commissioner may withdraw his consent at any time, upon reasonable notice, whenever the reason or reasons for giving his consent shall cease to exist.

3. If the commissioner shall give his consent, the board of education of the sending district may pay to the receiving district outside the State such amount for tuition as the respective districts may agree upon, but, in no case in excess of the actual cost per pupil, and the sending district shall be entitled to the same State aid apportionments as if the pupils were enrolled in a public school of similar grade in this State.

4. This act shall take effect immediately.

Approved May 31, 1950.

CHAPTER 159, LAWS OF 1950

AN ACT concerning the transportation of school children, and supplementing Title 18 of the Revised Statutes.

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

1. Within thirty days after the effective date of this act and in each school year, prior to the assignment of any driver or substitute driver to any vehicle operated by the board of education of any school district as a school bus, there shall be filed by the secretary or district clerk of such board with the secretary of the county superintendent of schools the name, address, photograph and fingerprints of each such driver or substitute driver.

2. Within thirty days after the effective date of this act and in each school year, prior to the beginning of transportation of school children under a contract awarded by a board of education, the contractor shall furnish to the secretary of the county superintendent of schools, the name, address, photograph and fingerprints of each driver or substitute driver to be assigned to any vehicle in the performance of his contract, except any such driver or substitute driver whose fingerprints shall have been filed by the contractor with the Federal Bureau of Investigation. If, during the school year, the assignment of additional drivers or substitute drivers is to be made, the same information as to such drivers or substitute drivers, except any such drivers or substitute drivers whose fingerprints shall have been filed by the contractor with the Federal Bureau of Investigation, shall immediately be furnished the secretary of the county superintendent of schools.

3. Such names, addresses, photographs and fingerprints may be forwarded by the county superintendent of schools to the State Bureau of Identification with a request for a report on each individual concerned. If it appears from such report that any such individual has been convicted of a crime and the offense is of such character as to make it undesirable that he should act as a driver of a school bus, he shall be disqualified by the county superintendent of schools. If the record is of an offense not of such character necessarily to require disqualification, the county superintendent of schools shall notify the school board, which board shall cause an investigation of his character to be made through the local police or otherwise before his employment as a driver is approved.

4. No board of education shall be entitled to, approve or assign a driver, and no contractor shall be entitled to approve or assign a driver, as a driver or substitute driver of a school bus except after first complying with the provisions of this act and any person violating, or failing to comply with, the provisions of this act shall be guilty of a misdemeanor.

5. This act shall take effect immediately.

Approved May 31, 1950.

CHAPTER 163, LAWS OF 1950

AN ACT concerning the appointment of an assistant district clerk or assistant secretary, and supplementing Title 18 of the Revised Statutes.

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

1. Every board may, by a majority vote of all its members, appoint an assistant district clerk in those districts having district clerks and an assistant secretary in those districts not having district clerks, who may be chosen from among its members, and may fix his term of employment and his compensation. Such assistant district clerk or assistant secretary shall perform all the duties and be subject to all the obligations of the district clerk and secretary, respectively, during the absence or inability of the district clerk or secretary to act, except that such assistant district clerk or assistant secretary shall not acquire tenure of office in such capacity; *provided, however*, such assistant district clerk or assistant secretary shall have no power to act until the board of education which made such appointment shall, by a vote by the majority of its members, declare that the district clerk or secretary is absent or unable to act.

Such assistant district clerk or assistant secretary shall be required to execute and deliver a bond similar to that required of the person for whom he is acting as assistant, and the payment of the premium thereon shall be made by the board in those cases where the board pays the premium on the bond for the district clerk or secretary.

2. This act shall take effect immediately.

Approved May 31, 1950.

CHAPTER 180, LAWS OF 1950

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

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

1. Whenever the provisions of section 18:7-107 of the Revised Statutes would hereafter become applicable to a school district because said district shall have attained a population of more than ten thousand, or because one municipality shall have been divided into two or more municipalities leaving such district as a single school district including both municipalities, pursuant to section 18:5-2 of the Revised Statutes, the board of education of such school district, within thirty days after the publication of the population figures in the census by virtue of which said section 18:7-107 would become applicable, may submit to the legal voters of the district, at an annual school election or at a special school election called for that purpose in the manner provided in chapter seven of Title 18 of the Revised Statutes the question as to whether a board of school estimate shall be organized for such school district pursuant to said section 18:7-107 or whether taxes and bond issues shall be authorized at annual or special school elections by a vote of a majority of the legal voters as theretofore. If the majority vote shall favor the continuance of the authorization of school taxes and bonds issued by the legal voters as theretofore, a board of school estimate shall not be organized.

2. This act shall take effect immediately.

Approved June 5, 1950.

CHAPTER 228, LAWS OF 1950

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.

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

1. The boards of education of two or more school districts in any county may by resolution adopted by a majority vote of all the members of each such board, determine to establish a "County Educational Audio-visual Aids Center."

2. The supervision, management and control of such center shall be vested in a County Educational Audio-visual Aids Commission which shall consist of seven members who shall serve without compensation. Three members of the commission, who shall be known as members of the first class, shall be chosen from the membership of the boards of education of the participating school districts, three members of the commission, who shall be known as members of the second class, shall be chosen from the membership of the professional staffs of said boards of education whose offices, positions or employments are such as to require them to hold appropriate certificates in full force and effect in this State, and one member of the commission, who shall be known as the librarian member, shall be the county librarian if there be a county library in the county, who shall hold office ex officio, and if there be no county library in the county, then such member shall be chosen from among the librarians of the libraries in the county supported in whole or in part by public funds.

3. The first members of the commission shall be appointed forthwith by the county superintendent of schools of the county upon notification that it has been determined to establish such a center and they shall serve until the thirtieth day of June next ensuing.

4. On or before said June thirtieth and annually thereafter, the county superintendent shall call a meeting of all of the members of the boards of education of the participating school districts for the election of permanent members of the commission. At such first meeting one member of the first class and one member of the second class, shall be elected for terms of one year, two years and three years, each, beginning on the first day of July next succeeding, and if there be no county library in the county, the librarian member shall be elected for a term of one year. At each subsequent meeting one member of each class shall be elected to serve for a term of three years and a librarian member to serve for one year shall be elected, also, if there be no county library in the county. In all cases the vote of the majority of the members of the boards of education of the participating school districts present and voting shall be necessary for election. Vacancies in the commission shall be filled by the remaining members of the commission according to the qualifications hereinbefore provided for original appointments and they shall serve for the unexpired terms only.

5. Each County Educational Audio-visual Aids Commission shall organize by the election of a chairman and a vice-chairman from its own membership and shall adopt rules and regulations for the establishment and maintenance of said center. The county superintendent of schools shall serve as secretary of the commission, and the county treasurer of the county shall serve as custodian of all moneys and funds of the commission from whatever source derived, without compensation. The county treasurer as such custodian shall keep said moneys and funds in a separate and distinct account and shall disburse the same on orders signed by the chairman and secretary of the commission. Before entering upon his duties as such custodian he shall be required to give additional bond or to renew his bond as county treasurer, in such manner as to cover and secure the faithful performance of his duties as such custodian and any additional premium shall be paid by the commission.

6. The commission shall provide, maintain and furnish educational audio-visual aids to the public schools of the participating school districts and shall provide such facilities, and may incur such expenses as it may deem necessary for said purpose, but shall not make expenditures or commitments in any year in excess of the funds available for that year.

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 forty cents (\$.40) per pupil in daily average attendance in the participating school districts and shall be apportioned among the participating school districts in the proportion which the average daily attendance of the pupils of each such district shall bear to the total average daily attendance of the pupils of all of the participating school districts. Said average daily attendance 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 first day of October, for apportionment of State aid for schools among the participating school districts.

8. On or before September thirtieth of each year the commission shall prepare a tentative budget of the sums required by said commission in carrying on its activities for the ensuing year so itemized as to make it readily understandable, together with a statement of the amount to be assessed against each participating school district for such year, and shall deliver the same to each board of education of the participating school districts before the date of the October meeting of such board. The board of education of each participating school district shall consider such tentative budget at its October meeting and shall return the same forthwith to the commission with its endorsement or suggestions for change, if any, and after all such boards of education shall have so returned the same, the commission shall adopt its budget for the ensuing year and notify the board of education of each participating school district, on or before the November meeting thereof if practicable and otherwise as soon thereafter as possible, of the total amount of the budget and of the amount to be assessed against such school district for said year and each such board of education shall include the amount so assessed against it in the item "current expenses of schools" in the budget adopted or submitted for adoption by it for the ensuing year and the same shall be paid to the custodian of the commission as

required and requisitioned by him. If during the first year of the establishment of any such commission it shall be impossible to carry out the budgetary provision hereinbefore provided, the commission shall certify to the boards of education of the participating school districts the amounts of said assessments as soon as practicable after the establishment of the commission and said boards of education shall pay said assessments from available current expense funds.

9. Each County Educational Audio-visual Aids Commission shall forward to the Commissioner of Education, on or before September first of each year, a statement of its organization and its proposed program of operation for the next ensuing school year, together with an estimate of the amount of State aid, calculated as hereinafter provided, to which it will be entitled for that school year and it shall certify, on or before the next June thirtieth, the amount raised by assessments and private donations for the purposes of such audio-visual center for the said school year and if the amount so raised by assessments or private donations or both for any one school year, for the establishment and maintenance or for the maintenance of such aids center shall be not less than the sum of five hundred dollars (\$500.00), and if the commissioner shall approve such organization and program he shall thereupon certify to the Director of Budget and Accounting in the Department of the Treasury that there shall be paid to the custodian of the commission an amount equal to the amount so raised by assessments and private donations out of any funds appropriated by law for said purposes, which amount shall be paid on the warrant of said director drawn on the State Treasurer in favor of the custodian of the commission except that the amount so to be paid by the State to any such commission shall not exceed the sum of twenty-five hundred dollars (\$2,500.00) in any one year nor shall it exceed the sum expended by the commission for educational audio-visual aids purchased by it in any year after the first two annual payments have been made. If the sum appropriated by the State for State aid to County Educational Audio-visual Centers in any one year shall be less than the total amounts so certified by the commissioner, each commission shall be entitled to be paid its proportionate share of the total amount so appropriated.

10. The amount raised for the school year 1950-1951 by assessments and private donations by any audio-visual aids commission, together with a statement of the organization of the commission and its program, shall be certified to the commissioner pursuant to the provisions of section nine of this act as soon as they shall be determined upon and the commissioner shall apportion the State aid, in the manner hereinafter provided, on the first day of December, one thousand nine hundred and fifty, and if there shall remain any balance available for State aid after the December first apportionment such balance shall be apportioned among the County Educational Audio-visual Aids Commissions which may be established after December first, one thousand nine hundred and fifty as certificates are received from them.

11. Any unexpended balance of the moneys or funds in the hands of the custodian of any such commission at the end of any school year shall be available for expenditure by the commission in the succeeding year or years but it shall not be included in any report of the amount raised as the basis for the calculation of State aid for any succeeding year.

12. Not more than one County Educational Audio-visual Aids Center shall be established in any one county and if any board of education of any school district within the county shall, subsequent to the establishment of a County Educational Audio-visual Aids Center within the county, determine, by resolution adopted by a majority vote of all of its members, to apply for membership therein and shall give notice according to the secretary of the commission, such board of education shall be admitted to membership therein beginning on the first day of the month next following and thereafter shall be subject to the provisions of this act in the same manner as though it had been one of the original participating school districts therein.

13. Any board of education of any participating school district may withdraw as a participating district pursuant to resolution duly adopted by said board and notice of intention to withdraw given to the secretary of the commission on or before the first day of August in any year and in event that all participating boards of education, or all of said participating boards of education except one, shall determine to withdraw from any such County Educational Audio-visual Aids Center, the same shall be dissolved and the property of such center shall be disposed of at public or private sale and one-half of the amount realized therefrom, together with one-half of any unexpended balances remaining in the treasury of such center, shall be paid to the State Treasurer to be credited to the State Public School account and the

remainder thereof shall be apportioned among the boards of education participating in said center at the time of its dissolution on the basis of the total average daily attendance of the pupils of said district ascertained as hereinbefore provided.

14. This act shall take effect immediately.

Approved June 13, 1950.

CHAPTER 230, LAWS OF 1950

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

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

1. After the effective date of this act, whenever by the creation of a new school district or by any other means part of the territory in an existing school district shall become part of a new or different school district, the board of education of said existing school district shall remain vested, in its corporate capacity, with the title to all school property real and personal located or to be located in the remainder of said existing school district, and the board of education of said new or different school district shall become vested, in its corporate capacity, with the title to all school property real and personal located or to be located in said new or different school district.

Notwithstanding the provisions of sections 18:5-6, 18:5-7 or 18:5-10 of Title 18, Education, of the Revised Statutes, any indebtedness of said existing school district, which was incurred or was authorized but not yet incurred for the erection, repair or purchase of any such property and for which the board of education of said existing school district to which such property originally belonged is and shall remain liable, shall be assumed and paid by and become the obligation of the board of education of the school district in which such property is or is to be located, and upon payment of any such indebtedness by the school district in which such property is not located, the board of education thereof may maintain an action therefor against the board of education of the school district in which said property is or is to be located.

2. This act shall take effect immediately.

Approved June 13, 1950.

ACTS AND RELATED LAWS, 1950

CHAPTER 3, LAWS OF 1950

AN ACT concerning municipalities, and amending sections 40:60-39 and 40:60-40.

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

1. Section 40:60-39 of the Revised Statutes is amended to read as follows:

40:60-39. When the governing body of a municipality shall determine that all or any part of a tract of land with or without buildings erected thereon, owned by the municipality, is no longer desirable, necessary or required for other public purposes, it may transfer and convey such land or any portion thereof, with or without improvements thereon, to the board of education in the municipality or a regional board of education of a regional school district of which the municipality is a constituent part, for a nominal consideration to be used for public purposes connected with the district board of education or the regional board of education. A prior dedication or use for park purposes of such land or any part thereof shall not be deemed to preclude a transfer and conveyance thereof under the provisions of this section.

2. Section 40:60-40 of the Revised Statutes is amended to read as follows:

40:60-40. No transfer or conveyance of such land or property as provided in section 40:60-39 of this Title shall be made until the governing body of the municipality shall have adopted a resolution declaring the property to be no longer desirable or necessary or required for other public purposes, and authorizing the conveyance thereof for public purposes by deed executed by the proper officers of the municipality under the municipal seal, nor until the board of education in said municipality or the regional board of education, to whom such conveyance is to be made, shall have adopted a resolution requesting or approving the conveyance of such lands or property for such public purposes.

3. This act shall take effect immediately.

Approved March 14, 1950.

CHAPTER 36, LAWS OF 1950

AN ACT to amend "An act concerning certain employees of any school district, the boundaries of which are coterminous with those of a municipality, or of more than one municipality in which chapter fifteen of Title 43 of the Revised Statutes has been or shall be adopted," approved April twenty-third, one thousand nine hundred and forty-six (P. L. 1946, c. 135), as said Title was amended by chapter forty-five of the laws of one thousand nine hundred and forty-nine.

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

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

1. Every employee of any school district including school districts in counties of the first class the boundaries of which are coterminous with those of a municipality, or more than one municipality, in which chapter fifteen of Title 43 of the Revised Statutes has been or shall be adopted, who is not a member of or eligible to join the teachers' pension and annuity fund, except an employee required upon employment or appointment to become a member of some other pension fund, shall be entitled to receive the same benefits as employees of such municipality or municipalities are entitled to receive and the school district shall have the same obligations with respect to such employees as the municipality has to its own employees under said chapter fifteen of Title 43 of the Revised Statutes; provided, such employee has been admitted to receive the benefits of the fund established under said chapter, or shall make application to be admitted to such benefits within one year from July first, one thousand nine hundred and forty-nine, or within one year from the effective

date of said chapter fifteen of Title 43 of the Revised Statutes in such municipality or municipalities, whichever is later.

2. This act shall take effect June thirtieth, one thousand nine hundred and fifty.

Approved April 11, 1950.

CHAPTER 116, LAWS OF 1950

AN ACT incorporating the College of South Jersey into the State University of New Jersey maintained by the Trustees of Rutgers College in New Jersey.

WHEREAS, The College of South Jersey, an educational nonprofit corporation organized under chapter one of Title 15 of the Revised Statutes, and the Trustees of Rutgers College in New Jersey, a body corporate and politic created by royal charter granted November tenth, one thousand seven hundred and sixty-six, and altered, amended and confirmed by the Council and General Assembly of this State by an act adopted June fifth, one thousand seven hundred and eighty-one, and by an act adopted May thirty-first, one thousand seven hundred and ninety-nine, have agreed, subject to the adoption of this act, that all departments of higher education maintained by the College of South Jersey shall be incorporated into the State University of New Jersey and that to that end the real and personal property of the College of South Jersey shall be granted, conveyed, transferred and assigned to the Trustees of Rutgers College in New Jersey; therefore,

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

1. The departments of higher education maintained by the College of South Jersey consisting of the Junior College and the School of Law are incorporated into and designated a part of the State University of New Jersey.

2. This act shall take effect on the first day of July, one thousand nine hundred and fifty; *provided*, that meanwhile the College of South Jersey shall grant, convey, transfer and assign its real and personal property to the Trustees of Rutgers College in New Jersey to be maintained as a part of the State University of New Jersey and utilized as an instrumentality of the State of New Jersey in the county of Camden for providing higher education and thereby to increase the efficiency of the public school system of the State; otherwise this act shall not become effective.

Approved May 8, 1950.

CHAPTER 127, LAWS OF 1950

AN ACT concerning motor vehicle special learner's permits, and supplementing article two of chapter three of Title 39 of the Revised Statutes.

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

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

2. The special permit shall be sufficient license for the person to operate a dual pedal controlled motor vehicle in this State during the period specified, while in the company of and under the control of a teacher, certified by the State Department of Education as authorized to instruct in an approved behind-the-wheel automobile driving education course, or while in the company of a representative of the Division of Motor Vehicles for the purpose of submitting to examination for a driver's license. Such person, as well as the said teacher, shall be held accountable

for all violations of subtitle one of Title 39 of the Revised Statutes and any supplements thereto committed by such person while in the presence of the teacher.

3. No special permit shall be issued unless the person applying therefor shall present a written application for the same, bearing a certification by the principal of the school indicating that the person is enrolled in an approved behind-the-wheel driving education course in the school of which he is principal and shall pay the sum of one dollar (\$1.00) to an agent of the Division of Motor Vehicles, which sum shall be turned over by the agent to the director, and by him remitted with the other funds collected in his division to the State Treasurer, in accordance with law.

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

5. This act shall take effect immediately.

Approved May 10, 1950.

CHAPTER 189, LAWS OF 1950

AN ACT concerning free county libraries, and amending sections 40:33-6, 40:33-7, 40:33-8, 40:33-12 and 40:33-13 of the Revised Statutes.

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

1. Section 40:33-6 of the Revised Statutes is amended to read as follows:

40:33-6. Upon the adoption of the provisions of this article the board of chosen freeholders may contract with an existing library, or library board, within the county or the library commission of a county library already established and furnishing county library services in another county, for the establishment and maintenance of the county free library in accordance with the provisions of this article and subject to the rules and regulations of the board of chosen freeholders. *No independently operated county library shall be established hereafter in any county unless a plan for the financing of the same, indicating the amount annually to be assessed, levied and collected in taxes for the establishment and thereafter for the maintenance, thereof, shall be submitted to, and shall be approved as sufficient by, the head of the bureau of public and school library services in the Division of the State Library, Archives and History in the Department of Education.*

2. Section 40:33-7 of the Revised Statutes is amended to read as follows:

40:33-7. Should the board of chosen freeholders not enter into the contract provided for in section 40:33-6 of this Title, it shall within sixty days after this article becomes operative, appoint a commission to be known as "the county library commission." The commission shall consist of five members. On the first commission one member shall be appointed for one year; one for two years; one for three years; one for four years and one for five years, and thereafter all appointments shall be for terms of five years, *except in the case of appointments to fill vacancies occurring other than by expiration of term, which vacancies shall be filled in the same manner as appointments are made, but for the unexpired terms only.* The county library commission shall serve without compensation.

3. Section 40:33-8 of the Revised Statutes is amended to read as follows:

40:33-8. The county library commission shall organize by the election of a chairman, and shall adopt rules and regulations for the establishment and maintenance of the county library. *It shall employ a librarian, and such professional library assistants, if any, as may be required, who shall hold appropriate certificates issued by the State Board of Examiners and such other employees as it shall deem necessary for the performance of its functions.* It may purchase such supplies and equipment and incur such expenses as it may deem necessary to carry out the provisions of this article, but shall not incur expenses or make purchases in any fiscal year from public funds in excess of the appropriation for county library purposes for that year. *In addition to its other powers, it may accept gifts, devises, legacies and bequests of property, real and personal, and hold and use the property and income of the same in any manner, which is lawful and consistent with the purpose for which the commission is created, and with the provisions of the conveyance, will or other*

instrument in or under which such gift, devise, legacy or bequest is made and may dispose of the same subject to the same conditions. It shall make an annual report to the county board of freeholders.

4. Section 40:33-12 of the Revised Statutes is amended to read as follows:

40:33-12. The county treasurer shall be the custodian of the county library tax collected and of all other funds or moneys of the commission, and upon receipt of bills properly authorized by the commission, payment thereof shall be made if sufficient funds are on hand.

5. Section 40:33-13 of the Revised Statutes is amended to read as follows:

40:33-13. When any municipality, maintaining a public library and situate in a county which has adopted a county library system under the provisions of this article, desires to participate in the benefits of this article, *the governing body thereof, by resolution, may apply to the county library commission of such county to be included in the county library system, and the municipality shall be admitted to said county library system upon such terms and conditions as may be agreed upon by the governing body thereof and the county library commission of the county, not inconsistent with the provisions of this act; provided, and so long as provision is made for assessing, levying and collecting within the municipality the special tax assessed, levied and collected in the other municipalities served by such county library system and thereafter such municipal public library shall continue to be operated as a municipal public library under its own governing board or body and shall be entitled to receive municipal appropriations notwithstanding its inclusion in the county library system and shall be entitled to receive from the county library system the same book loan, advisory, and other services as are received by the other municipalities within said system.*

6. This act shall take effect immediately.

Approved June 7, 1950.

RESOLUTIONS, 1950

ASSEMBLY CONCURRENT RESOLUTION 12, LAWS OF 1950

A CONCURRENT RESOLUTION providing for the adoption of the red oak as the recognized State tree of New Jersey.

WHEREAS, The State of New Jersey has not heretofore adopted an officially recognized tree known as the State tree; and

WHEREAS, The red oak is a representative tree of New Jersey with beauty of structure, strength, dignity and long life; and

WHEREAS, It is most useful commercially and enjoys great freedom from disease; and

WHEREAS, The red oak is adapted to our New Jersey soils and therefore it is compatible with all native shrubs and evergreens as well as permitting lawn and grass areas to be successfully grown under a canopy of the red oak; and

WHEREAS, The fall color of the red oak foliage places it foremost in our natural landscape scene; and

WHEREAS, The new State Constitution has been adopted and is now in effect and it is timely and in the best interests of good citizenship that a State tree be adopted; now, therefore

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

1. The State of New Jersey hereby adopts the red oak—*Quercus borealis maxima* (Marsh) Ashe—as the State tree.

2. This resolution shall take effect immediately.

Filed May 23, 1950.

JOINT RESOLUTION 4, LAWS OF 1950

A JOINT RESOLUTION creating a commission for the purpose of studying the subject of providing the State of New Jersey with a medical college and formulating a comprehensive plan for the creation, establishment and maintenance of said medical college, and making an appropriation for the expenses of the commission.

WHEREAS, The need for a medical college in New Jersey has long been recognized by the general public as well as by the medical profession; and

WHEREAS, In compliance with a request from the Medical Society of New Jersey, the Governor has named eight members to a committee to study such need; therefore

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

1. There is hereby created The New Jersey Medical College Commission. The commission shall consist of twenty members, eight of whom shall be the persons heretofore named in the month of May, one thousand nine hundred and forty-nine, by the Governor, to the committee to study the need for a medical college in New Jersey, four of whom shall be the persons named to the said committee by the Medical Society of New Jersey, four of whom shall be the persons named to the said committee by Rutgers University, two of whom shall be Senators to be named by the President of the Senate, and two of whom shall be Assemblymen to be named by the Speaker of the General Assembly. Any vacancy in the membership of the commission shall be filled by appointment by the same authority who named the person whose membership in the commission or in said committee ceased and thereby created the vacancy.

2. The commission shall select from among its members a chairman, a vice-chairman, a secretary, and a treasurer. The commission may adopt by-laws for the purpose of facilitating the performance of its functions. The commission may employ such technical and clerical assistants as it deems necessary and fix their compensation within the limits of its appropriation.

3. The commission is authorized and empowered to study the need for a medical college in New Jersey; to formulate a comprehensive plan for the creation, establishment and maintenance of a medical college in New Jersey; to consider whether such proposed medical college should be a State college or a college privately conducted, with State aid, affiliated with an existing university or college, or otherwise; to examine the existing statutory law which would be applicable directly or indirectly to such medical college, and to report its proposed plans and recommendations to the Governor and to the Legislature. The commission shall make its first report as speedily as possible and not later than February first, one thousand nine hundred and fifty-one.

4. For the purpose of effectuating this resolution there is hereby appropriated to the commission for its expenses the sum of ten thousand dollars (\$10,000.00), or so much thereof as may be necessary, which money shall be expended in the same manner and subject to the regulations governing other State appropriations.

5. This joint resolution shall take effect immediately.

Filed May 15, 1950.

JOINT RESOLUTION 9, LAWS OF 1950

A JOINT RESOLUTION creating a State School Aid Commission to investigate and study the needs of the public schools and the question of additional State financial aid to the public schools of New Jersey, the costs thereof, and a system of finance adequate to meet such costs.

WHEREAS, Studies of the State Department of Education indicate an unusual increase in the number of pupils in the public schools of New Jersey during the past few years and predict an even greater increase in the future; and

WHEREAS, These same studies show that this increase in school population will add greatly to the present teacher shortage problem which is already acute; and

WHEREAS, A number of State, county, and local educational and civic organizations and public bodies are recommending additional State school aid; therefore,

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

1. There is hereby created a State School Aid Commission to investigate and study the question of additional State financial aid to the public schools of New Jersey for school needs, the costs thereof and a system of finance adequate to meet such costs.

2. The commission shall consist of eleven members, three of whom shall be members of the Senate to be appointed by the President of the Senate, three of whom shall be members of the General Assembly to be appointed by the Speaker thereof, one of whom shall be the Commissioner of Education, and four of whom shall be chosen from the public and shall be appointed by the Governor.

3. The Governor shall designate one of the members to be chairman. The term of office for members of the commission shall be for one year from date of appointment or until their successors are appointed and qualified.

4. The commission is authorized to request of the Division of Law in the Department of Law and Public Safety such legal services as may be necessary and to request of the Commission on State Tax Policy recommendations for a system of finance adequate to meet the costs of a State aid plan such as shall be proposed by said State School Aid Commission and shall be entitled to call to its assistance, and avail itself of, the services of such employees of any State department, board, bureau, commission or agency as it may require, to employ such research, stenographic and clerical assistants, and to incur such traveling and other miscellaneous expenses, as may be necessary in order to perform its duties and to be paid for as hereinafter provided.

5. The commission may hold hearings in any part of the State and upon the completion of its said hearings shall embody its findings and recommendations in a report with proposed legislation thereon to the current session of the Legislature.

6. The Commissioner of Education is authorized to expend a sum not exceeding five thousand dollars (\$5,000.00) or so much thereof as may be necessary to defray the expenses of the study herein authorized from any sums appropriated to the Department of Education and not required for other purposes.

7. This joint resolution shall take effect immediately.

Filed June 7, 1950.

JOINT RESOLUTION 7, LAWS OF 1950

A JOINT RESOLUTION to declare the fourteenth of September of each year as "National Anthem Day," and for a proclamation thereof by the Governor.

WHEREAS, The War of 1812 was fought by the United States of America to maintain its independence as a nation; and

WHEREAS, The support and aid given by the State of New Jersey enabled the nation to emerge triumphant from the conflict; and

WHEREAS, The leadership and valor of the citizens of New Jersey in the armed forces resulted in glorious victories upon both land and sea; and

WHEREAS, The inspiration of such conspicuous conduct must be cherished and preserved; and

WHEREAS, The gallantry in combat of those who served is epitomized in our national anthem, "The Star Spangled Banner"; and

WHEREAS, In the crystalline splendor of the national anthem are expressed the ideals that engendered and preserved our great nation and this commonwealth; therefore,

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

1. The fourteenth of September of each year is declared to be "National Anthem Day" in the State of New Jersey, and the citizens thereof, the public schools and other educational institutions and the patriotic and veterans' organizations are urged to give their support thereto and to observe it as the anniversary of the composition of the national anthem, "The Star Spangled Banner," during the Battle of Fort McHenry on that date in the War of 1812, with appropriate exercises and otherwise, to the end that the memory of the services rendered by the patriots in the armed forces of the United States in that conflict may be perpetuated as exemplified in said national anthem.

2. That the Governor by an appropriate proclamation so proclaim the said date as "National Anthem Day" in this State.

3. This joint resolution shall take effect immediately.

Filed June 2, 1950.

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SCHOOL LAW DECISIONS

1949 - 1950

JOHN F. LANGE,
Petitioner,

vs.

THE BOARD OF EDUCATION OF THE TOWNSHIP OF WARREN, SOMERSET COUNTY,
AND AGNES H. MOBUS,
Respondents.

DECISION OF THE
COMMISSIONER OF EDUCATION

For the Petitioner, Jerome D. Newcorn.
For the Respondent Agnes H. Mobus, George F. Hetfield.
For the Respondent Board of Education, Joseph C. Paine.

The respondent in this case was elected to membership on the Board of Education of the Township of Warren, Somerset County, at the annual school election on February 8, 1949. The Board of Education organized as required by law on February 14, 1949. Respondent did not take the oath of office and accept membership on the Board of Education until on or about April 6, 1949.

Petitioner brought an action in the Superior Court of New Jersey to oust the respondent. Upon formal hearing before the Honorable Daniel J. Brennan, Assignment Judge for Somerset County, it was decided that the controversy, being a school matter, would first be under the jurisdiction of the Commissioner of Education, pursuant to R. S. 18:3-2. Petitioner asks that the respondent be found ineligible to act as a duly qualified member of the Board of Education of the Township of Warren.

The pertinent statutes are R. S. 18:7-11 and 12, which read as follows:

"18:7-11. A member of a board shall be a citizen and resident of the territory contained in the district, and shall have been such for at least three years immediately preceding his becoming a member of the board.

"Whenever a member shall cease to be a bona fide resident in the district, a vacancy in such office shall immediately exist and he shall not exercise any of the duties thereof."

"18:7-12. A member of a board shall, before entering upon the duties of his office, take and subscribe an oath, before an officer authorized to administer oaths, that he possesses the qualifications prescribed in section 18:7-11 of this title, and that he will faithfully discharge the duties of his office. The oath shall be filed with the district clerk."

The respondent admits that she did not establish a three-year continuous residence in Warren Township until April 1, 1949, but that she satisfied the requirements of R. S. 18:7-11 by waiting until on or about April 6, to take the oath of office. The petitioner contends that the respondent is ineligible for board membership because by her admission she had not established the required residence qualifications by the time of the organization meeting of the board of education.

The question to be decided is: When must the three-year residence prerequisite be completed in order for a candidate to qualify as a member of a board of education? The answer to the question must be the date of the organization meeting of the board of education in Chapter 7 school districts, which according to R. S. 18:7-53 is at

8:00 P. M. on the Monday next following the annual school election held on the second Tuesday in February. In the opinion of the Commissioner it was not the legislative intent to permit a person, without the necessary qualifications at the time of the organization, to delay the assumption of his duties until he possesses such qualifications. If the respondent were to prevail in this case and the practice of delaying the acceptance of membership were to become prevalent, some boards of education might find themselves without a quorum. There are boards of education in this State with only three members. If there happened to be an election for a full term and for an unexpired term and two members were elected who could not assume office until they possessed the qualifications at some future date, the board of education would be without a quorum and unable to transact business.

Honorable J. Wallace Leyden of the Superior Court in a recent case, *Martin J. Carrig vs. Walter E. Schember*, Bergen County, Docket No. L-3804-48, (as yet unreported) ousted a member of a board of education in Bergen County because he had not been a resident three years prior to the organization meeting of the board. The following is quoted from the Conclusions of Law in the case:

"Therefore, in this case in order for the defendant, Walter E. Schember, to be elected to become a member of the Board of Education of the Township of Lyndhurst, he must have resided in Lyndhurst *for at least three years prior to February 14, 1949*. Since the defendant, Walter E. Schember, did not reside in Lyndhurst for at least three years to prior to February 14th, 1949, he is not qualified and eligible to hold the office of a member of the Board of Education in the Township of Lyndhurst." (Italics supplied).

The Commissioner finds that the respondent was ineligible to become a candidate for membership or to serve as a member of the Board of Education of the Township of Warren, Somerset County, and that she is without legal right to membership on said Board of Education.
August 11, 1949.

HOWARD E. PURDY, vs. BOARD OF EDUCATION OF THE BOROUGH OF ROSELLE PARK, UNION COUNTY, Respondent.	}	DECISION OF THE COMMISSIONER OF EDUCATION
<i>Petitioner,</i>		
<i>Respondent.</i>		

For the Petitioner, Edward A. Dunbar, by Messrs. O'Connor, Morss and Mancini, by Ralph V. Mancini.
For the Respondent, Milton A. Feller.

The results of the Annual School Election held in the Borough of Roselle Park on February 8, 1949, with three members to be elected for the three-year term, were announced as follows:

Joseph G. Mele.....	664	votes
Jean M. Prochzka.....	637	"
Yorke E. Rhodes.....	472	"
Howard E. Purdy.....	420	"
Lambert F. Abel.....	323	"
Theodore L. Davis.....	320	"
Robert W. Adrian.....	306	"

The petitioner seeks to have the election invalidated for the reasons that (1) the election was not conducted in accordance with the pertinent statute, (2) voters were permitted to vote under the observation and with the assistance of others, and not in secret, (3) challengers were not permitted to exercise their prerogatives, (4) the counting of the ballots was not open to the public, and (5) voters were permitted to

vote upon their verbal allegations of identity and residence, no registration card was requested of the voters, and no signature comparison record was kept or made.

No proof or argument was offered at the hearing to establish any of the first three grounds of appeal. It was conceded at the pre-trial conference that appellant would be unable to prove that the violation of the School Election Law charged therein had affected the final election results, and therefore those charges were abandoned.

Testimony was presented to show a violation of the provisions of R. S. 18:7-40, which reads as follows:

"Immediately after the close of the polls the election officers shall proceed to count the votes for each candidate and shall complete the count without delay or adjournment. The counting shall be open and public but not to such an extent that the number present shall hinder, delay, or inconvenience the election officers in counting the ballots and ascertaining the result."

Three of the unsuccessful candidates testified that they were unable to open the doors of the Aldene School to attend the counting of the ballots for the reason that the doors were locked. Later, at a Men's Club meeting in a church, a board member with a key to the Aldene School offered to accompany two of these candidates to the school and unlock the doors, but his offer was declined. The janitor of the school in his testimony denied that the doors were locked. He testified that he was near the entrance most of the time from the closing of the polls until the count was completed, but admitted that he made several trips to the boiler room, the auditorium, and the polling place during the two-hour period. Two members of the election board testified that they gave no orders to lock the doors.

The testimony of the janitor of the Sherman School discloses that two or three people, whom he could not identify, told him to lock the doors at 9 P. M. One of the candidates mentioned above testified that he and another citizen of Roselle Park found the doors of the Sherman School locked, but that they were admitted by a board member who had a key. The other two candidates mentioned above were able to observe the counting in the Sherman School. All three admitted upon questioning that they made no attempt to exercise their right to act as challengers. Two members of the election board in the Sherman School denied giving any orders to lock the doors. The testimony of several witnesses reveals that a number of persons observed the counting in both schools and that no attempt was made by the election officials to order any citizen out of the polling places during the counting.

It is unfortunate if, as charged, any candidate or interested citizen was unable to gain entrance to the polling places during the counting of the ballots. Assuming without deciding that the doors were locked, such an occurrence in the light of the testimony would not constitute a ground for invalidating the election. There was no proof that the election officials, the board members, or the successful candidates ordered the doors locked. There was testimony that a number of persons were present at the polling places during the counting. It is well established in New Jersey law that to set aside an election the irregularity complained of must be sufficient to affect the result of the election. There was no proof submitted that the alleged locking of the doors affected in any way the result of the election.

It is stipulated that voters were not requested to present a registration card and no signature comparison was kept or made. Petitioner contends that the election boards failed in their duty in not requiring voters to present registration cards and in not keeping a signature comparison record. He concedes that the School Election Law does not, as does the General Election Law, expressly require the keeping of a signature comparison record and that neither law expressly requires the presentation of a registration card. He infers the requirement of keeping the signature comparison record from the duty imposed upon election board officials in school elections to ascertain that a voter is properly registered and qualified to vote. His contention is that in school elections, even though the School Law does not require the signature comparison record, the statute should be interpreted to intend the same procedure for school elections as is required for general elections in ascertaining that a voter is registered and qualified to vote.

School elections are conducted in accordance with the School Law and not according to the General Election Law. The Commissioner cannot find any provision in the School Law requiring the presentation of a registration card and the keeping

of a signature comparison record and, in the absence of any such provision, he is of the opinion that he is without power to make any such requirement. However this may be, even if there were such a requirement, the failure on the part of the election officials to do their duty in this respect would not invalidate the election unless it were proved that the irregularity affected the result of the election. The following is quoted from *In re Clee*, 119 N. J. L. 310, at page 321 :

"This charge is that the election officers in the 519 election districts listed in the schedule annexed to the petition, of Hudson County did not perform a duty imposed upon them by statute, i.e., they failed to compare the signature made by the voter in the poll book with the signature of the voter in the permanent registration book, and thus ascertain whether the two signatures were the same or similar, as required by paragraph 178, section 13 of the statute, supra, and the petitioner says that as a result thereof 'your petitioner challenges the entire vote cast in the said districts, to wit, 221,708 * * *.' In other words, the charge is that since the election officers (assuming the truth of the charge) failed in a directory duty, each and every of the more than two hundred thousand votes cast is to be rejected as void so that the result is thereby challenged. It is not asserted, under this charge, that a single illegal vote was received and yet, if I understand the petition correctly, it does mean that each and every vote in those five hundred and nineteen districts is to be invalidated.

"The implication that the two thousand and seventy-six election officers in charge of the five hundred and nineteen election districts in this county, sworn to perform their duties, selected in equal number by the respective political parties, failed utterly in even a single instance to compare signatures as required by law, imposes a strain upon one's credulity. But even if this be true, their failure to perform a directory duty cannot invalidate the result of the election.

"That such duties are directory is settled by the case of *Burrough vs. Branning* (at p. 115), supra, and that determination has never been challenged. This case, and others to which reference will be made, settles this and other points now under consideration. 'It is a principle of universal application that an irregularity which does not deprive a legal voter of his vote (not accompanied by fraud by the party seeking the benefit thereof) will not vitiate the election. The omission by election officers to discharge some duty merely directory will not set aside the return. * * * There are cases where the judges of election have been guilty of acts which render them liable to indictment and yet (in the absence of fraud by the party who claimed the benefit from the result) the election was held valid. If this be so, surely the will of the people is to be given effect, in the absence of fraud, if only irregularly expressed. Negligence or mistake in the performance of duty by election officers will not be allowed to stand in the way so as to defeat the expression of the popular will.' * * *

"It is not even suggested, much less charged in this specification, that the incumbent was in any way directly or indirectly responsible for the failure of the election officers to compare signatures. As a matter of fact, at the oral argument of this motion, it was expressly admitted by counsel for the contestant that he had no thought of intimating that the incumbent was in any way responsible for the alleged derelictions of which complaint is made."

Irregularities in school elections should not be condoned, but irregularities which do not affect the results of the election should not be permitted to penalize innocent persons. An inspection of the election results shows that the successful candidate with the third highest vote received 52 more votes than the highest unsuccessful candidate. The successful candidates with the highest and second highest number of votes received respectively 244 and 217 more votes than the highest unsuccessful candidate. It would be manifestly unfair to these successful candidates and would frustrate the will of the people expressed at the polls to set aside an election without proof that the failure of an election board to perform a directory duty affected the result of the election. If elections could be set aside for every failure of election officials to do their duty, it would be within the power of unscrupulous election officials to defeat the will of the people. The presumption is with the incumbents and it is necessary to uphold an election whenever possible. See *Lehlbach vs. Haynes*, 54 N. J. L. 77, *Love vs. Freeholders*, 35 N. J. L. 269, *In re Clee*, supra, at p. 330. The Commissioner has read the case of *Burkett vs. Francesconi*, 127 N. J. L. 541, cited by petitioner in

is brief, and finds it not to be applicable to the case under consideration. The Court is of the opinion that the case found fraud so diffused as to challenge the result. In the present case fraud is not charged. The petition is dismissed.
August 19, 1949.

THE BOARD OF EDUCATION OF THE BOROUGH OF GLEN GARDNER, <i>Petitioner,</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
<i>vs.</i>		
THE BOARD OF EDUCATION OF THE BOROUGH OF HAMPTON, HUNTERDON COUNTY, <i>Respondent.</i>		

For the Petitioner, Aller and Oliver (Lester W. Oliver of Counsel).
For the Respondent, Wesley L. Lance.

This case deals with the application of the Board of Education of the School District of the Borough of Glen Gardner in the County of Hunterdon for a change of designation of three pupils from the High School of the School District of the Borough of Hampton in the County of Hunterdon.

Alton Stevens has been attending the High Bridge High School without the formal consent of the Board of Education of the Borough of Hampton and without a change of designation being granted by the Commissioner of Education. The Hampton Board of Education at a special meeting held on August 13, 1948, instructed its counsel to notify the Glen Gardner Board of its intention to see to it that the provisions of the law relating to high school designations are complied with. Compliance with the law would result in requiring Alton Stevens to change high schools in his senior year.

The Glen Gardner Board now exercises its rights pursuant to R. S. 18:14-7 to apply for a formal change of designation for Alton Stevens to permit him to complete his education in High Bridge High School. This application will be granted. The State Department of Education is adverse to requiring a pupil to change high schools in his senior year unless such a change is absolutely necessary.

Mary Ella Staples attended the Hampton High School during the school years of 1946-1947 and 1947-1948. She began the eleventh grade of Hampton High School in the school year of 1948-1949 and remained until November, 1948, at which time she went to the State of Florida. In the spring of 1949, she returned from Florida and without formal change of designation attended the Clinton High School for two days at which time she became ill. Her illness prevented her from attending high school during the balance of the school year of 1948-1949.

Application is now made for a formal change of designation for Miss Staples so that she may pursue a course in agriculture in Clinton High School. This application must be denied. The high school designation law was enacted to protect districts which provide facilities for pupils of other districts from withdrawing such pupils without good cause. The Legislature has charged the Commissioner of Education with the responsibility of determining when good and sufficient reason exists for a change of designation. The Commissioner of Education feels constrained to exercise his discretion under the law with great caution in order that the legislative purpose for enacting the law may be accomplished. Only where a decided educational benefit will accrue to a pupil is it clearly the duty of the Commissioner of Education to grant an application for a change of designation. Miss Staples attended Hampton High School over two years prior to moving to Florida. The Commissioner of Education is of the opinion that any benefit which might accrue to her from taking agriculture for the remainder of her high school course weighed against the disadvantages of making an adjustment to another high school is not sufficient to warrant the granting of the application.

Miss Jean Erickson, who is entering high school for the first time, desires to attend High Bridge High School so that she can attend classes in Home Economics. This application will be denied because, in the opinion of the Commissioner, the

benefits to be derived from the change of designation do not warrant the granting of the application.
September 8, 1949.

<p>THE BOARD OF EDUCATION OF THE TOWNSHIP OF BERNARDS, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOARD OF EDUCATION OF THE BOROUGH OF BERNARDSVILLE, <i>Respondent.</i></p>	}	<p>DECISION OF THE COMMISSIONER OF EDUCATION</p>
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For the Petitioner, McCarter, English & Studer (Woodruff J. English, of Counsel).
For the Respondent, Kasen, Schnitzer & Kasen (Morris M. Schnitzer, of Counsel).

Prior to October 30, 1947, the School District of Bernardsville was comprised of the municipalities of Bernardsville Borough and Bernards Township. At an election held on that date, pursuant to R. S. 18:5-3, the legal voters of the Borough of Bernardsville voted to constitute that municipality a separate school district. A controversy has arisen as to the amount of the outstanding indebtedness of the original school district to be assumed by the new district, pursuant to R. S. 18:5-6 and R. S. 18:5-10. The source of R. S. 18:5-6 is Chapter 1 of the Laws of 1903 (2d Special Session), and reads as follows:

"The board of education of a new school district shall become vested, in its corporate capacity, with the title to all property real and personal in the district.

"Any indebtedness incurred for the erection, repair or purchase of any such property, for which the board of education of the school district to which such property originally belonged is liable, shall be assumed by and become the obligation of the board of education of the new district. Upon payment of such indebtedness by the district originally liable therefor, the board of education thereof may maintain an action therefor against the board of education of the new district."

The source of R. S. 18:5-10 is Chapter 270, Laws of 1931, and reads as follows:

"When a part of a school district shall become a new school district or a part of another school district, the new district or the district of which it becomes a part shall assume the liability for a proportion of the indebtedness of the whole original district outstanding at the time of separation, which proportion shall be as are the ratables of the separating part of the district to the ratables of the whole original district. The value of such ratables shall be computed from the records of the tax assessor for the year next preceding the date of separation."

The Board of Education of the Township of Bernards contends that, pursuant to R. S. 18:5-6, the Board of Education of the Borough of Bernardsville must assume the entire indebtedness of \$114,000 against the Bernardsville High School located in the new district and, pursuant to R. S. 18:5-10, must also assume 59.40505% of the \$64,000 indebtedness on the school located in the old district, amounting to \$38,019.23, making \$152,019.23 the total indebtedness to be assumed by the Borough.

The Borough Board admits that it must assume the \$114,000 indebtedness of the Bernardsville High School, pursuant to R. S. 18:5-6, but denies any obligation, pursuant to R. S. 18:5-10. Respondent's contention is that when the amount of indebtedness assumed by the separating district, pursuant to R. S. 18:5-6, exceeds its proportionate share of the total indebtedness of the original district outstanding at the time of separation, said district is relieved of any responsibility under the terms

f R. S. 18:5-10. Since the \$114,000 indebtedness assumed for the Bernardsville High School is in excess of \$105,740.99 (59.40505% of the indebtedness of the whole original district), the Borough Board maintains it has no responsibility for paying proportionate share of the indebtedness on property remaining in the old district. Thus, both parties agree that effect must be given to R. S. 18:5-6 in the case under consideration, but differ as to the effect of R. S. 18:5-10. Vice Chancellor Jayne in another case involving the same parties, *The Board of Education of the Township of Bernards vs. The Board of Education of the Borough of Bernardsville*, 142 N. J. Eq. 76, at page 278, expressed the opinion that R. S. 18:5-6 is in force at the present time.

The respondent Board attaches great significance to the legislative history of R. S. 18:5-10. The source of R. S. 18:5-10 is Chapter 27, Laws of 1931. The original bill (Senate No. 123) introduced by Senator Kuser contained the words "the said new school district * * * shall be responsible in like manner for the proportionate part of the outstanding bonded debt authorized for any school properties located in the remaining portion of the original district."

An Assembly Substitute for Senate No. 123 was enacted into law and its language is substantially that of R. S. 18:5-10. It requires a new district to assume the liability for a proportion of the indebtedness of the *whole original district outstanding at the time of secession*. Respondent argues that the petitioner is applying the formula of the bill as introduced in arriving at its proportionate share of the indebtedness rather than the formula of the bill which became law. Petitioner counters with the argument that the weight of authority is against the consideration of legislative history in construing a statute and that, even so, the committee substitute is but another way of expressing the intent of the original bill, which was to prevent a separating district from leaving the remaining district saddled with debt. Petitioner also attaches importance to the fact that both the 1903 and 1931 statutes were incorporated in the Revision of 1937, indicating that the revisers found no inconsistencies in the two statutes and that they may be construed together as a related whole and effectuated accordingly.

It is unnecessary for the Commissioner to pass on the question as to whether the legislative history of the 1931 statute should be considered because he takes the view that the result in this case will be the same whether the language of the original bill or the Assembly Substitute is applied in the situation under consideration.

The indebtedness on the school property of the new district, pursuant to R. S. 18:5-6, \$114,000 plus \$105,740.99 (59.40505% of the indebtedness of the whole original indebtedness, pursuant to R. S. 18:5-10), minus \$67,721.76 (59.40505% of the high school indebtedness already assumed under R. S. 18:5-6), which the petitioner does not claim and which would be an unreasonable demand, equals \$152,019.23, and is the same figure as \$114,000 (the indebtedness of the high school) plus \$38,019.23 (59.40505% of the indebtedness of the remaining part of the old district) which is \$152,019.23.

$$\begin{aligned} &(\$114,000 + \$105,740.99 - \$67,721.76 = \$152,019.23) \\ &(\$114,000 + 38,019.23 = 152,019.23) \end{aligned}$$

The Commissioner cannot agree with respondent that when the indebtedness of the property in the new district exceeds its proportionate share of the indebtedness of the whole original district, it is relieved of any further obligation for the debt of the remaining portion of the old district. It is well established that statutes *in pari materia* are to be construed as one act. *Modern Industrial Bank vs. Taub*, 134 N. J. L. 260 at page 263. It is the opinion of the Commissioner that full effect can and must be given to the provisions of both R. S. 18:5-6 and 18:5-10. See *Sutherland Statutory Construction, 3d Edition, Horack, Vol. 2, Section 5201*. The 1931 statute was a supplement. It may be presumed that the Legislature was aware of the existence of R. S. 18:5-6 when R. S. 18:5-10 was enacted. *City of Newark vs. Rockford Furniture Co.*, 66 A. (2d) 743. Also see *Sutherland Statutory Construction, 3d Edition, Horack, Vol. 2, Section 4510*. The Commissioner believes that if the Legislature had intended to relieve a separating district of any obligation under the terms of R. S. 18:5-10, when the amount of indebtedness assumed under R. S. 18:5-6 exceeds the proportion provided by R. S. 18:5-10, it would have included a specific provision therefor in R. S. 18:5-10 or as an amendment to R. S. 18:5-6.

Respondent argues the inequity of a construction of the statute that would require the new district with approximately 60% of the ratables to pay 85% of the remaining debt. Petitioner counters by pointing to the fact that under the provision of the law the Borough Board has acquired the Olcott School and twenty-six acre of land given in 1905 to the original district by Mr. Frederic P. Olcott.

The amount of property acquired by separating and remaining districts relative to the amount of indebtedness previously paid and assumed, pursuant to R. S. 18:5-4 and R. S. 18:5-10, will vary with each situation. The law does not provide a method for determining in each case of separation the amount of indebtedness to be assumed by the districts by taking into account all the tangible and intangible considerations peculiar to the case. The Commissioner believes, therefore, that all the equities involved cannot be weighed in applying the law to each situation. Accordingly, he feels that in a particular situation he must apply the law as he construes it, regardless of how much property is acquired by each district relative to indebtedness assumed and regardless of whether the indebtedness assumed is proportionate to the ratables in situations where R. S. 18:5-6 and 18:5-10 must both be applied. However this may be, it should be pointed out that the citizens of the municipality in which the referendum is held have a choice whether to form a separate district. They may consider the amount of debt to be assumed in weighing the advantages and disadvantages of separation. The citizens of the remaining portion of the district, however, have no voice in the matter. It is the opinion of the Commissioner that the intent of R. S. 18:5-10 is to protect the citizens of the remaining portion of the district from being left with a burdensome debt because of separation.

The Commissioner holds that effect can and must be given to both R. S. 18:5-6 and 18:5-10. He finds and determines that the Board of Education of the Borough of Bernardsville shall assume the entire indebtedness of the Bernardsville High School and 59.40505% of the bonded indebtedness of the School District of the Township of Bernards. The Board of Education of the Borough of Bernardsville is directed to make all payments with interest now due to the Board of Education of the Township of Bernards and all future payments in accordance with the determination of the Commissioner.
September 29, 1949.

DECISION OF THE STATE BOARD OF EDUCATION

This is a proceeding by the plaintiff-respondent, the Board of Education of the Township of Bernards, to require the defendant-appellant, the Board of Education of the Borough of Bernardsville, to make payment on account of school bonds representing indebtedness created upon property in the school district of plaintiff-respondent.

The school district of defendant-appellant was formerly part of the district of plaintiff-respondent. In 1947, the voters of Bernardsville decided to form a new district and pursuant to that decision the new and separate district came into being on July 1, 1948.

At the time of separation there was an indebtedness of \$114,000.00, being a balance remaining unpaid of bonds issued to erect a high school building in Bernardsville. On January 1, 1947, there was payable on account of this indebtedness \$9,000.00 of principal and \$2,565.00 interest.

There was also at the time of the separation a bond indebtedness of \$64,000.00 incurred on account of the erection of a school building in the school district of plaintiff-respondent, upon which there was payable on December 1, 1948, \$5,000 of principal and \$800.00 interest, which was duly paid by the plaintiff-respondent.

The question raised for decision is whether the defendant-appellant district is liable for the payment, in addition to the indebtedness on the high school bonds, of a proportion of the indebtedness incurred and remaining unpaid on July 1, 1948, on account of the bonds for the school building located in the school district of plaintiff-respondent.

The pertinent statutes are:

Title 18, Chapter 5, Section 6.

"The board of education of a new school district shall become vested, in its corporate capacity, with the title to all school property, real and personal in the district.

"Any indebtedness incurred for the erection, repair or purchase of any such property, for which the board of education of the school to which such property originally belonged is liable, shall be assumed by and become the obligation of the board of education of the new district. Upon payment of such indebtedness by the district originally liable therefor, the board of education thereof may maintain an action therefor against the board of education of the new district." P. L. 1903 (2nd Spec. Sess.), Chapter 1, Section 34, page 16.

Title 18, Chapter 5, Section 8.

"Whenever a new school district is created, the county superintendent of schools of the county in which it is situated, at the end of the then current school year, shall make a division of the assets and liabilities of the district from which the new district was created, *excepting the property and liabilities mentioned in Sections 18:5-6 and 18:5-7* of this title, between the new district and the remainder of the former district. Such division shall be made on the basis of the ratables in the respective districts for the year next preceding the creation of the new school district."

P. L. 1903 (2nd Spec. Sess.), Chapter 1, Section 33, page 15.

Title 18, Chapter 5, Section 10.

"When a part of a school district shall become a new school district or a part of another school district, the new district or the district of which it becomes a part shall assume the liability for a proportion of the indebtedness of the whole original district outstanding at the time of separation, which proportion shall be as are the ratables of the separating part of the district to the ratables of the whole original district. The value of such ratables shall be computed from the records of the tax assessor for the year next preceding the date of separation."

P. L. 1931, Chapter 270, Section 1, page 680.

This provision is entitled as a supplement to P. L. 1903, Chapter 1, commonly known as the School Law of 1903.

The defendant-appellant district does not dispute its liability to pay the bond indebtedness of \$114,000.00 remaining unpaid on July 1, 1948, incurred for the erection of the high school located therein.

It denies, however, that it is also obligated to pay more than its proportionate share of the entire indebtedness of the original district, and that the indebtedness assumed by it (the \$114,000.00) exceeds its proportionate share of the total indebtedness of the original district, which was determined to be 59.40505%, amounting to \$105,740.99.

The defendant-appellant rests its contention upon the language of R. S. 18:5-10. The sections of the statutes 18:5-6, 18:5-8 and 18:5-10 were all incorporated in the Revised Statutes of 1937 and re-enacted as part of our subsisting law; they are *pari materia* and should be read and construed together as a related whole, if that be possible.

The general rule is stated thus in Vol. 26, Am. and Eng. Enc. of L., Second Ed., on pages 620 and 621, and is supported by numerous cases therein cited:

"Statutes are in *pari materia* which relate to the same person or thing or to the same class of persons or things, and the phrase is applicable to public statutes or general laws made at different times and in reference to the same subject.

"In arriving at the intent of the Legislature in enacting a statute, not only must the whole statute and every part of it be considered, but where there are several statutes in *pari materia*, they are all, whether referred to or not, to be taken together and one part compared with another in the construction of any material provision."

To accept the contention of defendant-appellant we must assume that the legislative enactments are inconsistent or conflicting, although re-enacted at the same time in the Revision of 1937.

Counsel for both plaintiff-respondent and defendant-appellant make no reference in their briefs to R. S. 18:5-8, which directs the county superintendent to make a division of the assets and liabilities of the original district, excepting from the computation of such assets and liabilities the property and liabilities mentioned in R. S. 18:5-6. This section, R. S. 18:5-8, remains in full force and effect and we consider it must be read conjunctively with R. S. 18:5-6 and 18:5-10. So read, inconsistent or conflict, if any there was, no longer exists.

This view of the effect of the statutory enactments relating to the question presented for decision makes it unnecessary to discuss whether there was an implied repeal of R. S. 18:5-6 by R. S. 18:5-10, or the admissibility of the legislative history of R. S. 18:5-10 and the practical interpretation of the statute by the Commissioner of Education in previous instances.

The Commissioner of Education held that effect can and must be given to both R. S. 18:5-6 and 18:5-10, to which we add R. S. 18:5-8; and that the Board of Education of the Borough of Bernardsville shall assume and pay, when and as it becomes due, the entire indebtedness of the Bernardsville High School (\$114,000.00) and 59.40505% of the bonded indebtedness of the school district of the Township of Bernards, amounting to the sum of \$38,019.23. He directs the Board of Education of the Borough of Bernardsville to make all payments now due to the Board of Education of the Township of Bernards with interest, and all future payments when due in accordance with his determination.

We agree with the conclusions of the Commissioner of Education and recommend that his decision be affirmed.
December 2, 1949.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-175-49 September Term, 1949

The opinion of the court was delivered by COLIE, J.

This appeal involves the apportionment of bonded indebtedness between the Township of Bernards and the Borough of Bernardsville, hereinafter respectively referred to as Township and Borough.

Prior to October 30, 1947, the Township and the Borough comprised a single school district. On that date, the Borough held an election under R. S. 18:5-3 and a majority vote favored the separation of the Borough from the then existing school district. After the election, the schools in the former district comprising both the Township and the Borough were, in accordance with R. S. 18:5-4, operated by the Township until July 1, 1948. The Bernardsville High School is located in the Borough and there was outstanding \$114,000. of bonded indebtedness on it. The Borough admits that under R. S. 18:5-6 it was obligated to assume the entire indebtedness on that building. The Basking Ridge School is located in the Township and on it there is a bonded indebtedness of \$64,000. The proportion of ratables in the original school district was 40.59495% for the Township and 59.40505% for the Borough. In anticipation of \$5,000. par value of bonds on the Basking Ridge School, maturing on December 1, 1948, the Board of Education of the Township billed the Board of Education of the Borough in the amount of \$3,445.49, being the latter's proportion of the said \$5,000. based on the percentage of ratables in the Borough. The Borough refused to honor the bill and thereafter the Township paid and filed a petition with the Commissioner of Education seeking a determination of the controversy and an order directing the Borough to pay the aforesaid amount with interest. The Commissioner of Education held against the Borough and on appeal, the State Board of Education affirmed. This appeal is from the latter determination.

There is no dispute but that the bonded indebtedness on the high school located in the Borough amounted to \$114,000. and that the bonded indebtedness on the Basking Ridge School located in the Township amounted to \$64,000., and consequently the bonded indebtedness on the whole original district comprising both the Township

nd the Borough was \$178,000. Statutory authority for charging the entire bonded indebtedness on the high school against the Borough is to be found in R. S. 18:5-6:

"The board of education of a new school district shall become vested, in its corporate capacity, with the title to all school property, real and personal, in the district.

"Any indebtedness incurred for the erection, repair or purchase of any such property, for which the board of education of the school district to which such property originally belonged is liable, shall be assumed by and become the obligation of the board of education of the new district. Upon payment of such indebtedness by the district originally liable therefor, the board of education thereof may maintain an action therefor against the board of education of the new district."

The decision of the Commissioner, affirmed by the State Board, apportioned the bonded indebtedness against the Borough at \$152,019.23 and with this apportionment the Borough feels aggrieved.

The situation is controlled by statute and if the apportionment is to be sustained, it can only be done by virtue of statutory authority. *Board of Education of West Paterson vs. Board of Education of Little Falls*, 92 N. J. L. 284 (Sup. Ct. 1918.)

R. S. 18:5-10 is also clearly applicable. It provides:

"When a part of a school district shall become a new school district or a part of another school district, the new school district or the district of which it becomes a part shall assume the liability for a proportion of the indebtedness of the whole original district outstanding at the time of separation, which proportion shall be as are the ratables of the separating part of the district to the ratables of the whole original district. The value of such ratables shall be computed from the records of the tax assessor for the year next preceding the date of separation."

This language is clear. It obligates the separating district, in this case the Borough, to assume a proportion of the liability of "the whole original district outstanding at the time of separation." That indebtedness was \$178,000, as heretofore mentioned. The Borough's percentage of that indebtedness, based on its share of the ratables, amounted to \$105,740.99. By reason of R. S. 18:5-6, the Borough, in assuming the indebtedness on the high school of \$114,000, assumed an indebtedness substantially in excess of its obligation under R. S. 18:5-10.

The Commissioner apportioned the bonded indebtedness against the Borough by charging against it \$114,000, for the indebtedness on the high school. He then added to that \$105,740.99, which is the Borough's ratable proportion of the indebtedness of the whole original district, less \$67,721.76 representing the Borough's ratable proportion of the high school indebtedness which it had already assumed under R. S. 18:5-6.

There is no basis in R. S. 18:5-10 for such apportionment as the Commissioner made. There is no authority in R. S. 18:5-10 for subtracting the Borough's ratable proportion of the high school indebtedness which it had already assumed under R. S. 18:5-6 from the Borough's ratable proportion of the liability of the whole original district. It was not the intention of the legislature to make the Borough liable for the bonded indebtedness on the high school and also liable for its proportion of the bonded indebtedness of the whole original district prior to the separation. R. S. 18:5-6 and R. S. 18:5-10 are a part of the existing school law and are to be reconciled if possible so as to give purposeful meaning to each. This can be done if the indebtedness on the high school under R. S. 18:5-6 is deducted from the liability of the Borough for its proportion of the indebtedness of the whole original district outstanding at the time of separation. In this case, since the Borough's assumption of bonded indebtedness under R. S. 18:5-6 exceeds that of the bonded indebtedness that it would necessarily have had to assume under R. S. 18:5-10, the Borough owes nothing to the Township. This construction gives effect to both sections of the statute.

R. S. 18:5-8, under the facts of this case and in view of the above holding that there is no bonded indebtedness liability due to the Township, has no applicability at all.

There is no need to resort to the legislative history of R. S. 18:5-6 and R. S. 18:5-10 except to note that the latter was passed in 1931 when the existing state of the law provided only for the assumption of the bonded indebtedness by the new school district within its area. The mischief of that state of the law is readily seen in *Board of Education of West Paterson vs. Board of Education of Little Falls Supra*, wherein the court held that since "there was no provision therein (the school law) for the apportionment of a deficit," the new school district was "not liable for any part thereof." In this connection the court said: "Whatever the natural justice of the case may seem to be, it is a matter which is regulated entirely by statute, so far as there is any regulation, and where the legislature has failed to provide for a contingency such as this, it must be either regarded as a *casus omissus* or else the conclusion must be that the legislature, having contemplated the contingency of a deficit, chose to leave it where it originated, viz., as an indebtedness of the original school district." Obviously, R. S. 18:5-10 makes more equitable the distribution of liabilities on the bonded indebtedness. Although in this particular case the Borough assumed all that was required when it assumed the bonded indebtedness of the new high school, it is easy to conceive of a situation where the bonded indebtedness might be very light under R. S. 18:5-6 and thus require the applicability of R. S. 18:5-10 to insure more equitable distribution of a heavy bonded indebtedness of the whole original district.

The judgment under review is reversed and the cause remanded to the State Board of Education to the end that a judgment may be entered in accordance with the views herein expressed.
Decided May 24, 1950.

THEODORE J. BURDYL, *Petitioner,*
vs.
BOARD OF EDUCATION OF THE CITY OF NEWARK, *Respondent.*

DECISION OF THE COMMISSIONER OF EDUCATION

Per See
For the Respondent, Jacob Fox.

The Board of Education of the City of Newark under the authority of R. S. 18:3-2 has established a board of examiners. This City Board of Examiners under rules and regulations of the State Board of Education and additional rules and regulations of the Newark Board of Education grants teachers' certificates to teach in the Newark School System following oral, written, and health examinations. The names of all candidates successful in passing the examinations are placed on an eligibility list in order of their final composite scores, in particular "subject areas" and appointments of teachers are made in the same order.

The announcement of the examination to be held on February 22, 1949, issued under the signature of the Director of Personnel and Chief Examiner contained, among other things, the following information:

"SUBJECT - AREAS
Elementary (Grade) Elementary Art
Kindergarten Secondary English"

In capital letters attention was called to the following:

"THE RESPONSIBILITY FOR MEETING ALL REQUIREMENTS AND CONDITIONS, BOTH EXPRESSED AND IMPLIED, RESTS WITH THE CANDIDATE. AN EXAMINATION ADMISSION CARD IS NOT, IN ITSELF, AN INDICATION OF ELIGIBILITY. ELIGIBILITY IN FACT IS THE CANDIDATE'S RESPONSIBILITY."

Among the prerequisites for the examination was "a valid New Jersey State certificate for the position desired, or a statement of eligibility therefor."

On March 7, 1947, the State Board of Education approved a curriculum at the Glassboro Teachers College, the completion of which would entitle the graduate to a license to teach in grades 5-9 in the schools of the State. While the curriculum was not limited to veterans, it was intended especially for veterans who might wish to teach in the upper elementary grades but who were not interested in teaching in the first four grades.

After a series of conferences and exchanges of correspondence with the Director of Personnel, extending from May 29, 1948, concerning his ambition to teach in grades 7-8 in the Newark Schools, the petitioner on December 29, 1948, filed with respondent "A Preliminary Notice of Intention to Take Examination on February 22, 1949." He conferred with the Director of Personnel on the same day and presented his reasons for contending that grades 5-9 certification entitled him to take the examination in the elementary (grade) subject area listed in the preliminary announcement.

On January 10, 1949, the Board of Examiners decided that the 5-9 certificate was not acceptable for the forthcoming examination, and the petitioner was so notified the following day. On January 31, 1949, the Board refused petitioner's request that it rescind its action. The examination was held on February 22, 1949. The following day the petitioner appeared at the regular monthly meeting of the respondent Board of Education and read a protest. At its regular meeting on March 22, 1949, the Board voted to uphold the decision of its Board of Examiners. Petitioner appeals from this decision.

Petitioner and respondent differ on the interpretation of the meaning of the words "position desired" in the requirement that an applicant hold "a valid New Jersey State certificate for the position desired, or a statement of eligibility therefor." Petitioner desired to teach in grades 7 and 8. According to State certification rules, he was eligible to teach in these grades. He, therefore, maintains that he had a right to take the examination even if he was not eligible to teach the first four elementary grades and, in the event that he passed the examination, he was entitled to an appointment in an elementary grade within the range of his certificate. He supports his contention by pointing out that, on previous occasions, holders of certificates valid only for grades kindergarten through the fourth were permitted to take the examinations and were appointed to positions in these grades. He maintains that it was capricious and discriminatory to bar from the examinations a holder of a certificate to teach grades 5-9 and to admit to the examinations a holder of a K-4 certificate.

The respondent maintains that the position for which the examinations were held was not that of a teacher of grades 5-9 but as a grade teacher legally qualified to teach in any one of the elementary grades. For administrative reasons, teachers are desired who can teach in any of the elementary grades. Respondent once permitted graduates of Montclair Teachers College with a certificate valid to teach in grades 5-12 to take the elementary examination. Administrative problems arose because Montclair graduates could not be assigned to teach below grade 5. As a result, it was necessary to transfer these graduates from school to school to place them in appropriate grades. The result was that Montclair graduates received upper grade assignments and Newark and Jersey City State Teachers College graduates had to be assigned to lower grades. To eliminate this administrative difficulty, holders of certificates to teach grades 5-12 were declared ineligible to take the examinations. Respondent maintains that inasmuch as the Glassboro State Teachers College graduates of the 5-9 curriculum are eligible for precisely the same elementary grades as the holders of grades 5-12 certificates, all of the reasons which caused the elimination of holders of the 5-12 certificates apply with equal effect to the holders of the 5-9 certificates. This, respondent contends, shows there was no discrimination intended against the graduates of the 5-9 curriculum.

Respondent admits that exceptions were sometimes made to permit holders of K-4 certificates to take the examinations because of a shortage of candidates for placement in the primary grades. It contends, however, that there is nothing in the evidence to indicate that this was other than a special departure from the requirements and points out that no holder of such a certificate was admitted to the examination under consideration. In any event, it contends that the logic, or lack of

it, attending the acceptance of the K-4 certificate creates no obligation to accept the 5-9 certificate.

It is the opinion of the Commissioner that the Board of Examiners was within its legal rights in requiring an applicant to hold a certificate valid in all the elementary grades.

The following is quoted from the "Regulations for the Certification and Appointment of Teachers" of the Newark Board of Education:

"II. PREREQUISITES OF PREPARATION AND EXPERIENCE FOR CERTIFIED POSITIONS

"A. Prerequisites for Day Elementary-School Positions.

"Following is a list of the teaching positions in the day elementary schools of Newark for which candidates may qualify:

Grade Teacher	*Teacher of Industrial Arts
Kindergarten Teacher	*Teacher of Library Studies
*Principal	Teacher of Music
Psychologist	*Teacher of Music (Instrumental)
Teacher Clerk, Junior Grade	*Teacher of Speech Improvement
Teacher of Art	Teacher of Physical Education
*Teacher of Corrective Physical Education	*Vice-Principal
Teacher of Home Economics	Visiting Teacher

Thus, according to the regulations, the teaching position for which the petitioner might qualify was that of "grade teacher" and the prerequisite was a valid certificate for the position desired. In the opinion of the Commissioner the only "desired position" for which the applicant could apply was that of "grade teacher." The Board did not classify the position as 5th grade teacher, 6th grade teacher, 7th grade teacher, 8th grade teacher. This was the interpretation of the Board of Examiners and this interpretation was upheld by the Board of Education of Newark. Courts give great weight to the practical interpretation of rules and regulations of officials who make and administer regulations. (See *Offhouse, et al. vs. Paterson, Decision of State Board of Education*, July 9, 1943; *Harper vs. New Jersey Manufacturers Casualty Insurance Company*, 1 N. J. 97.) For administrative reasons, holders of 5-12 certificates had long been ineligible for the grade school examinations. The same administrative reasons apply to holders of 5-9 certificates. Therefore, the Commissioner concludes that the Board of Examiners and the Board of Education of Newark were within their rights in interpreting the rule to exclude holders of 5-9 certificates who were not qualified to fill the position of teacher in any of the elementary grades.

Petitioner makes much of the fact that holders of K-4 certificates were once permitted to take the examinations for "grade teacher" and the lack of logic in excluding a 5-9 certificate holder. The Commissioner finds nothing wrong in admitting one classification of certificate holders and excluding another, if the classifications are made for sound administrative reasons. Inasmuch as no K-4 certificate holders took the examination from which the petitioner was excluded, it is mere speculation to say that such certificate holders would have been admitted to the examination if they had applied. Even if previous boards of examiners and boards of education had, properly or through error, permitted exceptions to the prerequisite that a grade teacher must be qualified for all the elementary grades, neither the board of examiners nor the board of education in power at the time of the examination was bound

* See Other Prerequisites.

1. Minimum Prerequisites.

An applicant for any of the above-listed positions (a) shall have a baccalaureate degree from a recognized institution or have equivalent preparation, and (b) shall possess either a New Jersey teacher's certificate, valid for the position desired, or a statement of eligibility therefor. The only exception, as provided under Section D on page 2, shall be a candidate who meets all prerequisites except that of graduation from college.

State Provisional or Emergency Certificates, and State certificates granted under alternative plans may be accepted on special action of the Board of Examiners."

continue to make the exceptions. Boards of education are non-continuous bodies, except where otherwise provided by law, one board of education cannot bind its successors. *Skladzien vs. Bayonne*, 12 N. J. Misc. 602; Cf. *State vs. Rogers*, 56 J. L. 480; 28 Atl. Rep. 726; *Gulnac vs. Bergen*, 74 N. J. L. 543; 64 Atl. Rep. 388; *Greene vs. Freeholders of Hudson County*, 44 N. J. L. 388.

There is no evidence to show discrimination or capriciousness against the petitioner as an individual. Any determination in his case applied also to any holder of similar certificate. Nor is there any showing of bad faith. It is well established that the Commissioner cannot in administrative matters substitute his judgment for that of board members unless there is proof of bad faith. *Boult vs. Passaic*, 136 J. L. 521; *Peters Garage, Inc. vs. City of Burlington*, 121 N. J. L. 523 at 527.

The Commissioner finds and determines that the petitioner was not illegally excluded from the examination held on February 22, 1949.

Even if the Commissioner took a different view of this case, he could grant the petitioner no relief for the reason that his petition came too late. The successful candidates in the February 22, 1949, examination have been placed on the eligible lists in the order of their final composite scores. No two examinations are quite alike. Therefore, it would be impossible to order a new examination and place the petitioner in his proper relative order. The petition is dismissed. January 9, 1950.

SERY NICOSIA, <i>Petitioner,</i> <i>vs.</i> THE BOARD OF EDUCATION OF THE BOROUGH OF EAST PATERSON AND ARTHUR J. MESSINEO, <i>Respondents.</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
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For Petitioner, Pachella & Chary (Dominick F. Pachella of Counsel).
For Respondent, Heller & Laiks (Aaron Heller of Counsel).
For the Board of Education, Arthur J. Messineo.

The principal question to be decided in this case is whether a Chapter 7 Board of Education is authorized to fix a term of office of counsel of the board and thus to preclude the removal of counsel before the expiration of his term without cause.

The minutes of the Board of Education of the Borough of East Paterson, County of Bergen, for February 16, 1949, disclose that the petitioner was appointed attorney for the Board for the school year 1949-1950 at a retainer fee of \$100.00. At the same meeting, he was appointed attorney to handle all the legal matters in connection with the construction of a proposed new school. At a meeting held on August 29, 1949, the resolution of February 16, 1949, appointing the petitioner as attorney was rescinded and the district clerk was authorized to secure from the petitioner a complete list of services rendered by him to date so that appropriate action could be taken to settle any claims which he might have for services rendered to the Board to date. He was further requested to surrender all papers, documents, letters and other information pertaining to the legal work performed by him. By separate resolution at the same meeting, Mr. Arthur J. Messineo was appointed counsel to the Board for the balance of the school year at a retainer fee of \$1.00 and attorney to the Board for handling legal matters in connection with the construction of the new school. At a subsequent meeting held on September 13, 1949, the resolution was adopted rescinding only the February 16, 1949, resolution which appointed petitioner as attorney in connection with the construction of the new school. Mr. Messineo was by resolution appointed "Special Counsel for the purpose of advising said Board for the balance of the 1949 school year at a retainer fee of \$100.00 for the expiration of the 1949 school year."

The minutes of the meetings held on September 6, September 26, October 3, and October 10 further disclose that legal matters other than those connected with the new school were referred to Special Counsel Messineo.

Petitioner contends that the resolutions appointing Mr. Arthur J. Messier Special Counsel to the Board of Education are illegal for the reason that (a) petitioner was appointed attorney for the Board of Education for a definite term and the effect of the resolutions would be to remove him, (b) the resolutions purporting to appoint Mr. Messineo were not adopted at a regular meeting of the Board, and (c) the special meeting at which Mr. Messineo is purported to have been appointed was not called according to law. He further contends that the appointment of a designation of Mr. Messineo as "Special Counsel" is an attempt to remove petitioner by indirection and is not made in good faith. He asks that the resolutions be set aside.

It seems to the Commissioner that the determination of this case turns on whether the petitioner held office or position for a term of office fixed by law. Counsel in his brief cites an abundance of authority to support the doctrine expressed in *McGrath vs. Bayonne*, 85 N. J. L. 188 that "an office or position which is created by municipal ordinance or resolution, adopted pursuant to power conferred by the Legislature upon the governing body of the municipality for the purpose is just as much created by law, and its term, when fixed by such ordinance or resolution, is just as much fixed by law as if the Legislature itself had acted in the premises." He also cites authorities to prove that no power of removal exists, when the term of office is fixed by law, unless expressly given by the statute. The Commissioner has reviewed all these citations but finds that they deal with situations where the law or city charter authorized a municipal governing body or a board of education by ordinance or resolution, as the case may be, to fix the term of an incumbent.

The petitioner cites the decision of the Supreme Court, affirmed by the Court of Errors and Appeals in the case of *Evans vs. Board of Education of Gloucester City*, 13 N. J. Misc. 506, 116 N. J. L. 448, in support of his contention that counsel for a board of education holds a term of office fixed by law. It should be pointed out that this decision was grounded in the powers conferred upon a Chapter 6 board of education by the terms of Section 18:6-27 of the Revised Statutes to appoint needed officers and agents and fix their terms of office. Section 18:6-27 of the Revised Statutes reads in part as follows:

18:6-27. "The board shall appoint a person to be its secretary, and may appoint a superintendent of schools, a business manager, and other officers, agents, and employees as may be needed, and fix their compensation and terms of employment * * *"

The Commissioner can find no such authority for districts such as East Paterson, which are governed by Chapter 7 of Title 18 because a provision similar to R. S. 18:6-27 for Chapter 7 districts (R. S. 18:7-71) does not confer such broad authority. Section 18:7-71 of the Revised Statutes reads as follows:

18:7-71. "The board may employ and dismiss principals, teachers, janitors, mechanics, and laborers, and fix, alter, and order paid their salaries and compensation."

It should be noted that the words "and other officers, agents, and employees as may be needed" and "terms of employment" found in Section 18:6-27 do not appear in Section 18:7-71.

It is the opinion of the Commissioner that the Legislature did not intend a term to be fixed for counsel for Chapter 7 boards of education but anticipated that such boards would employ counsel only on special occasions.

Section 18:7-59 of the Revised Statutes provides that a board may sue and be sued and employ counsel therefor. Sections 18:5-50.2 and 18:5-50.3 of the Revised Statutes require boards of education to furnish legal counsel under certain circumstances. There is only occasional need for counsel under these statutes.

The fact that there are specific provisions in Chapter 7 for fixing the terms of other appointees of the board (18:7-68, district clerk, 18:7-111, business assistant, 18:14-56, physician and nurse) and that such specific provisions are omitted for fixing the terms of boards' counsel supports the opinion that if the Legislature had desired to have terms fixed for others than those appointees mentioned above, it would have so provided. It seems to the Commissioner that the maxim *expressio unius est exclusio alterius* is applicable here.

If we consider the history of Chapter 6 and Chapter 7 districts, support is found in this opinion. In 1903 when districts were classified into Chapter 6 and Chapter 7 districts, the Chapter 6 districts were cities and, hence, as a rule were more populous than Chapter 7 districts which were townships, towns, or boroughs. A comparison of the provisions of these chapters shows the tendency to set forth the duties of Chapter 7 boards in more detail and to leave more to the Chapter 6 boards to be provided by local regulation.

The problems of small Chapter 7 districts were usually not as complicated as those of Chapter 6 districts as to require the services of counsel to any extent. Most of their acts were routine. The Commissioner, by the terms of Section 18:3-8 of the Revised Statutes, is required to prepare and cause to be printed forms for making all reports and conducting all proceedings under the School Law. He is further required to cause School Laws to be printed in pamphlet form and annex thereto forms for making reports and conducting all school business and to distribute them. In view of this assistance provided by the Legislature, there was not much need for legal counsel in the routine conduct of the schools in such school districts. Against this background, Section 18:7-59 *supra*, and the failure to fix a term for counsel take on added significance. It seems to the Commissioner that the Legislature contemplated that Chapter 7 boards would employ counsel only on special occasions.

The Commissioner recognizes that during the last half century the growth in population of suburban towns, boroughs, and townships, has made the actual difference between the problems of Chapter 6 and Chapter 7 districts without much significance in many situations. Nevertheless, the law governing the two districts remains the same. Perhaps the law should be changed. Such a change is, of course, a matter for the Legislature. Until the law is changed, the Commissioner cannot apply by interpretation what the Legislature has omitted in legislation. *Bendler vs. Bendler*, 3 N. J. 161.

The Commissioner does not wish to imply that a Chapter 7 board of education is not authorized to employ counsel to advise it on legal matters. Such power may be inferred from the duty of the school board to conduct prudently the affairs of each school district. Nor does the Commissioner wish to imply that a board of education cannot enter into an agreement for continuous service by one attorney during the life of the board. All the Commissioner is holding in this case is that the term of counsel for a board of education is not fixed by law in such a way as to preclude his removal without charges being preferred and a hearing held. It is the opinion of the Commissioner that counsel for a Chapter 7 board of education may be removed at any time subject to any claim he may have under the agreement entered into with the board at the time of his engagement as counsel.

Petitioner also raises the question of the legality of the appointment of Mr. Lessineo at a special meeting which he alleges was not called in accordance with the law. It is well settled that when a special meeting of a municipal board is called, each member must have notice of the time and place of the meeting and the purpose for which the meeting is called. However, the view which the Commissioner takes of the nature of the employment of an attorney for a Chapter 7 board makes it unnecessary to determine whether he was appointed at a properly called meeting. The board of education continued to avail itself of his services at subsequent meetings and may be deemed to have ratified any previous action and cured any defect in his engagement.

The view which the Commissioner takes of this case makes it unnecessary for him to consider other questions raised and argued.

The petition is dismissed.
January 26, 1950.

ARTHUR E. CREVELING, <i>Petitioner,</i> <i>vs.</i> BOARD OF EDUCATION OF THE TOWNSHIP OF HARMONY, COUNTY OF WARREN, STATE OF NEW JERSEY, <i>Respondent.</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
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The question to be decided in this case is whether the Board of Education of the Township of Harmony must furnish transportation for the petitioner's children a distance of nine-tenths of a mile from their place of residence to the main route.

It appears that for some years prior to the school year 1949-1950, a transportation contractor, under separate contracts with the Board of Education of the Township of Franklin and the Board of Education of the Township of Harmony transported both elementary and high school pupils of the two districts to Belvidere. In furnishing transportation for the Franklin Township Board, the route was such that the contractor picked up the children of the petitioner without extra cost to the Harmony Township Board.

The contract for the transportation was terminated with the Franklin Township Board and was no longer in effect as of the school year 1949-1950. Nevertheless without previous direction of the Harmony Township Board, the contractor, for a period of two months in the present school year 1949-1950, continued to pick up the petitioner's children at their place of residence which necessitated a trip of nine-tenths of a mile and return from the main route. By resolution, the Harmony Township Board authorized payment for this transportation, but informed the contractor that the board would no longer pay for the trip to the petitioner's residence. The contractor discontinued the service for petitioner's children. The petitioner asks that the Commissioner require the Board of Education of Harmony Township to furnish this service.

Petitioner has four children, three of the male sex, ages 16, 13, and 11, respectively, and one of the female sex, age 7. He feels that nine-tenths of a mile is too great a distance for children to walk, especially his daughter, and calls attention to the fact that the road she traverses passes through wooded country and that there is no shelter where his children must wait for the bus.

The essential facts were agreed upon at a conference held in the State Department of Education Building, Trenton, on Thursday, January 26, 1950. The Assistant Commissioner of Education in Charge of the Division of Controversies and Disputes rode over the disputed route on Saturday, February 4, 1950.

This case is similar to that of *Buelow, et al. vs. Board of Education of the Township of Little Egg Harbor, Ocean County, 1938 Compilation of School Law Decisions, 770*, wherein parents asked that the respondent board be required to extend transportation facilities a distance of nine-tenths of a mile from the main route to their homes. In dismissing the appeal, the Commissioner said:

"The general plan of transportation throughout the State is for the bus to traverse main highways which serve the largest number of pupils within a reasonable time limit, and at a minimum cost. Transportation routes must be approved by the County Superintendent, if the district is to receive State support. Where pupils' homes are not remote and the bus leaves the main line as an accommodation, the length of time for many of the pupils is unjustly increased and such extensions to the route add to the cost of transportation. The children of appellants, all of whom live within nine-tenths (.9) of a mile of the main route, are not remote from the facilities provided by the Board of Education and the Board cannot be legally required to make further provision for them."

The same reasoning applies in this case. The road from the main route to the petitioner's residence is kept open in the winter and there are no conditions so unusual as to warrant any departure from the precedent established in the *Buelow* case, *supra*.

After weighing all the considerations involved in this petition, the Commissioner has reached the conclusion that the Board of Education of the Township of Harmony

cannot be required to extend its transportation facilities from the main route to the petitioner's residence. The petition is dismissed.
February 10, 1950.

IN THE MATTER OF THE RECOUNT OF }
 BALLOTS CAST AT THE ANNUAL SCHOOL }
 ELECTION IN THE TOWNSHIP OF MILL- }
 STONE, MONMOUTH COUNTY. } DECISION OF THE
 COMMISSIONER OF EDUCATION

The announced results of the Annual School Election in the School District of the Township of Millstone in the County of Monmouth held on Tuesday, February 14, 1950, are as follows:

For the Three-Year Term

Chester Livesay	82	votes
Harold Otteson	74	"
Murry Abelson	58	"
Mildred Handel	58	"
Philip Turetsky	58	"
Irene Rooney	1	vote

A recount of the ballots cast for Murry Abelson, Mildred Handel, and Philip Turetsky was held in the office of the County Superintendent of Schools in Freehold on February 24, 1950.

The following is a tabulation of the votes counted at Freehold:

Murry Abelson	56	votes
Mildred Handel	58	"
Philip Turetsky	56	"

Seven disputed ballots were referred to the Commissioner of Education for determination. These disputed ballots were classified and the classifications described as follows:

Exhibit A, 2 ballots. These ballots had stickers pasted in the blank spaces and were properly marked in the squares at the left of the names. It was conceded that these ballots should be counted for Philip Turetsky. The ballots were challenged for Mildred Handel for the reason that the stickers with her name were pasted in the blank spaces upside down.

Exhibit B, 3 ballots. Stickers on two of these ballots for Mildred Handel were pasted over the name of Harold Otteson. On a third ballot a sticker for Philip Turetsky was pasted over the name of Harry Abelson. It was conceded that one vote for Harry Abelson was properly marked and should be counted.

Exhibit C, 1 ballot. A sticker for Philip Turetsky was pasted to the right of the name of Murry Abelson. A cross was marked in the square at the left of the printed name of Murry Abelson and the sticker for Philip Turetsky.

Exhibit D, 1 ballot. This ballot for Murry Abelson was challenged on the grounds that the cross mark was not within the square at the left of his name.

By counting the votes conceded to Philip Turetsky in *Exhibit A* and to Murry Abelson in *Exhibit B*, the tabulation now is as follows:

Murry Abelson	57	votes
Mildred Handel	58	"
Philip Turetsky	58	"

The outcome of the election for the third member of the Board of Education turns on whether the two ballots with stickers pasted upside down for Mildred Handel can be counted. The stickers are pasted in the spaces provided for personal choice and are properly marked in the squares. In determining disputed ballots in

recounts of school elections, Commissioners of Education have looked to the General Election Law for guidance.

N. J. S. A. 19:16-3d reads as follows:

"In canvassing the ballots the district board shall count the votes as follows:

"d. Where the name of any person is written or pasted in the column designated personal choice, and a cross (X), plus (+), or check (V) appears in the square to the left of the name, it shall be counted as a vote for such person."

N. J. S. A. 19:16-4 reads in part as follows:

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

According to N. J. S. A. 19:16-4, these ballots must be counted for Mildred Handel unless the Commissioner is satisfied that the voters pasted the stickers upside down in order to identify or distinguish the ballot. The Commissioner is not so satisfied. Therefore, these ballots will be counted. This brings the votes for Mildred Handel to sixty. Regardless of what disposition is made of the other contested ballots, her lead cannot be overtaken. Therefore, it is unnecessary for the Commissioner to determine the other ballots.

The Commissioner finds that Mildred Handel was duly elected a member of the Board of Education of the School District of the Township of Millstone in the County of Monmouth for a term of three years at the Annual School Election held on February 14, 1950. March 7, 1950.

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE BOROUGH OF NORTH CALDWELL, ESSEX COUNTY. } DECISION OF THE COMMISSIONER OF EDUCATION

The announced results of the Annual School Election held on February 14, 1950, for membership on the Board of Education of the School District of the Borough of North Caldwell in the County of Essex, are as follows:

Three-Year Term

Edward C. Kehoe 84 votes
Winston C. Perdue 83 "

A recount of the votes cast for Edward C. Kehoe and Winston C. Perdue was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Essex County in Newark on Tuesday, March 7, 1950. The results of the recount of the ballots at Newark are as follows:

Edward C. Kehoe 83 votes
Winston C. Perdue 83 "

During the recount, four ballots were set aside for consideration at the close of the recount. It was agreed that one ballot with one vote for Edward C. Kehoe, and one ballot with one vote for Winston C. Perdue should be counted. It was agreed also that a third ballot is void.

One ballot was referred to the Commissioner for determination, on which there was a vote properly marked for the full three-year term for Edward C. Kehoe. The voter also wrote the name of Edward C. Kehoe in the personal choice space for the unexpired term of two years and marked a cross (X) in the square at the left of the written name.

The question for determination is whether this ballot can be counted for Edward C. Kehoe. The Commissioner may look to the provisions of the General Election Law (N. J. S. A. 19:16-3) for guidance. N. J. S. A. 19:16-3d reads as follows:

"Where the name of any person is written or pasted in the column designated personal choice, and a cross (X), plus (+) or check (V) appears in the square to the left of the name, it shall be counted as a vote for such person."

The Commissioner knows of no provision of the School Law which precludes a voter from voting for the same person for a full term and for an unexpired term. Nor is there any provision of law to prevent a person from being a candidate for both terms. In the unlikely event that he would be elected for both terms, he would have a right to accept either term of office.

Even if this conclusion is erroneous, the vote for Edward C. Kehoe must be counted. The fact that a voter spoils part of a ballot does not invalidate another part of a ballot. See *N. J. S. A. 19:16-3f*; also *pages 166 and 186 of the 1938 Compilation of School Law Decisions*.

Only in the event that the Commissioner is satisfied that the name of Edward C. Kehoe was written in the personal choice column for the unexpired term to identify the ballot can he void the ballot for the full term. See N. J. S. A. 19:16-4. The Commissioner is not satisfied that the name was written in to identify the ballot. Therefore, the vote for the three-year term will be counted for Edward C. Kehoe.

The Commissioner finds and determines that Edward C. Kehoe was duly elected a member of the Board of Education of the School District of the Borough of North Caldwell in the County of Essex for a term of three years at the Annual School Election held on February 14, 1950.
March 16, 1950.

IN THE MATTER OF THE RECOUNT OF }
BALLOTS CAST AT THE ANNUAL SCHOOL } DECISION OF THE
ELECTION IN THE TOWNSHIP OF OCEAN, } COMMISSIONER OF EDUCATION
MONMOUTH COUNTY.

The announced results of the Annual School Election held on February 14, 1950, for membership for the three-year term on the Board of Education of the School District of the Township of Ocean in the County of Monmouth, are as follows:

Raymond W. Haviland	375	votes
Robert H. Prall	356	"
George R. Schneider	293	"
William I. Thompson	337	"
William VanMiddlesworth	337	"
Mildred Morris	179	"
Lawrence Morrissy	1	vote

The vote for the appropriations was announced as follows:

	<i>For</i>	<i>Against</i>
Current Expenses	191	110
Repairs and Replacements	228	70
Land, Building & Equipment.....	197	95

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 were no squares printed at the left of the names of the candidates. However, the horizontal lines separating the names of the candidates made a well defined space at the left of each name. The directions for voting conformed to the illustration of the form of ballot.

The variations of the ballot with respect to the appropriations were more pronounced. There were no squares at the left of "Yes" and "No," but there was space for voting at the right of each "Yes" and "No." Although the spaces for voting were at the right, the directions for voting above the appropriations instructed the voters to mark the ballots at the left.

The Commissioner received protests against the use of the ballot described above. There was also a tie vote for third place. The Assistant Commissioner of Education in Charge of Controversies and Disputes was directed by the Commissioner to examine the ballots and to conduct a recount of the ballots for and against all candidates and appropriations and to report his findings to him.

It was decided to count all ballots for candidates marked in the space at the left of the candidates' names where there would ordinarily be a square. In case of the appropriations, it was decided to make a separate count of those votes marked at the left and those marked in the space at the right of each "Yes" and "No."

The following is a tabulation of the votes counted in the office of the County Superintendent of Schools at Freehold on Friday, February 24, 1950:

Raymond W. Haviland	375	votes
Robert H. Prall	354	"
William I. Thompson	335	"
William VanMiddleworth	334	"
George R. Schneider	291	"
Mildred Morris	177	"

Appropriations Marked at Left

Current Expenses.....	YES	29
	NO	18
Repairs and Replacements.....	YES	32
	NO	13
Land, Building and Equipment.....	YES	29
	NO	14

Appropriations Marked at Right

Current Expenses.....	YES	358
	NO	160
Repairs and Replacements.....	YES	417
	NO	107
Land, Building and Equipment.....	YES	375
	NO	141

Twenty-five disputed ballots were referred to the Commissioner of Education for determination. These disputed ballots were classified and the classification described as follows:

Exhibit A, 2 ballots. The question to be determined on one of these ballots is whether the check (V) mark is properly in the space at the left of the name of William VanMiddlesworth. On the other ballot, the question is whether the cross mark is properly in the space at the left of the name of William I. Thompson.

Exhibit B, 1 ballot. The ballot was properly marked for William VanMiddlesworth. The ballot was disputed with respect to the appropriations for the reason that each "YES" was crossed out and each "NO" enclosed in parentheses.

Exhibit C, 1 ballot. The question is whether the mark at the left of the name of William VanMiddlesworth is a check mark or an arrow. The mark is horizontal instead of vertical.

Exhibit D, 2 ballots. Two votes for William VanMiddlesworth and one vote for William I. Thompson with cross marks at both the right and left of their names.

Exhibit E, 19 ballots. Sixteen votes for William Thompson and six for William Middlesworth. These ballots are challenged for the reason that there is no cross (X), plus (+) or check (V) mark in the spaces at the left of their names.

(Note: The number of votes in the exhibits for the appropriations and other candidates are not given for the reason that the appropriations and the position of the candidates other than William VanMiddlesworth and William I. Thompson will not be changed, regardless of what disposition is made of the ballots.)

It is well established that irregularities which are not shown to affect the results an election will not vitiate the election. The following is quoted from *15 Cyc. 372*, 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 noted in *In re Canvassers' Returns, 25 N. J. L. J. 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, 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.

There was a well defined space at the left of each candidate's name. Above the names of the candidates on the ballot, the following was printed:

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

Any voter who voted in the space at the left of the candidate's name did his best to comply with the law and his vote should not be voided because of a defect in printing the ballot. Therefore, the Commissioner will count the ballots with proper marks in the space at the left of the candidates' names as if the marks were in squares. Accordingly, Raymond W. Haviland and Robert H. Prall are declared to be elected for the three-year term.

Next, it must be considered whether to uphold the part of the election deal with appropriations. The Commissioner directed the Assistant Commissioner Charge of Controversies and Disputes to make a separate count of votes cast for and against the appropriations at the left and at the right of each "Yes" and "No." In each item of the appropriation, the votes for the appropriations are substantially in excess of the votes against the appropriations, both at the left and at the right of the "Yes" and "No." Consequently, in the opinion of the Commissioner, the error in printing the ballots did not affect the result of the vote on the appropriation. Therefore, the Commissioner must uphold the passage of the appropriations in view of the fact that the will of the people can be determined.

Finally, it must be determined whether William I. Thompson or William VanMiddlesworth was elected for the three-year term. In counting and voiding 19 ballots, the Commissioner may look to the General Election Law, N. J. S. A. 19:16 and 19:16-4 for guidance. In the light of the provisions of N. J. S. A. 19:16-3 and 19:16-4 and previous decisions of the Commissioner of Education, the Commissioner will determine the following disputed ballots:

Exhibit B. The ballot with one vote for William VanMiddlesworth was disputed because of the marking of the votes against the appropriations. Since the votes on the appropriations cannot affect the results, it is not necessary to determine whether the votes against the appropriations shall be counted. An improperly marked ballot on an appropriation does not invalidate the entire ballot. *N. J. S. A. 19:16-3 also pages 166 and 186 of the 1938 Edition of the School Law Decisions, In Annual School Election in the Town of Boonton, 1944.* This ballot will be counted as a vote for William VanMiddlesworth.

Exhibit D. The ballots with one vote for William I. Thompson and two votes for William VanMiddlesworth must be counted. N. J. S. A. 19:16-3b specifically provides:

"If proper marks are made in the squares to the left of any names of any candidates in any column and in addition thereto, proper marks are made to the right of said names, a vote shall be counted for each candidate so marked; but if the district board canvassing the ballots 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 such marks to the left and right of the names was intended to identify or distinguish the ballot, then the ballot shall not be counted and shall be declared null and void."

The Commissioner is not satisfied that the voters intended to identify or distinguish these ballots. In other recounts, the Commissioner has counted such ballots. *Page 186 of the 1938 Edition of School Law Decisions; Recounts of Ballots Cast in Annual School Elections in Lodi (1948) and in East Paterson (1949).*

The count now shows 337 votes for William VanMiddlesworth and 336 votes for William I. Thompson. The outcome of the election turns on the determination of the ballots in *Exhibit E.* These are 19 ballots with 16 votes for William I. Thompson and 6 votes for William VanMiddlesworth with a cross (X), plus (+) or check (V) mark at the right of the candidate's name, but with no mark in the space at the left of the name. If these ballots are counted, William I. Thompson will be elected; but if not, William VanMiddlesworth will be elected.

Above the ballot is printed: "To vote for any person whose name appears on this ballot mark a cross (X) or plus (+) mark or check (V) with black ink or black lead pencil in the space or square at the left of the name of such person." N. J. S. A. 19:16-3g, reads in part as follows:

"No vote shall be counted for any candidate in any column or for or against any public question unless the mark made is substantially a cross (X), plus (+), or check (V), and is substantially within the square."

Commissioners of Education have never counted ballots which are not marked at left of the candidates' names. See pages 181, 185, 186, 188, and 190 of the 1938 *Compilation of School Law Decisions*; also see *Recounts of Ballots Cast in the Annual School Elections in Lodi (1948) and in Union (1948) unpublished*.

The Commissioner has held that the vote of any voter in this election who marked a ballot in the space at the left of the candidate's name will be counted for the reason that the voter should not be penalized because of an error in the printing of the ballot. It is the opinion of the Commissioner that a voter should neither suffer any penalty nor derive any advantage from such an error. To count a ballot which, except for an error in printing would not have been counted, would cause a voter who did not follow the printed directions to benefit from the error. The directions instructed the voter to mark the ballot in the space at the left. There was a well defined space at the left of the candidates' names. Any voter who failed to read and follow the directions did so at his peril. Therefore, the Commissioner sees no reason to deviate from this recount from the practice of not counting ballots which are not marked in the space at the left of the candidate's name. Accordingly, these ballots will not be counted.

It is not necessary to determine the ballots in *Exhibit A* because there is just as much reason to count or void the ballot for William I. Thompson as the one for William VanMiddlesworth. Therefore, neither candidate can gain by determining these ballots. It is also not necessary to determine the ballot for William VanMiddlesworth in *Exhibit C*.

The Commissioner finds and determines that Raymond W. Haviland, Robert H. Hall, and William VanMiddlesworth were elected to membership on the Board of Education of the School District of the Township of Ocean, in the County of Monmouth, for a term of three years at the Annual School Election held on February 14, 1950. The Commissioner further finds and determines that the appropriations for current Expenses, Repairs and Replacements, and Land, Buildings and Equipment were adopted. March 22, 1950.

ABEL MARRIOTT, <i>Petitioner,</i>	<i>vs.</i>	BOARD OF EDUCATION OF THE TOWNSHIP OF HAMILTON, MERCER COUNTY, <i>Respondent.</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
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For the Petitioner, Milton A. Feller.
For the Respondent, William Henry Lawton.

The petitioner, a teacher under tenure in the School District of Hamilton Township, underwent an operation in July, 1946. Under date of August 21, 1946, she notified the Supervising Principal as follows:

"Having undergone a major operation this summer, I find that I will be unable to report back to school upon the opening of the fall term. On the advice of my physician, I plan to return after the Christmas holiday."

Her communication was accompanied by a physician's statement. On September 1, 1946, she was informed by the Supervising Principal that at the September 4th meeting of the Board of Education she was granted a leave of absence from September 9, 1946, to January 6, 1947. The Board of Education refused to pay her ten days' sick leave for the school year 1946-1947, ten days previously accumulated, and the difference between her salary and her substitute's pay to which she claims she is entitled according to the law and the rules and regulations of the board of education.

This case is submitted on a stipulation of facts and testimony taken at a hearing before the Assistant Commissioner of Education in Charge of Controversies and Disputes on November 17, 1949, in the Conference Room of the State Department of Education. Briefs have been submitted by counsel. It was stipulated by counsel

at the hearing that if the Commissioner should rule that the petitioner was entitled to sick leave, she would be entitled to the ten days for the school year 1946-1947 and to the ten days of accumulated sick leave permitted by the rules of the respondent Board. In respect to leaves of absence, it was stipulated that the rules of the Board of Education provide:

"Leaves of absence (as distinguished from sick leave) be limited to health reasons applicable to the person of the employee; and that

"All leaves of absence shall terminate (and shall not sooner terminate) at the end of the then current school year in which such leave is granted."

Respondent makes four contentions in denying petitioner's claim for sick leave for the period of her absence from September 9, 1946, to January 6, 1947:

1. Petitioner was absent on leave of absence and not on sick leave.
2. Petitioner was not entitled to sick leave for the period because she had not been in school at the beginning of the school term.
3. Even if it is held that petitioner is entitled to the twenty days' sick leave she is not entitled to the difference for twenty days between her salary and her substitute's pay.
4. Petitioner is estopped from pressing her claim by reason of laches.

The rights of the petitioner must be tested by Chapter 142 of the Laws of 1946 and the rules and regulations of the local Board of Education in so far as such rules are not inconsistent with said chapter. Chapter 142 (N. J. S. A. 18:13-23), reads as follows:

"1. Teachers, principals and supervising principals in all school districts of the State who are steadily employed by the board of education on a year-to-year appointment or who are protected in their positions under the provisions of sections 18:13-16 to 18:13-19 of the Revised Statutes shall be allowed sick leave with full pay for a minimum of ten school days in any school year. If any such teacher, principal or supervising principal requires in any school year less than this specified number of days of sick leave with pay allowed, a maximum of five days of such leave not utilized that year shall, when authorized by the board of education of the district, be accumulative to be used for additional sick leave as needed in the subsequent years.

"2. In case of sick leave claimed, a board of education may require a physician's certificate to be filed with the secretary of the board of education.

"3. Sick leave is hereby defined to mean the absence from his or her post of duty, of the teacher, principal or supervising principal because of personal disability due to illness or injury, or because he or she has been excluded from the school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

"4. When absence, under the circumstances described in section three of this act, exceeds the maximum leave granted by the board and the accumulated leave permitted under the provisions of section one of this act, the board of education may pay the teacher, principal or supervising principal each day's salary less the pay of a substitute for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as one two-hundredth of the annual salary.

"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.

"6. The Commissioner of Education shall enforce this regulation to the extent of withholding State school moneys from school districts violating any of the provisions of this act."

Whether petitioner is entitled to twenty days' sick leave turns on whether she was absent from her *post of duty*. The respondent takes the view that a teacher cannot be absent from her post of duty until she has reported at the beginning of the school term. With this view, the Commissioner cannot agree. It is the opinion of

The Commissioner that a teacher who is unable, because of illness, to report for duty the first day of school is just as much absent from her post of duty as if she were absent on any other day in the year. The statute does not provide that a teacher must report for duty on the first school day of September in order to qualify for sick leave. The Commissioner cannot read into the law a provision which is not included. Under the provisions of Section 18:13-20 of the Revised Statutes, the petitioner is continuously employed.

Section 18:13-20 reads as follows:

"Any teacher, principal, or supervising principal, under tenure of service, desiring to relinquish his position, shall give the employing board of education sixty days' written notice of his intention, unless the local board of education shall approve of a release on shorter notice.

"Any teacher failing to give such a notice shall be deemed guilty of unprofessional conduct, and the commissioner may suspend his certificate for a period not exceeding one year."

Under pain of loss of certificate, a teacher must give sixty days' written notice of her desire to relinquish her position. The petitioner had given no such notice; on the contrary, she informed the Board that, because of illness, she would need to be absent but expected to return to her duties. Not having relinquished her position, pursuant to this statute, she held a position the first day of school; not being able to report, she was absent from her post of duty the first day of school, and, being absent from her post of duty, she became entitled to sick leave pursuant to Chapter 143 of the Laws of 1942.

A statute must be construed in the light of the purpose it is intended to accomplish. A sick leave statute is not only for the benefit of the teacher—it is also for the benefit of the school. It is well known that teachers, many times prior to the enactment of the sick leave law, remained at their post of duty too ill to do effective work and sometimes, even with colds and other infectious diseases, because they could not afford to lose their salary by remaining at home. A sick leave plan makes it possible for a teacher to be absent with less pecuniary loss.

Because of the long summer vacation and the consequent lack of income during the summer months, a teacher is more in need of protection the early days of the school year than at any other time. Therefore, it is just as important for the welfare of the teacher and the school for her to be able to remain away from school at the beginning of the school term and receive pay as at any other time in the year. Accordingly, the Commissioner does not believe that the Legislature intended that a teacher under tenure, holding a permanent position as indicated in Section 18:13-20, should be ineligible for sick leave, if unable to report at the beginning of the academic year.

The Commissioner is further of the opinion that it is immaterial whether the petitioner was on sick leave or a leave of absence. According to the Board's rule, leaves of absence are limited to reasons of health. Regardless of the language describing her absence, petitioner was absent from her post of duty because of illness and, therefore, entitled to sick leave.

The respondent contends that it is not required to pay the difference between the petitioner's salary and substitute's pay for the reason that the rule, under the terms of Section 4 of Chapter 142, Laws of 1942, *supra*, can be regarded only as a general statement of policy and not a blanket rule binding upon the Board or any of its members in an individual case. With this contention the Commissioner agrees. The rule-making power of Chapter 7 boards of education is grounded in Section 18:7-56 of the Revised Statutes, which reads in part as follows:

"The board may make, amend and repeal rules, 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, and for the employment and discharge of principals and teachers."

Section 4 of Chapter 142 of the Laws of 1942, previously quoted in full reads as follows:

"When absence, under the circumstances described in section three of this act, exceeds the maximum leave granted by the board and the accumulated leave permitted under the provisions of section one of this act, the board of education may pay the teacher, principal, or supervising principal each day's salary less the pay of a substitute *for such length of time as may be determined by the board of education in each individual case.* A day's salary is defined as one two-hundredth of the annual salary."

It will be noted that the Board must consider each individual case. Therefore, a blanket rule of a board of education to pay for a certain number of days the difference between a teacher's salary and her substitute's without considering the individual cases is inconsistent with law. Accordingly, such a blanket rule must be considered only as a general statement of policy, not binding upon the board or any of its members in an individual case. The board members are free, and, indeed, it is their duty, to decide each individual case on its merits.

It was held in the case of *Burke vs. Kenny*, 6 N. J. Super 524, that a "governing body of a municipality may not by its own act or failure to act, enlarge, change or diminish its powers, as any such action or inaction would be inconsistent with the rule as to municipal powers being wholly dependent on enabling legislation."

The same reasoning is applicable to a board of education. Thus, the board could not by a blanket rule diminish its power to pass on an individual case.

Respondent board argues that the petitioner is estopped by laches. In its brief, it cites a number of precedents in school cases where petitioners have been held to be in laches. These cases are not applicable here. They deal with situations where the persons involved were removed from their positions. In the case of *Jennie L. Biddle vs. Board of Education of Jersey City*, decided November 19, 1938, the State Board of Education distinguished between cases of this kind and cases involving a purely legal demand of a pecuniary nature. The following is quoted from this decision:

"The Commissioner of Education bases his disallowance of this part of petitioner's claim on the time which elapsed before asserting it by action. Laches is an equitable defense and is not available in what is a purely legal as differentiated from an equitable demand. The statute of limitations fixes six years as the period within which actions in the nature of actions upon contract without specialty should be brought. The cases cited by the Commissioner of Education are not applicable. They relate to the propriety of suspension from or abolition of positions or offices in the public service. We have been unable to find any case which denies the right of action for a purely pecuniary demand based upon contract within the period fixed by the statute of limitations. It is within the period fixed by the statute of limitations. It is true that applications to the courts for the prerogative writs (which were involved in the cases cited) are often denied within the time fixed by statute within which they may be allowed, but this is because the allowance of such writ is discretionary, and the court may deem that intervening interests which may have arisen, or the presumption of acquiescence, which in action may give rise to, or other circumstances, justify its denial. Petitioner's claim, to the extent of the amount deducted for the period from June, 1932, to June, 1933, inclusive, is within six years from the filing of her petition. It is a purely legal demand arising out of contract, and is not barred by the statute of limitations. R. S. N. J. 2:24-1."

The Commissioner finds and determines that the petitioner is entitled to ten days' sick leave for the school year 1946-1947, and to ten days' sick leave accumulated from prior years. The Board of Education of the Township of Hamilton, Mercer County, is directed to pay the petitioner an amount equal to twenty days' salary at the rate she was receiving in the academic year 1946-1947.
March 30, 1950.

Appeal pending before State Board of Education.

GEORGE B. THORP,

Petitioner,

vs.

THE BOARD OF TRUSTEES OF SCHOOLS FOR
INDUSTRIAL EDUCATION - NEWARK COL-
LEGE OF ENGINEERING,

Respondent.

DECISION OF THE
COMMISSIONER OF EDUCATION

For the Petitioner, Rothbard, Harris & Oxfeld (Emil Oxfeld of Counsel).
For the Respondent, Pitney, Hardin & Ward (Charles Hardin of Counsel).

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

Petitioner believes that the application of the said oath is unconstitutional and constitutes a violation of his right to freedom of speech and denies him due process, equal protection and privilege and immunity as guaranteed by the United States Constitution and is in violation of the Constitution of the State of New Jersey and of the United States Constitution in that it constitutes a bill of attainder and prevents freedom of assembly and freedom of the press. Petitioner further states that the said law is unconstitutional in that it constitutes an unlawful amendment of the Constitution of the State of New Jersey by unilateral action of the legislature. He maintains that the application of Chapter 23, Laws of 1949, to him deprives him of his constitutional right to pursue his occupation as a teacher in the State of New Jersey. His prayer is that an order be issued reversing the action of the Newark College of Engineering in terminating his employment and directing that he be restored to his position.

Respondent says that the Newark College of Engineering, as a college or school supported in whole or in part by public funds, directly or through contracts or otherwise with the State Board of Education, cannot lawfully employ petitioner in a teaching capacity because of the provisions of Section 18:13-9.2 of the Revised Statutes. Respondent further says that petitioner has accepted an offer of employment in a non-teaching capacity in the Newark College of Engineering and that, therefore, any controversy or dispute respecting the propriety or effect of petitioner's refusal to execute the oath of office and allegiance has become immaterial and academic by reason of petitioner's acceptance of such employment in a non-teaching capacity.

It has been stipulated that this dispute shall be submitted to and determined by the Commissioner on the facts set forth in the petition of appeal and answer.

The pertinent statute is N. J. S. A. 18:13-9.2 which reads as follows:

"Every professor, instructor, teacher or person employed in any teaching capacity who shall be employed hereafter by, or in, any college, university, teachers college, or other school in this State which is supported in whole or in part by public funds, directly or through contract or otherwise with the State Board of Education, shall, before entering upon the discharge of his or her duties, subscribe to the oath of allegiance and office prescribed in Section 41:1-3 of the Revised Statutes, before an officer authorized by law to administer oaths. A copy of such oath shall be filed with the board or body, person or persons employing him or her within this State."

The Commissioner can take judicial notice of the records on file in the State Department of Education. The records show that the Newark College of Engineering receives public funds for the fiscal year ending June 30, 1950, through a contract with the State Board of Education for services for public higher education rendered

to the State of New Jersey pursuant to Chapter 51 of the Laws of 1945. According every person employed in a teaching capacity after the effective date of Chapter 2 Laws of 1949, was required to subscribe to the oath of allegiance and office prescribed in Section 41:1-3 of the Revised Statutes.

To grant the prayer of the petitioner that he be restored to his position would require the Commissioner to declare Chapter 23, Laws of 1949, unconstitutional. The Commissioner of Education has repeatedly declined to decide constitutional questions for the reason that it is well settled that the determination of the constitutionality of an act of the Legislature rests with the courts and it is the duty of State agencies and administrative bodies to accept a legislative act as constitutional unless and until it is declared unconstitutional by a qualified judicial body. *Schwartz v Essex County Board of Taxation*, 129 N. J. L. 129. A full discussion of the Commissioner's reasons may be found in the decision of the Commissioner of Education in the case of *Hering vs. Secaucus*, 1938 *Compilation of School Law Decisions*, 82 and in the case of *Phelps vs. Board of Education of West New York*, 1938 *Compilation of School Law Decisions*, 427. The State Board of Education also declined to decide a constitutional question raised in the case of *Offhouse vs. Board of Education of the City of Paterson*.

Accordingly, the Commissioner of Education cannot direct that the petitioner be restored to his teaching position in the Newark College of Engineering.
May 9, 1950.

Appeal pending before State Board of Education.

JOHN R. SMITH,	<i>Petitioner,</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
<i>vs.</i>			
BOARD OF EDUCATION OF THE TOWNSHIP OF SHREWSBURY, MONMOUTH COUNTY,	<i>Respondent.</i>		

For the Respondent, Daniel W. Weigand.

The petitioner asks for the invalidation of the Annual School Election held in the Township of Shrewsbury, Monmouth County, on February 14, 1950, for the reason that the names of the candidates were not listed on the ballots in alphabetical order in accordance with N. J. S. A. 18:7-30. He maintains that the listing of the names was not an oversight or an error for the following reasons:

1. The first three names listed on the ballot were those of a member of the school board running for re-election and two other candidates who campaigned as a group and signed campaign literature jointly.
2. In the elections of 1948 and 1949 the same procedure was followed; namely, a member or members of the board together with other candidates who campaigned jointly were listed first on the ballot.
3. The county superintendent mailed to each district clerk and board of education specific instructions as to how the ballot was to be prepared prior to the 1950 election.

The Board of Education in its answer admits that the candidates were not listed on the ballot in alphabetical order according to N. J. S. A. 18:7-30, but denies that the successful candidates were not duly elected. It denies the allegation of the petitioner that the listing of the names on the ballot was not an oversight or an error.

The successful candidates in their answer say:

1. That to the best of their knowledge the listing of the names on the ballot in other than alphabetical order was an oversight or an error on the part of the district clerk.

2. That they had no intention of having their names listed together on the ballot.
3. One of the successful candidates, who is a re-elected board member, said that he assumed the 1948 and 1949 elections were held as prescribed by law. The other two successful candidates deny any knowledge of the 1948 and 1949 elections. All three successful candidates maintain that their substantial plurality over the petitioner makes it inconceivable that a change in the order of his name on the ballot would have made any difference in the final outcome of the vote.

The following facts were stipulated and agreed upon as the basis for the determination of the Commissioner:

- "1. The names of the candidates for election to the Board of Education of the Township of Shrewsbury were not listed alphabetically upon the official ballot for the election held on February 14, 1950.
- "2. The name of Louis A. Steinmuller, a candidate to succeed himself, and the names of two other candidates were listed first upon the ballot, and these three campaigned and others campaigned on their behalf, as a group.
- "3. The Clerk of the Board of Education of the Township of Shrewsbury received instructions from the County Supervisor prior to the election stating how the ballot was to be prepared.
- "4. The result of the election, as tabulated, was as follows:

a) Louis A. Steinmuller	284
b) Fred W. Biel	283
c) Ernest W. Wadley, Jr.	285
d) John R. Smith	99
- "5. Beginning in 1941, when Mrs. Nellie C. Osborn first became Clerk of the said Board of Education, the names of the candidates for election to the School Board were listed in the order in which the petitions were filed. This manner in listing the names of the candidates continued annually to and including the election of 1950. In the election in question the appellant filed his petition about 10 o'clock P. M. on the last day upon which petitions could be duly filed.
- "6. It is agreed that nothing herein contained shall be a bar of either party to appeal the decision."

Included in the record is the following affidavit made by the District Clerk:

"Nellie C. Osborn, of full age, being duly sworn on her oath according to law, deposes and says:

"I reside on Tinton Avenue, at Tinton Falls, in the Township of Shrewsbury, County of Monmouth and State of New Jersey.

"I am the Clerk of the Board of Education of the Township of Shrewsbury, which office I have held since 1941.

"Since 1941, when I became Clerk of the Board of Education of the Township of Shrewsbury, I have always listed the names of the candidates upon the official ballot for the annual school election in the order in which the petitions were received by me.

"I did not know of the intention, nor of the fact, that any three candidates intended to campaign jointly in the election, at the time of the listing of the names of the candidates upon the official ballot.

"Deponent makes this affidavit knowing that the Commissioner of Education of the State of New Jersey relies upon the truth of the statements herein contained."

The Commissioner has held in two recent decisions, *Purdy vs. Roselle Park*, decided August 19, 1949, and *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*, that he cannot set aside an election because of the mistake or negligence of an official unless he is satisfied that such mistake or negligence affected the result of the election.

In the case of *Purdy vs. Roselle Park, supra*, the Commissioner said:

"Irregularities in school elections should not be condoned, but irregularities which do not affect the results of the election should not be permitted to penalize innocent persons. An inspection of the election results shows that the successful candidate with the third highest vote received 52 more votes than the highest unsuccessful candidate. The successful candidates with the highest and second highest number of votes received respectively 244 and 217 more votes than the highest unsuccessful candidate. It would be manifestly unfair to these successful candidates and would frustrate the will of the people expressed at the polls to set aside an election without proof that the failure of an election board to perform a directory duty affected the result of the election. If elections could be set aside for every failure of election officials to do their duty, it would be within the power of unscrupulous election officials to defeat the will of the people. The presumption is with the incumbent and it is necessary to uphold an election whenever possible. See *Lchlbach vs. Haynes*, 54 N. J. L. 77, *Love vs. Freeholders*, 35 N. J. L. 269, *In re Clee, supra*, at p. 330."

The following is quoted from *In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of Ocean, Monmouth County, supra*:

"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 full 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*, 25 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."

There is no evidence that any of the successful candidates asked that their names be grouped for the purposes of this particular election or that the failure to list the names alphabetically was anything other than an error of the district clerk. Her affidavit, the district clerk said that it had been the practice since 1941 to list the names of the candidates upon the official ballot in the order in which she received the petitions. She denied in her affidavit any knowledge that the three candidates intended to campaign jointly in the election at the time of placing the names of the candidates upon the official ballot.

It is the opinion of the Commissioner that he cannot set aside this election unless he is convinced that the failure to list properly the names of the candidates affected the result of the election. The successful candidate with the third highest vote received 283 votes and the petitioner received 99 votes. The Commissioner is not convinced that the failure to list the names alphabetically caused the defeat of the petitioner. Therefore, to set aside the election because of the district clerk's error would frustrate the will of the people and be unfair to the successful candidates. Relying on the legal precedents cited in this decision, the Commissioner must uphold the election. The Commissioner is not unaware of the decision in the case of *Engle and Green vs. Board of Education of the Township of Hainesport, 1938 School Law Decisions, 175*, wherein a previous Commissioner set aside an election for the reason that the names of the candidates were not listed alphabetically. The then Commissioner mentioned the possibility that the improper arrangement of the candidates' names was prejudicial to the interests of the unsuccessful candidates, although the decision does not indicate what evidence was adduced to establish such prejudice. In the instant case, however, the Commissioner has already determined that the failure to list the names properly did not affect the result of the election and, in view of the precedents cited in the present decision, the *Engle and Green* case, *supra*, is not applicable. The petition is dismissed. June 19, 1950.

DAVID WHITEHEAD,	<i>Petitioner,</i>	}	DECISION OF THE COMMISSIONER OF EDUCATION
vs.			
BOARD OF EDUCATION OF THE TOWN OF MORRISTOWN, MORRIS COUNTY,	<i>Respondent.</i>		

For the Petitioner, Scerbo, Parzio & Kennelly (Frank C. Scerbo, of Counsel).
For the Respondent, Schenck, Price, Smith & King (Robert H. Price, of Counsel).

This is a janitor tenure case which is presented to the Commissioner on a stipulation of facts and briefs of counsel. The petitioner was appointed a janitor on November 8, 1929, by the Board of Education of the Town of Morristown and remained in its employ until June 30, 1949. According to the minutes of the respondent Board of April 12, 1949, he was not reappointed because his work was not satisfactory. Petitioner claims that he was protected by tenure and, hence, the action of the respondent Board was in violation of the Janitors' Tenure Law, which provides as follows:

"18:5-66.1. The board of education of any school district may reduce the number of janitors, janitor-engineers, custodians or janitorial employees, in any such district, subject to the following restrictions and conditions. No such reduction shall be made by reason of residence, age, sex, race, religion or political affiliation; but when any such janitor, janitor-engineer, custodian or janitorial employee under tenure is dismissed, the janitor, janitor-engineer, custodian or janitorial employee, having the least number of years of service to his credit

shall be dismissed in preference to those having longer terms of service; any janitor, janitor-engineer, custodian or janitorial employee so dismissed shall be and remain upon a preferred eligible list in the order of years of service for re-employment whenever vacancies occur, and shall be re-employed by the board of education causing such dismissal in such order, and upon re-employment shall be given full recognition for previous years of service in his respective position and employments.

"18:5-67. Except as provided by section 18:5-66.1 of this title, no public school janitor in any school district shall be discharged, dismissed or suspended nor shall his pay or compensation be decreased, except upon sworn complaint for cause, and upon a hearing had before the board of education. Upon the filing of such complaint, a copy thereof, certified by the secretary or district clerk as true copy, shall be served upon such janitor at least five days before the hearing and at such hearing such janitor shall have the right to be represented by counsel. If upon such hearing it shall appear that the person charged is guilty of the neglect, misbehavior or other offense set forth in the complaint, the board may discharge, dismiss or suspend such janitor or reduce his pay or compensation, but not otherwise."

Janitors' tenure differs from teachers' tenure in that there is no probationary period before tenure vests. It has also been held that the tenure conferred by this act is similar to veterans' tenure and is a personal privilege which may be waived if the incumbent of a position accepts an appointment for a definite term. *Hard vs. Orange*, 61 N. J. L. 623; *Calverley, et al. vs. Board of Education of the Township of Landis*, 1938 *School Law Decisions*, 706; *Ratajczak vs. Board of Education* 114 N. J. L. 577; *Williams vs. Board of Education of West Orange*, 1938 *School Law Decisions*, 714; *DeBolt vs. Board of Education of the Township of Mount Laurel* 1932 *Supplement to 1928 School Law Decisions*, 930; *Lynch vs. Board of Education of the Town of Irvington*, 1938 *School Law Decisions*, 703. Thus, a janitor may acquire tenure protection under the terms of the above law immediately upon his appointment or he may never acquire tenure.

In order to determine this case, two questions must be answered:

- (1) Was the petitioner appointed for an indeterminate term?
- (2) Did he at any time waive his tenure protection?

The answer to the first question must be in the affirmative. The minutes of the November 8, 1929, meeting of the Morristown Board, relating to petitioner's first appointment, make no reference to any term. The following excerpt is quoted from the minutes:

"Superintendent Wiley recommended the appointment of the following janitors, each at a salary of \$120 per month:

"David Whitehead
* * * * *

"There being no objections, the appointments were approved."

It is the opinion of the Commissioner that the petitioner by his appointment for an indeterminate term acquired tenure immediately.

Over the objection of counsel for the petitioner, respondent's counsel included in his brief an excerpt from the minutes of June 14, 1929, which reads as follows:

"Superintendent Wiley recommended the reappointment of all janitors. It was agreed that all janitors be appointed annually on a one-year basis."

Counsel for the respondent contends this minute of June 14, 1929, must be read with the minute of November 8, 1929, to show that it was the intention of the respondent to appoint the petitioner for a term of one year. He contends that the Commissioner should include this minute, discovered after the signing of the stipulation by both parties, in the stipulation. Counsel for respondent objects to its inclusion and to its consideration in the determination of this case. The Commissioner considers it unnecessary to decide whether this excerpt from the minutes

ould be included in the stipulation for the reason that it cannot affect the determination of the issues involved in this case.

The agreement at the June 14, 1929, meeting, to appoint janitors for a one-year term, must be regarded merely as a statement of policy and not binding upon the board or any of its members in appointing a janitor in November. *Marriott vs. Board of Education of the Township of Hamilton, decided by the Commissioner March 30, 1950.* The Board of Education had a right to change its mind in November and to appoint a janitor for an indeterminate term. An action of a board of education not in accordance with its own rules, where rights to other parties have not accrued, is deemed to constitute a waiver of the rule. *Calverley, et al. vs. Landis, et al.; Michaelis vs. Jersey City*, 49 N. J. L. 154.

The next question to be determined is whether the petitioner at any time waived his tenure. The answer to this question must be in the negative. It has been held that waiver means the "act of intentionally relinquishing or abandoning some known right, claim, or privilege." *Freeman vs. Conover*, 112 Atl. Rep. 324, cited in *Williams vs. West Orange, supra.* No documentary evidence was adduced to prove that the petitioner ever signed a waiver. There is in evidence a janitor's contract which was sent to the petitioner under date of April 11, 1946. The following is a copy:

"Board of Education

"Town of Morristown, N. J.

"JANITOR'S CONTRACT

"To David Whitehead

April 11, 1946.

"YOU ARE HEREBY NOTIFIED of your appointment as janitor in the Morristown Public Schools of the Town of Morristown for the school year 1946-1947, beginning July 1, 1946, upon the following conditions:

"1. A salary of \$1760.00 is to be paid in twelve (12) monthly installments on the 15th of each month, from July thru June inclusive.

"2. A sixty-day notice is to be given by either party desiring to be released from the provisions of this contract.

(Signed) CLAIRE W. GOBLE,
District Clerk.

"ACCEPTANCE

"I hereby contract as janitor in the Public Schools of Morristown for the Board of Education at a salary of \$1760.00 to be paid in 12 monthly installments beginning July 1, 1946, thru June, 1947.

.....
Janitor."

This contract for the school year, 1946-1947, was never signed by the petitioner but nonetheless, he was continued in service.

It is stipulated that the petitioner, if sworn, would have testified that he never was tendered or received any written contract other than the above which he refused to sign because he deemed himself to be legally under tenure. It is further stipulated that the District Clerk, who has been either assistant to the District Clerk or District Clerk for twenty-two years, if sworn, would have testified that contracts, in form similar to the one set forth above, were sent to all janitors annually and acceptances were sometimes signed and returned and sometimes not; and, also, that the petitioner and the others accepted and received increased salaries as indicated in the minutes and that at no time did the petitioner or any of the janitors contend to her, or in Board meetings, that he or they were under tenure. The Superintendent of Schools in office most of the same period would have sworn similarly.

It is significant that no effort was made by the Board or its officers to enforce the signing of the acceptances and that the janitors were continued in service and paid their increases without signing. The Commissioner attaches no significance to the failure of the petitioner to contend in any Board meeting or to the District Clerk that he was under tenure. He was under no duty to do so. Having been appointed for an indeterminate term, any subsequent action of the Board in reappointing him for a fixed term was a nullity as far as he was concerned, unless he waived his tenure. The only documentary evidence adduced shows he did not sign anything which might be construed as a waiver.

Respondent maintains that petitioner waived his tenure in accepting salary increases for the years the minutes show he was reappointed. The Commissioner cannot agree that accepting a salary increase constitutes a waiver of tenure. Although the Commissioner does not feel called upon to decide the question, it may be that, janitors' tenure being a personal privilege, a janitor could make a waiver of tenure a consideration for an increase in salary. As has been held in the *Freeman vs. Conover* case, *supra*, a waiver of a privilege must be intentional. There is no evidence that the petitioner intentionally waived his tenure rights as a consideration for an increase in salary. There is nothing to show that the Board of Education regarded an increase in salary as a consideration for waiving tenure; nor is there any indication that the Board made any attempt to withhold increases from janitors who failed to sign the acceptances.

The Commissioner finds that David Whitehead was appointed for an indeterminate term and never by any act of his waived his tenure privileges. The Board of Education of the Town of Morristown is ordered to reinstate the petitioner and, upon his compliance with the provisions of Chapter 241, Laws of 1948, to compensate him as if he had been on duty during the period of the illegal dismissal, June 30, 1950.