

State of New Jersey  
Department of Education  
Trenton

NEW JERSEY  
SCHOOL LAWS

Enacted during the Legislative Session of 1955  
and Laws of 1954  
Passed Too Late for Inclusion in 1954 Bulletin

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SCHOOL LAW DECISIONS  
1954 - 1955

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## SCHOOL LAWS, SESSION OF 1954

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(Passed too late in 1954 to be included in the 1954 School Law Bulletin.)

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LAWS OF 1954 PASSED TOO LATE FOR INCLUSION IN  
1954 BULLETIN

AMENDMENTS, LAWS OF 1954\*

CHAPTER 249, LAWS OF 1954

AN ACT to provide for a schedule of minimum salaries and increments for certain persons holding office, position, or employment under any district or regional board of education, or any board of education of a county vocational school of this State, and supplementing article 2 of chapter 13 of Title 18 of the Revised Statutes.

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

1. As used in this act:

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

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

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

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

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

"Employment increment" shall mean an annual increase of \$150.00 granted to a teacher for one "year of employment."

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

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\* Italics show amendments of 1954.

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

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

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

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

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

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

4. Whenever a person shall hereafter accept office, position, or employment as a teacher in any school district of this State, his initial place on the salary schedule shall be at such point as may be agreed upon by the teacher and the employing board of education.

5. On and after September 1, 1954, any teacher mentioned in sections 3 and 4 of this act who is below his place on the salary schedule according to years of employment shall receive on said date and annually thereafter an adjustment increment until he shall have attained his place on the schedule according to his years of employment but any such teacher who on or after said date is under contract for the year of employment beginning on said date at a salary of less than \$3,000.00 a year for said year of employment shall receive an increase in his salary to \$3,000.00 in lieu of his first adjustment increment unless such adjustment increment is greater.

6. Every teacher who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of this State, including active service in the Women's Army Corps, the Women's Reserve of the Naval Reserve, or any similar organization authorized by the United States to serve with the Army or Navy, in time of war or an emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service, shall be entitled to any employment or adjustment increment to which he would have been entitled if he had been employed for the same period of time in some publicly owned and operated college, school, or institution of learning in this or any other State or territory of the United States, except that the period of such service shall not be credited toward more than 4 employment or adjustment increments.

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

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

8. Nothing contained in this act shall be construed to interfere with or discontinue any salary schedule now in force; provided, such schedule shall meet the requirements of this act, nor to prevent the adoption of any salary schedule which shall meet its minimum requirements, nor to prevent the payment of extra compensation for additional service, nor to prevent the payment

of any bonus pursuant to law, but no bonus payment may be made in lieu of an employment or adjustment increment.

9. The provisions of this act shall not apply to any person whose appropriate certificate, valid for his office, position, or employment is an emergency certificate and to persons employed as substitutes on a day-by-day basis.

10. Nothing herein contained shall be construed to repeal or to modify to any extent the provisions of section 18:13-10 of the Revised Statutes or "An act concerning the compensation of teachers in the public schools, and supplementing chapter 13 of Title 18 of the Revised Statutes," approved June 19, 1942 (P. L. 1942, c. 256).

11. This act shall take effect July 1, 1954.

Approved December 14, 1954.

#### CHAPTER 262, LAWS OF 1954

AN ACT to amend "An act relating to the public schools of this State, and supplementing Title 18 of the Revised Statutes," approved August 2, 1939 (P. L. 1939, c. 295).

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

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

1. Every board of education shall require a physical examination of all employees of the board once *a year*. The scope of such examination shall be determined under rules of the State Board of Education.

In addition to the routine examination of all employees as provided in this act, the board of education may require the individual examination of an employee whenever in its judgment such employee shows evidence of deviation from normal physical or mental health.

If as a result of the examination hereinbefore set forth, the board deems it advisable, it may require diagnostic data obtained by means of laboratory tests or by fluroscopic or X-ray technics.

The cost of examinations, laboratory tests, or X-ray procedures may be borne by the board of education when made by a physician or institution designated by the board. In lieu of the examination by such authority with payment by the board, an employee may be examined at his own expense by a physician or institution of his own choosing; provided, that such physician or institution shall be approved by the board of education.

If the result of the examination indicates mental abnormality or a communicable disease, the employee shall be ineligible for further service until satisfactory proof of recovery is furnished. If an employee is under contract or tenure protection, he may be granted any sick leave compensation provided by the board of education for other employees, and shall upon satisfactory recovery be permitted to complete the term of his contract, or, if

under tenure, shall be re-employed with the same tenure status as he possessed at the time his services were discontinued; provided, the absence does not exceed a period of 2 years.

All records and reports shall be the property of the board and shall be filed with the medical inspector as confidential information, except that such records and reports shall be open for inspection by officers of the State Department of Health and of the local board of health.

2. This act shall take effect immediately.

Approved December 27, 1954.

AMENDMENTS, LAWS OF 1955\*

CHAPTER 25, LAWS OF 1955

AN ACT relating to medical examination of pupils of free public schools, and amending section 18:14-57 of the Revised Statutes.

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

1. Section 18:14-57 of the Revised Statutes is amended to read as follows:

18:14-57. The medical inspector, or the nurse under the immediate direction of the medical inspector, shall examine every pupil to learn whether any physical defect exists, and keep a record from year to year of his growth and development, which record shall be the property of the board of education, and shall be delivered by the medical inspector or nurse to his successor in office. *A pupil who presents a statement signed by his parent or guardian that a medical examination interferes with the free exercise of his religious beliefs shall be examined only to the extent as may be necessary to determine whether he is ill or infected with a communicable disease or to determine his fitness to participate in the health, safety and physical education course as required by section 18:14-93 of the Revised Statutes.*

2. This act shall take effect immediately.

Approved May 18, 1955.

CHAPTER 39, LAWS OF 1955

AN ACT concerning teachers' institutes and conventions, and amending section 18:13-118 of the Revised Statutes.

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

1. Section 18:13-118 of the Revised Statutes is amended to read as follows:

18:13-118. When any superintendent, supervisor, principal, teacher, or any other full-time member of the professional staff of any district or regional board of education or any board of education of a county vocational school, the qualifications for whose office, position, or employment are such as to require or permit him to hold an appropriate certificate issued by the State

\* Italics show amendments of 1955.

*Board of Examiners in full force and effect in this State, or any school secretary or office clerk, applies to the board of education by which he is employed for permission to attend the annual convention of the New Jersey Education Association, such permission shall be granted for a period of not more than 2 days in any 1 year. If a certificate is procured and filed with the secretary of the board of education, signed by the executive secretary of the New Jersey Education Association, showing that such person was in actual attendance at all of the sessions of the convention, he shall receive his full salary for the days he has actually attended the sessions of the convention.*

2. This act shall take effect immediately.

Approved June 2, 1955.

#### CHAPTER 85, LAWS OF 1955

AN ACT to amend "An act relating to the public schools of this State, and supplementing chapter 5 of Title 18 of the Revised Statutes," approved June 6, 1938 (P. L. 1938, c. 311).

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

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

1. It shall be the duty of each board of education in any school district to save harmless and protect *any person holding office, position or employment under the jurisdiction of said board* from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person *or damage to property*, within or without the school building; provided, such *person* at the time of the accident, *injury or damage* was acting in the discharge of his duties within the scope of his *office, position or employment* and /or under the direction of said board of education; and said board of education may arrange for and maintain appropriate insurance with any company created by or under the laws of this State, or in any insurance company authorized by law to transact business in this State, or such board may elect to act as self-insurers to maintain the aforesaid protection.

2. This act shall take effect immediately.

Approved June 21, 1955.

CHAPTER 113, LAWS OF 1955

AN ACT concerning education, and amending section 18:7-67 of the Revised Statutes.

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

1. Section 18:7-67 of the Revised Statutes is amended to read as follows:  
18:7-67. Every person presenting any bill, as provided in section 18:7-66 of this Title, exceeding in amount the sum of \$5.00, shall *verify said bill by affidavit or include therein or annex thereto a signed declaration in writing to the effect*:
  - a. That the goods or services itemized in the bill have been delivered or rendered;
  - b. That no bonus or reward has been given or received by any person with the knowledge of the deponent in connection with the claim; and
  - c. That the bill is true and correct.
2. This act shall take effect immediately.  
Approved July 1, 1955.

CHAPTER 159, LAWS OF 1955

AN ACT concerning school districts, amending sections 18:8-1, 18:8-2, 18:8-3, 18:8-4, 18:8-5, 18:8-6, 18:8-8, 18:8-10, 18:8-16, 18:8-17, 18:8-18, 18:8-19, 18:5-84, 18:5-85, 18:5-86, 18:7-90, 18:7-100 and 18:7-102 of the Revised Statutes, amending chapter 113 of the laws of 1939 and chapter 81 of the laws of 1954, and repealing chapter 433 of the laws of 1948, chapter 189 of the laws of 1953 and chapter 51 of the laws of 1954.

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

1. Section 18:8-1 of the Revised Statutes is amended to read as follows:  
18:8-1. Whenever the boards of education of 2 or more school districts and the *State Commissioner of Education*, after study and investigation, shall deem it advisable *for such school districts* to unite in creating a regional school district for the establishment and development of elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational *services* or facilities in the territory comprised within *such* school districts and shall determine whether the amounts to be raised for annual or special appropriations for such regional school districts, *as provided in* section 18:8-17 of the Revised Statutes, are to be apportioned upon the basis of ratables, or of average daily *enrollment* of the *constituent school* districts during the preceding school year, the *board of education of each of such school districts* shall call and conduct a *special*

election, *which shall be held on the same date in each of such school districts, in the manner provided for the conduct of special school district elections in chapter 7 of this Title and shall submit a proposal for creation of a regional school district for any 1 or more of the above purposes. The proposal so submitted shall state whether the amounts to be raised for annual or special appropriations for such regional school district, as provided in section 18:8-17 of the Revised Statutes are to be apportioned upon the basis of ratables or of average daily enrollment of the constituent school districts during the preceding school year.*

*There may be included, as a part of each proposal to be submitted with respect to the creation of a regional school district, an authorization for the issuance of promissory notes or temporary loan bonds of the regional school district, in a principal amount not in excess of that stated in such proposal, for the purpose of providing for the current expenses of the regional school district until June 30 subsequent to the date of the first annual election of the regional school district. No such authorization shall be included in such proposal unless the State Commissioner of Education shall have made a finding, in writing, prior to the date of submission of such proposal, that the principal amount of such promissory notes or temporary loan bonds, as stated in such proposal, is not in excess of the amount of money reasonably expected to be necessary for the current expenses of the regional school district as aforesaid. If each of such proposals includes such an authorization and pursuant to such proposals such school districts shall vote to create a regional school district, such proposals shall after such vote be authority for the issuance of such promissory notes or temporary loan bonds of the regional school district to the amount and for the purposes set forth therein, and shall for all the purposes of chapters 7 and 8 of this Title and any other provisions of said Title, be deemed to constitute a proposal duly adopted on said date by the legal voters of the regional school district authorizing the regional board of education to issue bonds of the regional school district, but no school debt statement need be prepared or filed prior to such authorization. Such promissory notes or temporary loan bonds of the regional school district shall be issued by the regional board of education in the manner provided in article 8 of chapter 7 of this Title, except that all such promissory notes or temporary loan bonds shall mature in not exceeding 1 year and may be renewed by similar promissory notes or temporary loan bonds which shall mature not later than 2 years from the date of the first of the original notes or bonds so issued. An amount, sufficient to pay the principal and interest, at maturity, of such promissory notes or temporary bonds shall be raised in the same manner as provided by law for the payment of bonds of the regional school district.*

*There may be included, as a part of each proposal to be submitted with respect to the creation of a regional school district, the authorization of bonds of the regional school district for any 1 or all of the following purposes: (a) any purpose or purposes described in section 18:7-85 of the Revised Statutes, (b) the purchase of any schoolhouse or schoolhouses or other buildings for school purposes with or without the sites thereof and lands appertaining thereto or the furniture and other necessary equipment therefor or the materials and supplies therefor, and (c) the making of additions, alterations, repairs or improvements in or upon any such schoolhouse or*

*other building or purchasing school furniture or other necessary equipment therefor. Such an authorization shall for all the purposes of this Title, and particularly chapter 8 and article 18 of chapter 5 thereof, be deemed to constitute a proposal authorizing the regional board of education to issue bonds of the regional school district, but no school debt statement need be prepared or filed prior to the authorization of such bonds. A copy of each such proposal may be submitted prior to said election for consideration by the State Commissioner of Education and the Local Government Board under and for all the purposes of section 18:5-86 of the Revised Statutes. If each of such proposals includes such an authorization and pursuant to such proposals such school districts shall vote to create a regional school district, such proposals shall after such vote be authority for the issuance of bonds of the regional school district to the amount and for the purpose or purposes set forth therein and, from and after the date of such vote, shall for all the purposes of chapters 7 and 8 of this Title, and any other provisions of said Title, be deemed to constitute a proposal duly adopted on said date by the legal voters of the regional school district authorizing the regional board of education to issue bonds of the regional school district for the purpose or purposes and in the amount or amounts set forth in such proposal. The bonds so authorized shall be issued, shall be dated and sold in all respects in accordance with the provisions of said chapters, and shall mature within the period or respective periods of time prescribed by such provisions, in each case computed from the date of such bonds.*

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

18:8-2. The secretary of each school district referred to in section 18:8-1 of this Title shall transmit to the county superintendent of schools of the county in which said school district is situate a certificate of the results of the election in such school district. In the event that the uniting school districts are situated in different counties, the secretary of each school district shall also transmit a certificate of results of the election to the county superintendent of schools of each county in which any other such uniting school district or part thereof is situated. If each such county superintendent of schools shall determine from such certificates that the total number of votes cast in each school district in favor of the proposal for creating a regional school district exceeds the total number of votes cast in such school district against the same, he shall immediately notify the board of education of each of such school districts of his determination.

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

18:8-3. Whenever the board of education of a regional school district and the State Commissioner of Education, after study and investigation, shall deem it advisable to enlarge the regional school district to include any 1 or more additional constituent school districts and the board of education of each proposed constituent school district shall deem it advisable to enlarge the regional school district to include each of such proposed constituent school districts, the board of education of each proposed constituent school district, and the board of education of the regional school district shall call and conduct a special election to be held on the same day in each of said school districts, in the manner provided for the conduct of special school district elections in chapter 7 of this Title and shall submit a proposal for the en-

*largement of the regional school district to include such additional constituent school district or districts. There may be included as a part of the proposal to be submitted as aforesaid, any other matters which may be included as a part of a proposal to be submitted for the creation of a regional school district.*

*Within 5 days after the date of a special school district election, held as provided in section 18:8-3 of this Title for the purpose of submitting a proposal for the enlargement of a regional school district, the secretary of each school district in which such an election is held shall transmit to the county superintendent of schools of each county in which any part of the regional school district or a proposed constituent school district is situated, a statement of the results of such special election showing the total number of votes cast in favor of such proposal in such school district and the total number of votes cast against such proposal in such school district. If such statements shall establish the adoption of such a proposal by the regional school district and by each proposed constituent school district, each of the county superintendents of schools in which any part of any of said school districts is situated shall send notice thereof to the board of education of each of said school districts and to the State Commissioner of Education.*

*Not later than 30 days after the date on which the enlargement of any regional school district shall become effective, the county superintendents of schools of each county in which any part of the regional school district or a new constituent school district is situated, shall make a reapportionment of the representation of the constituent school districts in membership on the regional board of education on the basis of the population of the constituent districts as provided in section 18:8-5 of this Title and shall designate the number of members to be elected from each particular constituent school district at the next several annual elections of the regional school district upon the expiration of the terms of office of the then members of the regional board of education so that the representation of the constituent school districts in membership on the regional board of education shall be as established by such reapportionment. Following the making of such reapportionment and designation as above provided, the county superintendent of schools of the county in which each new constituent school district is located shall thereupon appoint a citizen of such district having the qualifications necessary to be a member of a regional board of education.*

*Each member of the regional board of education appointed from a new constituent school district shall serve until the first Monday succeeding the next annual election of the regional school district.*

*The enlargement of a regional school district to include any proposed constituent school district shall become effective on the twentieth day following the date of the special elections held as provided in section 18:8-3 of this Title at which proposals, providing for the enlargement of the regional school district, shall have been adopted by the regional school district and by each proposed constituent school district. Each new constituent school district shall become responsible for the indebtedness of the regional school district then outstanding, or authorized but unissued, as if such new constituent school district had originally constituted a part of the regional school district. The corporate existence of the regional school district shall be deemed to have continued without interruption from the date of its original*

*creation prior to its enlargement and the regional school district shall continue to be known by its then corporate name unless pursuant to resolution adopted by the regional board of education another corporate title, as therein set forth, shall be approved by the State Board of Education and so certified by said board to the Secretary of State. The board of education of the original school district shall have full authority and powers and duties with respect to the regional school district as enlarged, except that it shall not exercise any authority with respect to the educational facilities then being provided for pupils in any new constituent school district until July 1 next succeeding the first annual election in such regional school district as enlarged, but the time for exercising such authority may be accelerated or postponed by the board of education of the regional school district with the approval of the State Commissioner of Education.*

4. Section 18:8-4 of the Revised Statutes is amended to read as follows:

18:8-4. When 2 or more *school* districts have voted to *create* a regional *school district* as provided in *chapter 8* of this Title, the county superintendent of schools of the county or the county superintendents of schools of the counties in which *said school* districts are situated, shall select for the districts in their respective counties, from among the citizens of such districts having the qualifications for members of boards of education of *school* districts governed by the provisions of chapter 7 of this Title, 9 members to constitute the regional board of education, provided that if there are more than 9 *school* districts uniting to *create the regional school district*, then the number of members of the regional board of education shall be equal to the number of *constituent* school districts.

5. Section 18:8-5 of the Revised Statutes is amended to read as follows:

18:8-5. The membership of the regional board of education shall be apportioned by the county superintendent or county superintendents of schools among the several *school* districts uniting to *create a regional school district* as nearly as may be according to the number of their inhabitants as shown by the last Federal census officially promulgated in this State, but each *constituent school* district shall have at least 1 member on the regional board of education. The membership as apportioned shall continue to represent the respective *constituent school* districts on the regional board of education until changed by reapportionment by the county superintendent or county superintendents of schools of the county or counties in which any part of the regional school district is situated. Such reapportionment shall be made immediately succeeding the official promulgation in this State of each subsequent Federal census or as otherwise required by section 18:5-3 of this Title. Notwithstanding any such reapportionment, the members of the regional board of education, as theretofore apportioned among the constituent school districts, shall continue in office for the terms for which they were elected or appointed, and provision shall be made for election of their successors only to the extent necessary to provide, for each constituent school district, the representation in membership on the regional board of education to which such school district is entitled by reason of any such reapportionment. If by reason of any such reapportionment a constituent school district becomes entitled to increased representation in membership on the regional board of

*education, such additional members shall be elected from such school district at the next annual regional school district election.*

6. Section 18:8-6 of the Revised Statutes is amended to read as follows:

18:8-6. The *regional* board of education *originally appointed* shall serve until the first Monday succeeding the next annual election of *the regional school district, at which time* the terms of office of the members so appointed shall end, and the *elected* members of the *regional board of education* shall take office under the provision of section 18:8-8 of *this Title* for terms as provided in section 18:8-7 of this Title.

7. Section 18:8-8 of the Revised Statutes is amended to read as follows:

18:8-8. The board of education of the regional *school* district shall provide *at the annual regional school district election and* in the manner prescribed for *school* districts governed by *the provisions of chapter 7 of this Title*, for the election, of members *for* the regional board of education to succeed *for* the respective *constituent school* districts the members *representing such districts and* whose terms expire on the first Monday next succeeding *such election*. The polls shall remain open in each constituent school district for the same length of time as *would be* required by law *for an* annual school election *held* in such district *pursuant to the provisions of chapter 7 of this Title*. Members of the regional board of education shall be *elected and shall serve* for a term of 3 years. *Vacancies* for unexpired terms *on the regional board of education* shall be filled by *said board in the same manner as such vacancies are filled with respect to* boards of education governed by *the provisions of chapter 7 of this Title*.

8. Section 18:8-10 of the Revised Statutes is amended to read as follows:

18:8-10. The regional board of education shall forthwith after its first appointment *and annually thereafter on the first Monday following each annual regional school district election*, organize by the election of *one of its* members as president and *one of its members* as vice-president and shall appoint a secretary who may be a member of *said board*. The president and vice-president shall serve until the election of their successors. If any *regional board of education* shall fail to organize within 30 days after the date hereinbefore provided for its organization, the county superintendent of schools shall appoint a president and a vice-president from among the members of *said board* then in office *to serve until the election of their successors*. The term of the secretary shall expire annually on June 30.

9. Section 18:8-16 of the Revised Statutes is amended to read as follows:

18:8-16. *Regional school district elections* for the purpose of raising annual appropriations or for *authorizing the issuance of bonds of the regional school district or for any other purpose provided in chapter 8 of this Title* shall be called and conducted by the regional board of education in the manner provided for such elections in *school* districts governed by *the provisions of chapter 7 of this Title*, with at least 1 polling place in each of the *constituent school* districts. The annual *regional school district election* shall be held on the first Tuesday in February. *Except as otherwise provided in chapter 8 of this Title, only* the total vote of all the *constituent school* districts in the regional *school* district shall be considered in determining the

result of *any regional school district* election and any proposition, question or proposal must be adopted by the affirmative vote of a majority of the legal ballots cast thereon in the entire regional school district without regard to the majorities of the legal ballots cast thereon in the constituent school districts.

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

18:8-17. The amounts to be raised for annual or special appropriations for a regional school district and the amounts to be raised for interest and the redemption of bonds of a regional school district shall be apportioned among the constituent school districts by the regional board of education as follows:

(1) The amounts to be raised for interest and the redemption of bonds of a regional school district shall be apportioned upon the basis of the ratables of the constituent school districts;

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

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

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

The amounts of money thus determined to be raised in the respective constituent school districts shall be certified by the secretary of the board of education of the regional school district to the county board or county boards of taxation and to the assessors of the several taxing districts and the municipal clerks of the municipalities in the constituent school districts and the amount thus apportioned to each such school district shall be raised ratably

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

11. Section 18:8-18 of the Revised Statutes is amended to read as follows:

18:8-18. *Bonds or notes of a regional school district shall be authorized and issued as provided in chapter 8 of this Title in conformity with the provisions for authorizing and issuing bonds or notes in school districts governed by chapter 7 of this Title. Bonds or notes of a regional school district shall be issued in the corporate name of said district. The outstanding bonds and notes of a regional school district shall be a lien upon the real estate situated in all of the constituent school districts in the regional school district and the personal estates of the inhabitants of all of such constituent school districts as well as the property of said districts and the regional school district shall be liable for the payment thereof.*

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

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

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

year. The secretary of the regional school district shall certify the adoption of such proposal by each constituent school district to the county superintendent of schools of each county in which any part of the regional school district is situated and to the State Commissioner of Education.

13. Section 1 of chapter 113 of the laws of 1939, as heretofore amended by section 3 of chapter 81 of the laws of 1954, is amended to read as follows:

*Every proposition, question or proposal heretofore or hereafter adopted by the legal voters of any regional school district authorizing the issuance of bonds for the purchasing or taking or condemning of land for school purposes shall, unless otherwise expressly provided therein, be deemed to include and authorize the purchase of any schoolhouse or schoolhouses or other buildings situate thereon and the furniture and other necessary equipment therefor and the materials and supplies therefor, and the issuance of said bonds for said purpose in the amount or amounts set forth in such proposition, question or proposal. The bonds so issued shall be dated and sold in all respects in accordance with the provisions of chapters 7 and 8 of Title 18 of the Revised Statutes, and shall mature within the period or respective periods of time prescribed by such provisions, in each case computed from the date of such bonds.*

14. Section 4 of chapter 81 of the laws of 1954 is amended to read as follows:

*The board of education of any constituent school district may, at private sale and on terms and conditions approved by resolution of said board of education, sell, transfer and convey to a regional school district any lands of the constituent school district with or without any schoolhouse or other building or improvements thereon and the furniture and other necessary equipment thereof, and also any other furnishings, equipment, materials or supplies which may no longer be useful to the constituent school district. The proceeds of any such sale, transfer or conveyance shall be applied by the board of education of the constituent school district only to the payment of the principal of bonds, promissory notes or temporary loan bonds of the constituent school district or of the municipality comprised within such constituent school district issued pursuant to the provisions of chapter 6 of this Title. Pending application as aforesaid, such proceeds may be invested by such board of education in bonds or notes issued by the United States of America and the income on such investment shall be applied to payment of interest as it becomes due upon said bonds, promissory notes or temporary loan bonds or, if no such bonds, promissory notes or temporary loan bonds be then outstanding, shall be paid by said board of education into the building and repairing account of such constituent school district. Notwithstanding the foregoing provisions of this section, all or any part of such proceeds and interest thereon may be expended by such board of education for any purpose or purposes for which bonds may be issued by such constituent school district or by said municipality pursuant to the provisions of chapter 7 or chapter 6 of said Title upon (1) if such constituent school district has no board of school estimate, the adoption by the legal voters of such constituent school district, by a majority of the legal ballots cast thereon, of a proposal authorizing such board of education to make such expenditure or (2) if the provisions of said chapter 6 are applicable to such constituent school district,*

*the final adoption by the governing body of said municipality of an ordinance of said municipality authorizing such board of education to make such expenditure, or (3) if the provisions of said chapter 6 are not applicable to such constituent school district and it has a board of school estimate, the approval and signature by a majority of all the members of such board of school estimate of a resolution of such board of education authorizing such expenditure.*

15. Section 18:5-84 of the Revised Statutes is amended to read as follows:

18:5-84. Except as otherwise provided in section 18:5-85 or 18:5-86 of this article:

a. No local school district other than a certified local school district *and no regional school district* shall authorize the issuance of bonds the principal amount of which, added to the net school debt of such school district at the date of such authorization, shall exceed 6% of the average assessed valuation of property in such school district; and

b. No certified local school district shall authorize the issuance of bonds the principal amount of which, added to the net school debt of such school district at the date of such authorization, shall exceed 8% of the average assessed valuation of property in such school district.

Nothing contained in this article shall apply to or affect or limit the issuance of bonds by any board of education or school district or municipality for the purpose of funding or refunding any bonds, notes or other indebtedness heretofore or hereafter issued or incurred by such board of education or school district or municipality.

16. Section 18:5-85 of the Revised Statutes is amended to read as follows:

18:5-85. (a) Any school district *other than a regional school district*, within the limitations and upon compliance with the provisions of this section, may authorize the issuance of bonds notwithstanding the provisions of section 18:5-84 of this article. The issuance of any such bonds shall be authorized (1) in the case of a chapter 6 school district, (a) upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least  $\frac{2}{3}$  of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section, or (b) upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least a majority of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section, and the subsequent adoption by the qualified voters of such municipality, by a majority of the legal ballots cast thereon, of a proposition confirming such ordinance, which proposition shall be in form and substance as stated in this section, (2) in the case of a school district which has a board of school estimate and is not a chapter 6 school district, upon the making of the certificate of said board upon delivery of which the board of education, but for the provisions of section 18:5-84 of this article, would be authorized to issue such bonds and the subsequent adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board

of education to issue such bonds, which proposal shall be in form and substance as stated in this section, or (3) in the case of a school district which has no board of school estimate, upon the adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section.

(b) No proposal for authorizing, or ordinance authorizing, the issuance of bonds of a school district pursuant to this section shall be adopted if the percentage of net debt as stated in any supplemental debt statement required by this article to be filed prior to such authorization shall exceed 7%.

(c) Every proposal for authorizing, and every ordinance authorizing, and every proposition confirming an ordinance authorizing, the issuance of bonds of a school district pursuant to this section, after stating any other matters or things authorized or required by law, shall disclose the effect of such proposal or ordinance on the borrowing margin of every municipality comprised within such school district. Such disclosure shall include showing the amount of such borrowing margin before adoption of the proposal or ordinance and showing the amount of such borrowing margin used up by adoption of the proposal or ordinance. Such disclosure in any such proposal shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Resolved that the board of education is hereby authorized:

To \* \* \* ; and

To issue bonds of the school district for said purpose (or purposes) in the principal amount of \$ (insert amount of bonds to be issued), thus using up \$ (insert amount of borrowing margin to be used) of the \$ (insert amount of borrowing margin before adoption of proposal) borrowing margin of the (insert name of municipality) previously available for other improvements, and (if there be other municipality or municipalities comprised within such school district) \$ (insert amount of borrowing margin to be used) of the \$ (insert amount of borrowing margin before adoption of proposal) borrowing margin of the (insert name of municipality), et cetera, et cetera.

Such disclosure in any such ordinance shall be sufficient if set forth in substantially the following form *with* appropriate figures inserted:

The authorization of the \$ (insert amount of bonds to be issued) bonds provided for by this ordinance uses up \$ (insert amount of borrowing margin to be used) of the \$ (insert amount of borrowing margin before adoption of ordinance) borrowing margin of the (insert name of municipality) previously available for other improvements.

Such disclosure in any such proposition confirming an ordinance shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Shall the ordinance of the (insert name of municipality) adopted on (insert date of adoption) authorizing the issuance of \$ (insert amount of bonds to be issued) bonds for school purposes and using up \$

(insert amount of borrowing margin to be used) of the \$ (insert amount of borrowing margin before adoption of proposition) borrowing margin of the (insert name of municipality) previously available for other improvements, be confirmed.

17. Section 18:5-86 of the Revised Statutes is amended to read as follows:

18:5-86. (a) Any school district, upon compliance with the provisions of this section, may authorize the issuance of bonds notwithstanding the provisions of section 18:5-84 of this article. The issuance of any such bonds shall be authorized (1) in the case of a chapter 6 school district, upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least a majority of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section and upon a copy of which ordinance shall have been endorsed, prior to its adoption by said governing body, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for, and the subsequent adoption by the qualified voters of such municipality, by a majority of the legal ballots cast thereon, of a proposition confirming such ordinance, which proposition shall be in form and substance as stated in this section, (2) in the case of a school district which has a board of school estimate and is not a chapter 6 school district, upon the making of the certificate of said board upon delivery of which the board of education, but for the provisions of section 18:5-84 of this article, would be authorized to issue such bonds and the subsequent adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for, or (3) in the case of a school district which has no board of school estimate, upon the adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal, in the case of a local school district, shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for.

(b) A copy of any proposal for authorizing, or ordinance authorizing, the issuance of bonds of a school district may, before its adoption by the legal voters of such school district or governing body of the municipality comprised within such school district, be submitted for consideration by the State Commissioner of Education under subsection (c), and by the Local Government Board under subsection (d), of this section. As a part of such consideration and before endorsing any approval on such copy, the commissioner or board may require the board of education of such school district or governing body of such municipality to adopt resolutions restricting or limiting any future proceedings therein or other matters or things deemed by the commissioner or board to affect any estimate made or to be made under said subsections, and every such resolution so adopted shall constitute a valid and

binding obligation of the school district or municipality, as the case may be, running to and enforceable or releasable by the commissioner or board, as the case may be.

(c) Within 60 days after submission to the State Commissioner of Education of a copy of a proposal or ordinance pursuant to subsection (b) of this section, he shall endorse his consent thereon if he shall be satisfied and shall record in writing his estimates that existing educational facilities in such school district are or within 5 years will be less than 80% adequate, that the new educational facilities to be financed pursuant to such proposal or ordinance will within 10 years be fully utilized, and that under existing statutes there is no alternative method of providing such new educational facilities which would be more economical. If the State Commissioner of Education shall not be so satisfied within said period of 60 days, he shall endorse his disapproval on such copy.

(d) Within 60 days after the submission to the Local Government Board of any copy of a proposal or ordinance pursuant to subsection (b) of this section, it shall cause its consent to be endorsed thereon if it shall be satisfied and shall record by resolution its estimates that the amounts to be expended for the new educational facilities to be financed pursuant to such proposal or ordinance are not unreasonable or exorbitant, and that issuance of the bonds mentioned and described in such proposal or ordinance will not materially impair the credit of any municipality comprised within such school district or substantially reduce its ability during the ensuing 10 years to pay punctually the principal and interest of its debts and supply essential public improvements and services, and that authorization of such bonds would not be possible under the provisions of either section 18:5-84 or section 18:5-85 of this article, and that, taking into consideration trends in population and in values and uses of property and in needs for educational facilities, the net school debt of such school district will at some date within 20 years be less, in the case of a certified local school district, than 8%, or in the case of any other school district, than 6% of the average assessed valuation of property in such school district as stated in supplemental debt statements, which might be filed on such date. If the Local Government Board shall not be so satisfied within said period of 60 days, it shall cause its disapproval to be endorsed on such copy.

(e) Except proposals for authorizing the issuance of bonds of a regional school district, every proposal for authorizing, and every ordinance authorizing, and every proposition confirming an ordinance authorizing, the issuance of bonds of a school district pursuant to this section, after stating any other matters or things authorized or required by law, shall disclose the effect of such proposal or ordinance on the borrowing margin of every municipality comprised within such school district. Such *disclosure* shall include showing the amount, if any, of such borrowing margin before adoption of the proposal or ordinance and showing the amount of such borrowing margin, if any, used up by adoption of the proposal or ordinance and showing the amount, if any, of net debt in excess of the measure of such borrowing margin resulting after adoption of the proposal or ordinance. Such disclosure in any such proposal shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Resolved that the board of education is hereby authorized:

To \* \* \*; and

To issue bonds of the school district for said purpose (or purposes) in the principal amount of \$ (insert amount of bonds to be issued), thus using up all of the \$ (insert amount of borrowing margin before adoption of proposal), or, in an appropriate case, increasing the existing deficit in the borrowing margin of the (insert name of municipality) previously available for other improvements and raising its net debt to \$ (insert amount, after adoption of proposal, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, and (if there be other municipality or municipalities comprised within such school district) using up all (or, in an appropriate case, an amount) of the \$ (insert amount of borrowing margin before adoption of proposal), or, in an appropriate case, increasing the existing deficit in the borrowing margin of the (insert name of municipality) previously available for other improvements and (in every case where all borrowing margin is used) raising its net debt to \$ (insert amount, after adoption of proposal, of net debt of the municipality *in excess* of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, et cetera, et cetera.

Such disclosure in any such ordinance shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

The authorization of the \$ (insert amount of bonds to be issued) bonds provided for by this ordinance uses up all of the \$ (insert amount of borrowing margin before adoption of ordinance), or, in an appropriate case, increases the existing deficit in the borrowing margin of the (insert name of municipality) previously available for other improvements and raises its net debt to \$ (insert amount, after adoption of ordinance, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin.

Such disclosure in any such proposition confirming an ordinance shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Shall the ordinance of the (insert name of municipality) adopted on (insert date of adoption) authorizing the issuance of \$ (insert amount

of bonds to be issued) bonds for school purposes and using up all of the \$ (insert amount of borrowing margin before adoption of proposition), or, in an appropriate case, increasing the existing deficit in the, borrowing margin of the (insert name of municipality) previously available for other improvements and raising its net debt to \$ (insert amount, after adoption of proposition, of net debt of the municipality in excess of 7% of the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of the bonds to be issued as the average of the 3 next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed) beyond such borrowing margin, be confirmed.

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

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

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

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

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

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

19. Section 18:7-100 of the Revised Statutes is amended to read as follows:

18:7-100. Whenever the legal voters of a *school* district have, pursuant to sections 18:7-85 to 18:7-97 of this Title, authorized the board of *education* to issue bonds, hereinafter in this article called "permanent bonds," the board of *education* may issue promissory notes or temporary loan bonds in antici-

pation of the issuance of permanent bonds. *The promissory notes or temporary loan bonds may be authorized by resolution of the board of education which shall fix the maximum amount of such notes or bonds and the maximum rate of interest thereon. The other matters in respect of the notes or temporary loan bonds may be left to be determined by subsequent resolutions or by the officials executing them or by the secretary or the custodian of school moneys from time to time as the money is required for the purposes for which the permanent bonds are authorized. The aggregate face amount of such promissory notes or temporary loan bonds shall not exceed the aggregate amount of the permanent bonds authorized.*

20. Section 18:7-102 of the Revised Statutes is amended to read as follows:

18:7-102. The board shall issue the permanent bonds and apply the proceeds thereof to the payment of the principal of the notes or temporary loan bonds issued under section 18:7-100 of this *Title*.

*Any issue of permanent bonds may be sold at one time or in installments at different times. In the case of bonds sold in installments the maturities of such bonds offered for sale, combined with the maturities, if any, previously sold, shall be such as to comply with the requirements of section 18:7-90 of this Title. Any unsold part of an issue or installment may be reoffered and sold, notwithstanding the fact that the maturities, when considered alone, do not comply with the requirements of said section.*

21. Chapter 433 of the laws of 1948 is hereby repealed.

22. Chapter 189 of the laws of 1953 is hereby repealed.

23. Chapter 51 of the laws of 1954 is hereby repealed.

24. This act shall take effect immediately.

Approved July 20, 1955.

## ACTS AND RELATED LAWS, 1955

### CHAPTER 2, LAWS OF 1955

AN ACT concerning age as a bar to eligibility for pension funds, and amending section 43:1-1 of the Revised Statutes.

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

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

43:1-1. *Any person of the age of 40 years or over, who accepts any employment in the State or any county or municipality thereof shall not be eligible to join any pension fund maintained by the State or any county or municipality thereof, except that such person may join the pension fund established pursuant to the "Public Employees' Retirement-Social Security Integration Act," approved June 28, 1954 (P. L. 1954, c. 84), the pension fund established pursuant to "An act to provide for the creation, setting apart, maintenance and administration of a city employees' retirement system in cities of the first class having, at the time of the enactment of this act, a population in excess of 400,000 inhabitants; and merging and superseding the provisions of pension funds established pursuant to article 2 of chapter 13, chapters 18 and 19, of Title 43 of the Revised Statutes, in said cities," approved November 22, 1954 (P. L. 1954, c. 218), the pension fund created pursuant to "An act to provide for the creation, setting apart, maintenance and administration of a county employees' pension fund in counties having a population exceeding 800,000 inhabitants," approved April 8, 1943 (P. L. 1943, c. 160) or any pension fund established pursuant to article 1 of chapter 10 of Title 43 of the Revised Statutes.*

This section shall not apply to "teachers" as defined in section 18:13-25 of the Title Education, nor to any person eligible to membership in the Teachers' Pension and Annuity Fund.

2. This act shall take effect immediately.

Approved March 30, 1955.

CHAPTER 21, LAWS OF 1955

AN ACT concerning legal holidays, and amending section 36:1-1 of the Revised Statutes.

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

1. Section 36:1-1 of the Revised Statutes is amended to read as follows:

36:1-1. The following days in each year shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and of the protesting and giving notice of dishonor, of bills of exchange, bank checks and promissory notes be treated and considered as the first day of the week, commonly called Sunday, and as public holidays: January 1, known as New Year's Day; February 12, known as Lincoln's Birthday; February 22, known as Washington's Birthday; the day designated and known as Good Friday; May 30, known as Memorial Day; July 4, known as Independence Day; the first Monday of September, known as Labor Day; October 12, known as Columbus Day; November 11, known as *Veterans' Day*; the fourth Thursday of November, known as Thanksgiving Day; December 25, known as Christmas Day; any general election day in this State; every Saturday; and any day heretofore or hereafter appointed, ordered or recommended by the Governor of this State, or the President of the United States, as a day of fasting and prayer, or other religious observance, or as a bank holiday or holidays. All such bills, checks and notes, otherwise presentable for acceptance or payment on any of the days herein enumerated, shall be deemed to be payable and be presentable for acceptance or payment on the secular or business day next succeeding any such holiday.

Whenever any of the days herein enumerated can and shall fall on a Sunday, the Monday next following shall, for any of the purposes herein enumerated be deemed a public holiday; and bills of exchange, checks and promissory notes which otherwise would be presentable for acceptance or payment on such Monday, shall be deemed to be presentable for acceptance or payment on the secular or business day next succeeding such holiday.

In construing this section, every Saturday shall, until 12 o'clock noon, be deemed a secular or business day, except as is hereinbefore provided in regard to bills of exchange, bank checks and promissory notes, and the days herein enumerated except bank holidays and Saturdays shall be considered as the first day of the week, commonly called Sunday, and public holidays, for all purposes whatsoever as regards the transaction of business in the public offices of this State, or counties of this State; but on all other days or half days, except Sunday or as otherwise provided by law, such offices shall be kept open for the transaction of business.

2. This act shall take effect immediately.

Approved May 18, 1955.

CHAPTER 37, LAWS OF 1955

AN ACT to provide coverage for certain school district and other public employees under the provisions of Title II of the Federal Social Security Act as amended; continuing the Teachers' Pension and Annuity Fund, specifying contributions to be paid and benefit rights therein; repealing sections 24 to 110, inclusive, of chapter 13 of Title 18 of the Revised Statutes, with all amendments and supplements.

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

1. This act shall be known as the "Teachers' Pension and Annuity Fund-Social Security Integration Act."

2. As used in this act:

a. "Accumulated deductions" means the sum of all the amounts, deducted from the compensation of a member or contributed by him, including interest credited prior to January 1, 1956, standing to the credit of his individual account in the annuity savings fund.

b. "Annuity" means payments for life derived from contributions made by a member as provided in this act.

c. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this act.

d. "Compensation" means the contractual salary for services as a teacher as defined in this act.

e. "Employer" means the State, the board of education or any educational institution or agency of or within the State by which a teacher is paid.

f. "Final compensation" means the average annual compensation for which contributions are made by a member for the 5 years immediately preceding his retirement, or, at the option of such member, it shall mean the average annual compensation for which contributions are made by a member during any 5 consecutive years of his or her membership, within which period of 5 consecutive years he was entitled to retirement for service, said 5 years to be selected by the applicant prior to the date of retirement.

g. "Fiscal year" means any year commencing with July 1 and ending with June 30 next following.

h. "Pension" means payments for life derived from appropriations made by the State to the Teachers' Pension and Annuity Fund.

"Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of a pension granted to a member from the Teachers' Pension and Annuity Fund computed on the basis of such mortality tables as the board of trustees adopts, with regular interest.

k. "Present-entrant" means any member of the Teachers' Pension and Annuity Fund who has established status as a "present-entrant member" of said fund prior to the effective date of this act.

l. "Rate of contribution initially certified" means the rate of contribution certified based upon the member's age when last he became a member.

m. "Regular interest" shall mean interest as determined from time to time by the board of trustees. The regular interest rate shall be limited to a minimum of 3% per annum, and a maximum of 4% per annum.

n. "Retirement allowance" means the pension plus the annuity.

o. "School service" means any service as a "teacher" as defined in this section.

p. "Teacher" means any regular teacher, special teacher, helping teacher, teacher clerk, principal, vice-principal, supervisor, supervising principal, director, superintendent, city superintendent, assistant city superintendent, county superintendent, State commissioner or assistant commissioner of education and other members of the teaching or professional staff of any class, public school, high school, normal school, model school, training school, vocational school, truant reformatory school, or parental school, and of any and all classes or schools within the State conducted under the order and superintendence, and wholly or partly at the expense of the State Board of Education, of a duly elected or appointed board of education, board of school directors, or board of trustees of the State or of any school district or normal school district thereof, and any such persons under contract or engagement to perform 1 or more of these functions. No person shall be deemed a teacher within the meaning of this act who is a substitute teacher or is a teacher not regularly engaged in performing 1 or more of these functions as a full-time occupation outside of vacation periods. In all cases of doubt the board of trustees shall determine whether any person is a teacher as defined in this act.

In addition to the above mentioned persons defined as teachers, there shall also come under the provisions of this act and subject to the same provisions as apply to teachers, any custodian, janitor, assistant janitor, janitress,

engineer, fireman or any janitorial employees of a board of education of any school district, or of any other employer as defined in this act.

q. "Teachers' Pension and Annuity Fund" hereinafter referred to as the "retirement system," is the corporate name of the arrangement for the payment of retirement allowances and other benefits under the provisions of this act, including the several funds placed under the management of the board of trustees of said system. By that name all its business shall be transacted, its funds invested, warrants for money drawn, and payments made and all of its cash and securities and other property held.

r. "Veteran" means any honorably discharged officer, soldier, sailor, airman, marine or nurse who served in any army, air force or navy of the allies of the United States in World War I between July 14, 1914, and November 11, 1918, or who served in any army, air force or navy of the allies of the United States in World War II, between September 1, 1939, and September 2, 1945, and who was inducted into such service through voluntary enlistment, and was a citizen of the United States at the time of such enlistment, and who did not, during or by reason of such service, renounce or lose his United States citizenship, and any officer, soldier, sailor, marine, airman, nurse or army field clerk who has served in the active military or naval service of the United States and has or shall be discharged or released therefrom under conditions other than dishonorable, in any of the following wars, uprisings, insurrections, expeditions or emergencies, and who has presented to the board of trustees evidence of such record of service in form and content satisfactory to said board of trustees:

(1) The Indian wars and uprisings during any of the periods recognized by the War Department of the United States as periods of active hostility;

(2) The Spanish-American War between April 20, 1898, and April 11, 1899;

(3) The Philippine insurrections and expeditions during the periods recognized by the War Department of the United States as of active hostility from February 4, 1899, to the end of 1913;

(4) The Peking relief expedition between June 20, 1900, and May 27, 1902;

(5) The army of Cuban occupation between July 13, 1898, and May 20, 1902;

(6) The army of Cuban pacification between October 6, 1906, and April 1, 1909;

(7) The Mexican punitive expedition between March 14, 1916, and February 7, 1917;

(8) The Mexican border patrol, having actually participated in engagements against Mexicans between April 12, 1911, and June 16, 1919;

(9) World War I, between April 6, 1917, and November 11, 1918;

(10) World War II, between September 16, 1940, and September 2, 1945, who shall have served at least 90 days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army specialized training program or the Navy college training program which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman

at 1 of the service academies any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not he has completed the 90-day service as herein provided.

(11) Emergency, at any time after June 23, 1950, and prior to the date of termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December 16, 1950, or date of termination of the existence of such national emergency by appropriate action of the President or the Congress of the United States, who shall have served at least 90 days in such active service, exclusive of any period he was assigned (1) for a course of education or training under the Army specialized training program or the Navy college training program which course was a continuation of his civilian course and was pursued to completion, or (2) as a cadet or midshipman at 1 of the service academies, any part of which 90 days was served between said dates; provided, that any person receiving an actual service-incurred injury or disability shall be classed as a veteran whether or not he has completed the 90-day service as herein provided.

3. Sections 24 to 110, inclusive, of chapter 13 of Title 18 of the Revised Statutes of New Jersey with all amendments and supplements thereto are repealed as of the effective date of this act; provided, however, that the Teachers' Pension and Annuity Fund is hereby continued with the membership, all securities, investments and other assets and, except as provided herein, all obligations and liabilities existing as of the effective date of this act, to be hereafter administered in accordance with the provisions of this act. Any benefits and allowances granted under the statutes repealed by this section prior to the effective date of this act shall be continued in the same manner and under the same conditions as originally granted.

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

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

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

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

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

5. The board of trustees shall classify the members in such group or groups by age or sex as it may determine for actuarial purposes.

The board shall further classify the membership by benefit rates as Class A or Class B members, as follows:

"Class A" shall include those members whose annuity shall be based on a per centum of salary, computed to be sufficient, with regular interest, to

procure for the member, on retirement for service, an annuity equal to  $\frac{1}{140}$  of his final compensation for each year of service as a member.

“Class B” shall include those members who shall hereafter contribute to the annuity savings fund at a higher rate per centum, computed to be sufficient, with regular interest, to procure for the member, on retirement for service, an annuity equal to  $\frac{1}{120}$  of his final compensation for each year of service as a member.

Any member on December 31, 1955, may by his election contribute to the retirement system at the rate of contribution applicable to Class B members of the Public Employees' Retirement System as of January 2, 1955, based upon the member's age when he last became a member. He shall thereafter be classified as a Class B member. Any such member may elect to increase his accumulated deductions by the amount deemed necessary by the board of trustees on the advice of the actuary in order to receive credit as a Class B member for all or part of his service prior to the date of such election. The board of trustees shall establish the necessary rules governing the election by members of Class B credit for all service.

Any member on December 31, 1955, who is not a veteran and who does not elect to receive Class B credit for all or any portion of his service shall receive credit as a Class A member for all service not credited as Class B service. Any such member who does not elect Class B membership shall contribute at the rate of contribution initially certified to him upon his last becoming a member; provided, however, that any such person who became a member after June 30, 1946, shall have his contributions on and after January 1, 1955, based on the rates of contribution applicable on June 30, 1946, for his age and sex at the time he last became a member.

6. Any person becoming a teacher in the State on and after January 1, 1956, shall become a Class B member as a condition of his employment, regardless of age, and thereafter shall participate in the retirement system under the same conditions and with the same rights and privileges as other members, except as hereinafter provided.

7. Membership of any person shall cease:

(a) if, except as provided in section 8, in any 4-year period which elapses after his last becoming a member, he shall render less than 2 years of full service;

(b) upon the withdrawal by a member of his accumulated deductions as provided in this act;

(c) upon resignation and election to receive, in lieu of the return of his accumulated deductions, the benefits provided in sections 36 and 37 of this act;

(d) upon retirement;

(e) at death;

but not otherwise except as provided in this act.

The board of trustees shall send written notice to the last known address and to the last employer of a member between 60 and 50 days in advance of the date on which his inactive membership shall expire as provided in paragraph “a” of this section.

8. If a teacher is dismissed by his employer by reason of a reduction in number of superintendents of schools, assistant superintendents, principals or teachers employed in the school district when in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause; or if a teacher becomes unemployed by reason of the creation of a regional school district or a consolidated school district; or if a teacher is absent for more than 3 months on a leave of absence granted by his employer or permitted by any law of this State; and if such teacher has not withdrawn his accumulated contributions, his membership may continue in the retirement system notwithstanding any provisions of this act, but such continuation shall not extend beyond a period of 5 years from the date of such dismissal, or the beginning of such unemployment or leave of absence. In computing service for retirement purposes no time during which such teacher was not employed as a teacher or was absent on such leave shall be credited unless service rendered to any employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State.

9. Should a teacher who has withdrawn his accumulated deductions from the retirement system as provided in section 34 of this act be re-enrolled as a member and pay into the annuity savings fund the total amount as the board of trustees shall determine to be due in order to give to such person the same credit for such services as he had at the time of leaving service, there shall be restored his annuity credit, and in addition, upon completion of 1 year thereafter and the payment of at least  $\frac{1}{2}$  of such obligation, his pension credit shall be restored as it was at the time of his withdrawal. Subject to the rules and regulations of the board of trustees, such payments may be made in regular installments. Subsequent normal contributions shall be at the rate determined by the board of trustees.

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

In the case of any person coming under the provisions of this section, full annuity credit for the period of employment for which arrears are being paid shall be given upon the payment of the total amount due, and full pension credit for such period of employment shall be given upon the payment of at least  $\frac{1}{2}$  of the total arrearage obligation and the completion of 1 year of making arrears payments, except in the case of retirement for service, in which case the total membership credit for such service shall be in direct proportion to the amount paid of the total amount of the arrearage obligation, upon the completion of 1 year of making arrears payments.

Any person coming under the provision of this section shall not be allowed any of the death benefits established by this act unless he becomes a member

within 6 months after the effective date of this act, or furnishes satisfactory evidence of insurability.

11. Any teacher who had entered or shall hereafter enter into the active air, military or naval service of the United States before making application for enrollment in the retirement system shall be accepted as a member upon his filing application; provided, such application is made within 3 months after the effective date of this act or within 3 months after entry into such active air, military or naval service, whichever is later, and his regular salary deduction as determined by the board of trustees shall be paid to the retirement system by the employer as provided by chapter 252 of the laws of 1942, as amended by chapter 326 of the laws of 1942.

12. The board of trustees shall issue a certificate of enrollment in such form and containing such information as the board of trustees shall designate.

The board of trustees shall file 1 copy of the certificate of enrollment as a permanent record in its office and 1 copy with the employer of the enrollee, which shall constitute a notice to such employer to deduct the percentage of compensation as defined in this act.

When the board of trustees records the certificate of enrollment for a member, it shall also send to that member a certificate reciting that the named person is a member of the fund, giving the number under which the membership is recorded, the per centum of salary which has been certified for that member to the employer, and the amount to be deducted as a contribution as provided in section 31. There shall also be sent to each member a brief statement of the contribution and benefit provisions of the retirement system law.

13. Each member shall file a detailed statement of school service and service in a similar capacity in other States rendered by him prior to becoming a member for which he desires credit and on account of which he desires to contribute, and of such other facts as the board of trustees may require for the proper operation of the system. Members shall have the right to purchase credit for the prior service evidenced therein, up to the nearest number of years and months, but not exceeding 10 years. Members shall be given 1 year from the date of enrollment to file such a statement and to agree to purchase such credit.

The board of trustees shall verify as soon as practicable the statement of service submitted. The member may obtain credit for such service by making a lump sum payment or by contributing installment payments in such manner as the board of trustees shall approve. The board of trustees shall issue to the member a service certificate certifying to the aggregate length of such service on account of which he has contributed or agreed to contribute.

Any member electing to contribute toward such service, who retires prior to completing payments as agreed with the retirement system for the purchase of such service will receive pro rata credit for service purchased prior to the date of retirement, subject to provisions of section 68 of this act, but if he so elects at the time of retirement, he may make such additional lump sum payment as will be necessary to provide full credit at that time.

14. Any person employed temporarily as a teacher and whose temporary employment resulted in permanent employment or any person employed as a

substitute immediately prior to permanent employment shall be permitted to make contributions covering such service in accordance with the rules and regulations of the board of trustees and receive the same annuity and pension credits as if he had been a member during such service.

15. In computing for retirement or for purposes of resignation or separation from service under sections 36 and 37 of this act the total service of a member about to be retired, the board of trustees shall credit him with the time of all service rendered by him since he last became a member and in addition, if a service certificate heretofore issued to him is in full force and effect, with all the service certified in the certificate, and with no other service. Except as otherwise provided in this act, a service certificate or modified service certificate shall be final and conclusive for retirement purposes, or for purposes of resignation under sections 36 and 37 of this act, as to service certified therein, except that a service certificate shall become void when membership ceases.

For the purpose of computing service for retirement purposes, the board of trustees shall fix and determine by appropriate rules and regulations how much service in any year shall equal a year of service and part of a year of service. Not more than 1 year shall be credited for all service in a calendar year.

16. There shall be in the retirement system the contingent reserve fund, annuity savings fund, retirement reserve fund, pension fund, special reserve fund, interest fund, and the members' death benefit fund.

17. The expenses of administration of the retirement system shall be paid by the State of New Jersey.

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

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

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

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

d. Upon the basis of such tables as the board of trustees adopts, and regular interest, the actuary of the board shall compute annually the amount of the total liability for past service and all prospective service for veteran members who were employed as teachers on January 1, 1955, which has not already been covered by State and employer contributions to the retirement system and, except as provided by section 70 of this act, by past or prospective contributions by such veteran members and which will be sufficient to provide for the pension reserves required at the time of discontinuance of active service, to cover all pensions to which they may be entitled or which are payable on their account, and to provide for the amount of death and accidental disability benefits payable on their account. Using the total amount of this liability remaining as a basis, he shall compute the amount of the flat annual payment, which, if paid in each succeeding fiscal year commencing with July 1, 1957, for a period of 30 years, will provide for this liability.

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

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

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

19. The annuity savings fund shall be the fund in which shall be credited accumulated deductions and contributions to the fund by members as provided in section 13 of this act.

The accumulated deductions of a member withdrawn as provided in section 34 shall be paid out of the annuity savings fund. In the case of a withdrawal, an amount equivalent to the difference between the amount of the accumulated deductions and the amount of the accumulated deductions calculated by the use of interest at the rate specified for withdrawals shall be transferred to the interest fund to meet the interest to be annually credited by the board of trustees to the various funds pursuant to section 25.

20. Any contributions made by a member which are in excess of (a) those required on the basis of the rate of contribution initially certified and any changes in such rate in accordance with section 5 of this act, and (b) any contributions made by the member for the purchase of prior service credit,

shall be refunded with regular interest to January 1, 1956, to the member or his beneficiary or estate or shall, at his request, be used at retirement with regular interest, to provide an annuity of equivalent actuarial value which shall be in addition to his retirement allowance as computed in accordance with section 44.

Upon the submission of such evidence as the board of trustees may require, the board of trustees shall refund to any member, at his request, that part of his accumulated deductions which were paid into the retirement system as a result of deductions based on payments to him over and above compensation as defined in this act.

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

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

22. The pension fund of the retirement system is the fund in which shall be accumulated the reserves for the payment of pensions to present-entrant members, and from it shall be paid all retirement allowances of present-entrant members and of all beneficiaries of the Teachers' Pension and Annuity Fund who, as of the effective date of this act, were receiving pensions from the pension fund. All reserves for the payment of annuities to persons receiving pensions from the pension fund, as of the effective date of this act, are hereby transferred from the former annuity reserve fund to the pension fund. Upon the retirement of a present-entrant member, the accumulated deductions of the member shall be transferred from the annuity savings fund to the pension fund. The board of trustees shall annually transfer from the contingent reserve fund to the pension fund the annual State and employer contributions on account of present-entrant members as computed in accordance with subsection "(a)" of section 18 and the deficiency contribution made by the State in accordance with subsection "(c)" of section 18 of this act. Any surplus or deficit developing in the pension fund shall be adjusted from time to time by transfer to or from the contingent reserve fund by the appropriate action of the board of trustees.

23. If the pension or the annuity of a beneficiary is canceled, the appropriate reserve shall be transferred to the annuity savings fund and in the case of other than a present-entrant to the contingent reserve fund. If the pension of a disability beneficiary who was not a present-entrant is reduced in accordance with section 40 as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the contingent reserve fund during the period of the reduction.

24. There is hereby created an interest fund in which shall be accumulated interest received on the securities, funds and investments of the retirement system. From this fund the board of trustees shall periodically credit interest to the other funds of the system as provided in this act. Any surplus or deficit developing in the interest fund shall be adjusted from time to time by transfer to or from the contingent reserve fund by appropriate action of the board of trustees. Interest payable to a member or his beneficiary under any provision of this act shall be paid from the interest fund.

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

26. The members' death benefit fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their additional death benefits under the provisions of section 53. Upon the death of a member electing the additional death benefit, the additional death benefit payable shall be paid from the members' death benefit fund.

27. The special reserve fund shall be the fund to which all profits on the sale of securities shall be transferred. All losses from the sale of securities shall be charged against the profits deposited in said special reserve fund arising as aforesaid on the sale of securities.

28. The various funds created by this act shall be subject to examination by the Commissioner of Banking and Insurance. The Commissioner of Banking and Insurance shall have the power, whenever he deems the same expedient, to make or cause to be made an examination of all the assets and liabilities, method of conducting business and all other affairs of the retirement system and shall make such examination at least once every 3 years.

For the purpose of such examination the Commissioner of Banking and Insurance may employ such persons to conduct the same or to assist therein as he may deem advisable. For the purpose of such examination all securities, books, papers or other documents owned by, in the possession of, or relating to the retirement system shall be made available on demand for the inspection of the commissioner or any of his duly authorized assistants. The reasonable expenses of such examination shall be fixed and determined by the Commissioner of Banking and Insurance and he shall collect the same from the retirement system, which shall pay the same when appropriated by the Legislature. The report on such examination shall be filed in the Department of Banking and Insurance and a copy thereof shall be transmitted to the board of trustees of the system and to the Governor. Neither the commissioner nor any appointee thereof shall be liable for any statement included therein.

29. Upon the basis of such tables as the board adopts, and regular interest, the actuary of the board shall determine for each member the proportion of compensation, exclusive of the rate for any additional death benefit provided under section 53 of this act, which, when deducted from each payment of his prospective earnable compensation prior to service retirement

and accumulated at regular interest until he retires, shall be computed to be sufficient to provide, at that time, an annuity equal to  $\frac{1}{2}$  of the retirement allowance then allowable for service as a member after the establishment of the retirement system.

Any member of the retirement system as of January 1, 1956, shall pay the proportion of compensation as provided by section 5 of this act applicable to the age at enrollment, which proportion shall not be increased during the continuation of membership other than as provided in section 67, and shall make any special payments either as lump sums or as installment payments as required by the board of trustees as a result of election by the member to obtain additional service credit. Members enrolling on and after the effective date of this act shall contribute at the proportions applicable to Class B members of the "Public Employees' Retirement System" as of January 2, 1955, except that the board of trustees may from time to time adopt for employees becoming members thereafter new proportions of compensation to be determined as provided in the preceding paragraph. No member shall be required during the continuation of his membership to increase the proportion of compensation certified at the time of becoming a member as payable by him other than as provided in section 67.

30. Every teacher to whom this act applies shall be deemed to consent and agree to any deduction from his compensation required by this act and to all other provisions of this act. Notwithstanding any other law, rule or regulation affecting the salary, pay, compensation, other perquisites, or tenure of a person to whom this act applies or shall apply, and notwithstanding that the minimum salary, pay or compensation or other perquisite provided by law for him shall be reduced thereby, payment, less such deductions, shall be a full and complete discharge and acquittance of all claims and demands for service rendered by him during the period covered by such payment.

31. The board of trustees shall certify to each employer the proportion of each member's compensation to be deducted in accordance with rules and regulations established by the board of trustees, and to facilitate the making of deductions the board of trustees may modify the deduction required by a member of such amount as shall not exceed  $\frac{1}{10}$  of 1% of the compensation upon the basis of which the deduction is to be made.

Except as provided in sections 26 and 27 the board of trustees shall cause to be credited in the annuity savings fund to the individual account of each member any amounts so deducted or contributed by him.

32. Upon the employment of a person to whom this act may apply, his employer shall inform him of his duties and obligations under this act as a condition of his employment; the employer shall notify the board of trustees of such appointment within 10 days thereafter; it shall keep such records and from time to time furnish such information as the board of trustees in the discharge of its duties may require; deduct the proportion of salary and extra salary deductions as certified by the board of trustees; transfer each of the amounts so deducted to the retirement system; and shall transmit to the board of trustees monthly or at such intervals as the board designates a detailed statement of all amounts so paid. Where there is a delay of more than 90 days in the transmittal of such amounts, there shall be an interest charge of 6% per annum. Any failure on the part of the employer to comply with the

provisions of this section shall constitute a default, and the State Board of Education may withhold school moneys from the district until the default is made good.

33. a. Each employer as of January 1, 1955, of a veteran member who was employed as a teacher on January 1, 1955, shall pay the liability for such veteran member as computed by the actuary in accordance with subsection "d" of section 18 of this act; provided, however, that no annual payment by an employer other than the State shall be greater than the annual payment certified as provided below for the fiscal year beginning July 1, 1957.

The board of trustees shall annually certify, for a period of 30 years beginning July 1, 1957, to the Commissioner of Education, the State Treasurer, and to each employer of a veteran member who was employed as a teacher on January 1, 1955, the contributions due on behalf of such veteran members as described above payable by the employer to the contingent reserve fund. The Commissioner of Education shall deduct the amount so certified from the certification, to the State Treasurer and the Director of the Division of Budget and Accounting, of State aid payable to such employer under the provisions of chapter 85, P. L. 1954.

The State Treasurer, upon warrant of the Director of the Division of Budget and Accounting, shall pay the amounts so deducted to the retirement system. In the event that no State aid is payable under chapter 85, P. L. 1954, to such employer, the board of trustees shall certify the amount due on behalf of such veteran members to the chief fiscal officer of such employer.

The contributions so certified by the board of trustees shall be paid to the retirement system on July 1 in each year commencing with July 1, 1957.

b. Regular interest charges payable, the creation and maintenance of reserves in the contingent reserve fund and the maintenance of retirement allowances and other benefits granted by the board of trustees under the provisions of this act, except the amounts payable by other employers under the provisions of this section, are hereby made obligations of the State. Except as provided in section 27, all income, interest, and dividends derived from deposits and investments authorized by this act shall be used for payment of these obligations of the State.

Upon the basis of each actuarial determination and appraisal provided for in this act, the board of trustees shall prepare and submit to the Governor in each year an itemized estimate of the amounts necessary to be appropriated by the State to provide for payment in full during the ensuing fiscal year of the obligations of the State accruing during that year. The Legislature shall make an appropriation sufficient to provide for such obligations of the State. The amounts so appropriated shall be paid into the contingent reserve fund.

34. A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall receive all, or such part as he demands, of the accumulated deductions standing to the credit of his individual account in the annuity savings fund, plus regular interest on contributions made after January 1, 1956, less any loan outstanding, and except that for any period after June 30, 1944, the interest payable shall be such proportion of the interest determined at the regular rate as 2% per annum bears to the regular rate of interest; provided, however, that no interest shall be payable

if such a member does not have 3 years of membership service at the time of withdrawal from service or cessation of employment.

Except as provided for in sections 7 and 8 of this act, he shall cease to be a member 2 years from the date he discontinued service as a teacher, or, if prior thereto, upon the date when payment to him on demand of his accumulated deductions exceeds  $\frac{1}{2}$  of the accumulated deductions. The board of trustees may, in its discretion, withhold, for not more than 1 year after a member ceases to be a teacher, all or part of his accumulated deductions, if he previously withdrew from the annuity savings fund all or part of his accumulated deductions and failed to redeposit that amount to the credit of his individual account in the fund. No veteran member shall be entitled to withdraw the amount of his accumulated deductions contributed by his employer covering his military leave unless he shall have returned to the payroll and contributed to the retirement system for a period of 90 days.

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

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

36. Should a member, after having completed 20 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for inefficiency, incapacity, conduct unbecoming a teacher or other just cause under the provisions of sections 18:13-16 to 18:13-19 of the Revised Statutes, inclusive, such person may elect to receive, in lieu of the payment provided in section 34:

a. the payments provided for in section 37 of this act, if he so qualifies under said section; or

b. a deferred retirement allowance, beginning at age 60, which shall be  $\frac{1}{70}$  of his final compensation for each year of service credited as Class A service and  $\frac{1}{60}$  of his final compensation for each year of service credited as Class B service, calculated in accordance with section 44 of this act, with optional privileges provided for in section 47 of this act; provided, also that such election is communicated by such member to the board of trustees in writing stating at what time subsequent to the execution and filing thereof he desires to be retired; and provided further, that such member may later elect: (a) to receive the payments provided for in section 37 of this act, if he had qualified under that section at the time of leaving service; or (b) to withdraw his accumulated deductions with interest as provided in section 34, or, if such member shall die before attaining service retirement age, then his accumulated deductions, plus regular interest after January 1, 1956, shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate.

37. Should a member resign after having completed 25 years of service before reaching service retirement age, he may elect "early retirement," on which he shall receive, in lieu of the payment provided in section 34 of this act, a total retirement allowance of  $\frac{1}{70}$  of his final compensation for each year of service credited as Class A service and  $\frac{1}{60}$  of his final compensation for each year of service credited as Class B service, calculated in accordance with section 44 of this act, reduced by  $\frac{1}{2}$  of 1% for each month that the member lacks of being age 60 at the time of resignation, except that in the case of a member who has not attained age 53 at the time of resignation, the reduction is equal to 42% plus  $\frac{1}{6}$  of 1% for each month the member lacks of being age 53 at the time of resignation, and with the optional privileges provided for in section 47 of this act.

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

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

(b) An amount equal to  $1\frac{1}{2}$  times the compensation received by the member in the last year of creditable service.

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

For the purposes of this section and section 53 of this act, a member shall be deemed to be in service for a period of no more than 2 years while on official leave of absence without pay; provided, that satisfactory evidence is

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

39. A member, who shall have been a teacher and a member of the retirement system for each of the 10 years next preceding his retirement, shall, upon the application of his employer or upon his own application or the application of one acting in his behalf, be retired for ordinary disability by the board of trustees, on a regular disability allowance if he is under 60 years of age and on a service allowance if he has reached or passed that age. The physician or physicians designated by the board shall have first made a medical examination of him at his residence or at any other place mutually agreed upon and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

A member shall, upon the application of his employer or upon his own application or the application of one acting in his behalf, be retired by the board of trustees, if said member is disabled as the result of personal injuries sustained in or from an accident arising out of and in the course of his employment, on an accident disability allowance. No such application shall be valid or acted upon unless a report of the accident, in a form acceptable to the board of trustees, is filed in the office of the retirement system within 60 days next following the accident; no such application shall be valid or acted upon unless it is filed in the office of the retirement system within 2 years of the date of the accident; provided, however, that the board of trustees may waive strict compliance with either or both time limitations, if the board is satisfied (1) that a report of the accident from which the disability is claimed to have resulted was filed with the appointing authority with reasonable promptitude and in no event later than 60 days after the accident, and (2) the applicant shall show that his failure to file a report with the board of trustees or to file his application for retirement within the time limited by law was due to mistake, inadvertence, ignorance of fact or law, inability, or to the fraud, misrepresentation or deceit of any person, or to a delay in the manifestation of the incapacity, or to any other reasonable cause or excuse, and (3) that the application for retirement was filed in good faith and the circumstances justify its favorable consideration.

Before consideration of an application for accident disability allowance by the board of trustees, the physician or physicians designated by the board shall have first made a medical examination of the member at his residence or at any other place mutually agreed upon and shall have certified to the board that he is physically or mentally incapacitated for the performance of duty, and should be retired, and the employer shall have certified to the board that an accident arising out of and in the course of his employment was the natural and proximate cause of the disability, the time and place where the duty causing the disability was performed, that the disability was not the result of his willful negligence and that the member should be retired.

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

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

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

41. Subject to the provisions of section 68 of this act, a member upon retirement for ordinary disability shall receive a retirement allowance of the sum of  $\frac{1}{70}$  of his final compensation for each year of service credited as Class A service and  $\frac{9}{10}$  of the sum of  $\frac{1}{60}$  of his final compensation for each year of service credited as Class B service, calculated in accordance with section 44 of this act; and provided further, that in no event shall the allowance be less than  $\frac{3}{10}$  of final compensation, except that in no case shall the rate of allowance exceed  $\frac{9}{10}$  of the rate of allowance which the member would have received had he remained in service to age 60.

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

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

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his retirement; and

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

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

43. Retirement for service shall be as follows:

(a) A member who shall have reached 60 years of age may retire from service by filing with the board of trustees a written statement, duly attested, stating at which time subsequent to the execution and filing thereof he desires to be retired. The board of trustees shall retire him at the time specified or at such other time within 30 days after the date so specified as the board finds advisable.

(b) Each and every member who shall have reached 70 years of age shall be retired by the board of trustees for service forthwith, or at such time within 1 year thereafter as it deems advisable.

(c) Any member, who has attained the age of 62 years shall, upon the request of his employer, be retired from service if a written statement duly attested is filed by his employer with the board of trustees setting forth at what time, subsequent to the execution and filing thereof, his employer desires such retirement. The board of trustees shall retire the member at the time specified or at such other time within 30 days thereafter as it finds advisable.

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

(a) an annuity which shall be the actuarial equivalent of his accumulated deductions, less any excess contributions as provided in section 20; and

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

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

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

45. Any present-entrant member who has had 35 years of service as a teacher to his credit shall be retired at his request, irrespective of his age, and shall receive, subject to the provisions of section 68, a retirement allowance, calculated in accordance with section 44 of this act, consisting of not less than  $\frac{1}{70}$  of his final compensation for each year of credited service at retirement.

46. Upon the death of a member in active service as a result of an accident arising out of and in the course of his employment and not as the result of his willful negligence, an accident death benefit shall be payable, if a report, in a form acceptable to the board of trustees, of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. Evidence must be submitted to the board of trustees proving that the natural and proximate cause of his death was an accident arising out of and in the course of employment at some definite time and place.

Upon application by or on behalf of the dependents of such deceased member, the board of trustees, in addition to the payment of his accumulated deductions as provided in section 38 of this act, shall grant an allowance of  $\frac{1}{2}$  of the final compensation of such member, if the member was a male teacher, as a pension to his widow, to continue during her widowhood; or, if no widow, or in case the widow dies or remarries before the youngest child of such deceased member attains age 18, or if the member was a married female employee, then the child or children of such member under 18, divided in such manner as the board in its discretion shall determine, to continue until the youngest surviving child dies or attains age 18. If there be no widow or child under age 18 surviving such member, then there shall be paid a cash sum equal to  $1\frac{1}{2}$  times the amount of his or her final compensation to his or her estate or to such person as he or she shall have nominated by written

designation duly acknowledged and filed with the board of trustees. In no case shall the accident death benefit under this section be less than that provided for ordinary death benefit under the provisions of section 38.

No such application shall be valid or acted upon unless it is filed in the office of the retirement system within 2 years of the date of the accident; but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action.

47. Subject to the provisions of section 68 of this act, at the time of his retirement any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may on retirement elect to receive the actuarial equivalent at the time of his annuity, his pension or his retirement allowance, in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life, with the provision that:

Option 1. If he dies before he has received in payments the present value of his annuity, his pension or his retirement allowance as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation acknowledged and filed with the board of trustees at the time of his retirement, either in a lump sum or by equal payments over a period of years at the option of the payee.

Option 2. Upon his death, his annuity, his pension or his retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement.

Option 3. Upon his death,  $\frac{1}{2}$  of his annuity, his pension or retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement.

Option 4. Some other benefit or benefits shall be paid either to the member or to whomever he nominates, if such other benefit or benefits, together with the lesser annuity, or lesser pension, or lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value and shall be approved by the board of trustees.

No optional selection shall be effective in case a beneficiary dies within 30 days after retirement and such a beneficiary shall be considered an active member at the time of death until the first payment on account of any benefit becomes normally due.

48. A pension, an annuity or a retirement allowance granted under the provisions of this act shall be paid in equal monthly installments and shall not be decreased, increased, revoked or repealed, except as otherwise provided in this act; provided, however, that at the time any benefit becomes payable, any unpaid balance of a loan or arrearage outstanding shall be deducted from any benefit otherwise payable.

49. Any member or beneficiary of the Teachers' Pension and Annuity Fund who was a member of the Teachers' Retirement Fund as created by L. 1896, c. 32; L. 1899, c. 178; L. 1900, c. 96; L. 1902, c. 36; L. 1903 (2nd Sp. Sess.), c. 1; L. 1905, c. 95; L. 1906, c. 314; L. 1907, c. 139; and the amendments thereof and supplements thereto, prior to his becoming a member of the Teachers' Pension and Annuity Fund, shall receive in addition to his retire-

ment allowance otherwise payable a pension which shall be the actuarial equivalent of the contributions, without interest, which he paid to the Teachers' Retirement Fund prior to September 1, 1919, which he has not otherwise received.

50. Subject to the provisions of section 68:

(a) Any member who retires upon disability after completion of 20 years of service, or upon attainment of age 62 after completion of 20 years of service shall receive a pension of not less than \$800.00 per annum.

(b) Any member who retires for reasons other than disability and before attaining age 62 after completion of 20 years of service shall receive a pension of not less than \$400.00 per annum.

(c) Any member who retires upon disability or upon attainment of age 62 after completion of 20 years service consisting of membership service and service in New Jersey prior to September 1, 1919, shall be retired on a total retirement allowance of not less than \$800.00 per annum. Eligible members must apply to the board of trustees and provide satisfactory evidence as to such service.

51. The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of this act, and the moneys in the various funds created under this act, shall be exempt from any State or municipal tax and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court, and, except as in this act otherwise provided, shall be unassignable.

52. No veteran eligible for membership in the Teachers' Pension and Annuity Fund shall be eligible for, or receive, retirement benefits under sections 43:4-1, 43:4-2 and 43:4-3 of the Revised Statutes.

53. a. Within 1 year after the effective date of this section or after the effective date of membership, whichever date is later, each member shall have the right to select additional death benefit coverage during active service, or during active service and after retirement, as follows:

Upon the receipt of proper proof of the death in service of a member who selected coverage under this section, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to  $1\frac{1}{2}$  times the compensation received by the member in the last year of creditable service. In addition, he may select the following death benefit coverage:

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

(2) Upon the receipt of proper proofs of the death of a member selecting coverage under this section who has retired on an ordinary or

accident disability retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to  $\frac{3}{16}$  of the compensation received by the member in the last year of creditable service.

b. Each member selecting additional death benefit coverage under this section shall agree to the deduction of a percentage of his compensation in addition to that required under section 29. The actuary of the retirement system shall determine the percentages of contribution which, if deducted from each payment of the prospective earnable compensation throughout active service of a member selecting coverage under this section, are computed to be sufficient to provide the benefits selected under this section.

c. The percentage rates of contribution payable by members selecting coverage under this section shall be subject to adjustment from time to time by the board of trustees on the basis of annual actuarial valuations and experience investigations as provided under section 58, so that the value of future contributions of members selecting additional death benefit coverage under this section when taken with present assets held for such additional death benefits shall be equal to the value of prospective benefit payments.

d. All other provisions of this section notwithstanding, this section and the benefits provided under this section shall not come into effect until a required percentage of the members shall have applied for the additional death benefit coverage under this section. This required percentage shall be fixed by the board of trustees. Such application shall be made with the secretary of the board of trustees in such manner and upon such forms as the board of trustees shall provide.

e. Any other provision of this act notwithstanding, the additional contributions of members selecting additional death benefit coverage under this section shall not be returnable to the member or his beneficiary in any manner, or for any reason whatsoever, except in the form of the death benefit herein provided, nor shall such contributions be included in any annuity payable to any such member or his beneficiary.

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

54. Whenever any beneficiary of the Teachers' Pension and Annuity Fund shall, in writing, request the board of trustees to make deductions from his retirement allowance for the payment of premiums for any hospital service plan or medical surgical plan or both, the board of trustees may make such deductions and transmit the sum so deducted to the company carrying the policy or policies. Any such written authorization may be withdrawn by any member upon filing notice of such withdrawal with the board of trustees.

55. The Teachers' Pension and Annuity Fund shall for purposes of this act possess the powers and privileges of a corporation.

56. The general administration and responsibility for the proper operation of the Teachers' Pension and Annuity Fund and for making effective the provisions of this act shall be vested in the board of trustees. Subject to the limitations of the law, the board shall, from time to time, establish rules and regulations for the administration and transaction of its business and for the control of the funds created by this act and shall perform any other functions required for the execution of this act. The membership of the board shall consist of the following:

- (a) The State Treasurer;
- (b) One trustee appointed by the Governor for a term of 3 years;
- (c) Three trustees elected by the membership from among the members of the retirement system, 1 of whom shall be elected each year for a 3-year term in such manner as the board of trustees may prescribe;
- (d) One trustee not a teacher nor an officer of the State, elected by the other trustees for a term of 3 years.

The terms of office of the members of the board of trustees on the effective date of this act shall continue for the periods for which they were appointed or elected. A vacancy occurring in the board of trustees shall be filled for the unexpired term in the same manner as provided in this section for regular appointment or election to the position where the vacancy exists.

Each member of the board shall, upon appointment or election, take an oath of office that, so far as it devolves upon him, he will diligently and honestly administer the board's affairs, and that he will not knowingly violate or willfully permit to be violated any provision of law applicable to this act. The oath shall be subscribed to by the member making it, certified by the officer before whom it is taken and filed immediately in the office of the Secretary of State.

Each trustee shall be entitled to 1 vote in the board and a majority of all the votes of the entire board shall be necessary for a decision by the board of trustees at a meeting of the board. The board shall keep a record of all its proceedings, which shall be open to public inspection.

The members of the board shall serve without compensation but shall be reimbursed for any necessary expenditures. No employee shall suffer loss of salary or wages through serving on the board. The compensation for all persons employed by the board shall be fixed by it, within the limits of appropriations made available to the board.

57. The board shall elect annually from its membership a chairman and may also elect a vice-chairman, who shall have all the power and authority of the chairman in the event of the death, absence or disability of the chairman. It shall appoint a secretary, who may be a member of the board, and an actuary.

The actuary shall be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of this act and shall perform such other duties as are required in connection therewith.

The Attorney-General shall be the legal adviser of the retirement system.

58. The actuary appointed by the board 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 act. Once in every 5-year period the actuary shall make an actuarial investigation into the mortality, service and compensation or salary experience of the members and beneficiaries as defined in this act and shall make a valuation of the assets and liabilities of the various funds created by this act. Upon the basis of such investigation and valuation the board shall:

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

(b) Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this act; and

(c) Certify the rates of contribution, expressed as a proportion of the compensation of members, which shall be made by the State to the contingent reserve fund.

59. The board shall publish annually a report showing a valuation of the assets and liabilities of the funds created by this act, certifying as to the accumulated cash and securities of the funds and stating any other facts, recommendations and data which may be of use in the advancement of knowledge concerning teachers' pensions and annuities. The board shall submit the report to the Governor and furnish a copy to every employer for use of the members and the public.

60. Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investments made by the board of trustees; nor shall any trustee or employee of the board directly or indirectly, for himself or as an agent, in any manner use the moneys of the retirement system, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety, or in any manner an obligor for moneys loaned to or borrowed from the board of trustees.

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

as herein provided. The board of trustees shall determine from time to time the cash requirements of the various funds and accounts established by this act and the amount available for investment, all of which shall be certified to the State Treasurer and the Director of the Division of Investment.

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

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

62. The State Treasurer shall be the custodian of the funds created by this act, shall select all depositories and custodians and shall negotiate and execute custody agreements in connection with the assets or investments of any of said funds.

All payments from the funds shall be made by him only upon voucher signed by the chairman and countersigned by the secretary of the board of trustees. No voucher shall be drawn, except upon the authority of the board duly entered in the record of its proceedings.

63. If any change or error in records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then on discovery of the error, the board of trustees shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

64. A person who knowingly makes a false statement, or falsifies or permits to be falsified any record of the retirement system, in an attempt to defraud the system as a result of such act shall be guilty of a misdemeanor.

65. The State agency, with the approval of the Governor, is hereby authorized and directed to enter on behalf of the State into an agreement with the secretary of the United States Department of Health, Education and Welfare for the purposes of extending the provisions of the Federal old-age and survivors insurance system to service performed by employees in positions covered by the provisions of sections 24 to 110, inclusive, of chapter 13 of Title 18 of the Revised Statutes of New Jersey with all amendments and supplements, or by this act; provided, however,

(a) That such employees are members of a retirement system coverage group within the meaning of the Social Security Act as amended;

(b) That the agreement shall not be made applicable to services in such positions so long as said positions are barred from coverage by the provisions of the Social Security Act as amended;

(c) That the agreement shall be consistent with the terms and provisions of this act. It shall cover all employment in positions covered by the Teachers' Pension and Annuity Fund on the date of this enactment and each board

of education or other employer in the State shall be deemed to have submitted a plan in accordance with the provisions of section 5 of chapter 253, laws of 1951, as amended;

(d) That the effective date of said Social Security agreement shall be January 1, 1955.

66. The amount of the employer's share of the Social Security contributions for members shall be provided from the contingent reserve fund for service from January 1, 1955, to June 30, 1956; thereafter the State of New Jersey shall provide such amounts by appropriations upon certification by the State Treasurer as to the amounts required; provided, however, that the State's provisions for such Social Security contributions shall be limited to contributions upon compensation upon which members' contributions to the retirement system are based. The employer shall pay the employer's share of Social Security contribution upon all other wages.

67. Prior to January 1, 1960, amounts equal to the Social Security contributions by each member upon compensation upon which such member's contributions to the retirement system are based shall be deducted from the contributions required to be paid to the retirement system by such member as provided in section 29 of this act. On and after January 1, 1960, amounts equal to the Social Security contributions by each member upon compensation upon which such member's contributions to the retirement system are based shall be deducted from the contributions required to be paid to the retirement system by such member to the extent of the Social Security rate of contribution in effect on December 31, 1959. Any change in the rate of contribution to the Social Security fund after December 31, 1959, shall result in a corresponding change in the amount of contributions payable by the member.

Contributions by members of the retirement system to the Social Security fund shall be made in the manner prescribed by the State agency for Social Security. Contributions to the Social Security fund shall not be subject to any provisions of this act dealing with the withdrawal of contributions, loans, or the payment of any annuities, pensions, disability or death benefits.

68. When a member who retires reaches age 65 or upon retirement of a member after the attainment of age 65, the board of trustees shall reduce the retirement allowance by the amount of the old age insurance benefit under Title II of the Social Security Act paid or payable to him whether received or not. Membership in the retirement system shall presume the member's acceptance of and consent to such reduction. However, such reduction shall be subject to the following limitations:

(a) The amount of the old age insurance benefit shall be computed in the same manner as computed by the Federal Social Security Administration, except that in determining such benefit amount only the wages or compensation for services performed in the employ of the State, or 1 or more of its instrumentalities, 1 or more of its political subdivisions, or 1 or more instrumentalities of its political subdivisions, or 1 or more instrumentalities of the State and 1 or more of its political subdivisions shall be included.

(b) Eligibility to the old age insurance benefit shall be computed in the same manner as computed by the Federal Social Security Administration, ex-

cept that in determining such eligibility only the quarters of coverage and wages or compensation for services performed in the employ of the State, or 1 or more of its instrumentalities, or 1 or more of its political subdivisions, or 1 or more instrumentalities of its political subdivisions, or 1 or more instrumentalities of the State and 1 or more of its political subdivisions shall be included.

(c) The retirement allowance shall not be reduced below the amount of the annuity portion of the retirement allowance fixed at the time of the member's retirement, unless the member shall, at the time of retirement, agree to such reduction in order to provide a higher level of payments prior to attaining age 65 based upon his accumulated deductions.

(d) The reduction shall apply in the following cases only:

- (1) Retirement for age.
- (2) Retirement for disability.
- (3) Retirement for age on a deferred retirement allowance, as provided in section 36 of this act.
- (4) Where an allowance is being paid upon resignation after 25 years of service, as provided in section 37 of this act.
- (5) Where an allowance is being paid upon retirement after 35 years of service as provided in section 45 of this act.

(e) Any increase in the amount of the old age insurance benefit under Title II of the Social Security Act to take effect after December 31, 1959, shall be disregarded in determining the amount of such reduction from the retirement allowance.

(f) Whenever the amount of such reduction from the retirement allowance shall have been once determined, it shall remain fixed for the duration of the retirement allowance, except that any decrease in the amount of the old age insurance benefit under Title II of the Social Security Act shall result in a corresponding decrease in the amount of reduction from the retirement allowance, and except that any error may be corrected, as provided in section 63 of this act.

(g) The reduction provided in this section shall never be greater than the amount of the old age insurance benefit which may be paid or payable by the Federal Social Security Administration whether received or not.

69. Any other provision of this act notwithstanding, any member who is not covered under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act as a teacher, or his designated beneficiary, shall not be eligible for the death benefit provisions of sections 38, 41, 42 and 44 of this act.

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

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

c. In the event that a veteran who prior to the effective date of this section rendered service in office, position, or employment of this State or of a county, municipality, or school district, board of education or other employer, but who is not in such office, position or employment on the effective date of this section shall later become a member of the retirement system, such veteran member shall receive service credit for service rendered prior to January 1, 1955, for which evidence satisfactory to the board of trustees is presented, and shall pay the proportion of compensation applicable to the age resulting from the subtraction of his years of such prior service from his age on the date of his becoming a member of the retirement system. The State shall pay the liability on behalf of such prior service, and such liability shall be paid in such a manner that the total obligation will be met within the period of time fixed for the liquidation of all accrued liabilities under this act.

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

71. a. Any veteran member in office, position or employment of this State or of a county, municipality, or school district, board of education or other employer on January 1, 1955, who remains in such service thereafter and who has or shall have attained the age of 60 years and who has or shall have been for 20 years in the aggregate in office, position or employment of this State or of a county, municipality or school district, board of education or other employer, satisfactory evidence of which service has been presented to the board of trustees, shall have the privilege of retiring and of receiving a retirement allowance of  $\frac{1}{2}$  of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made with the optional privileges provided for in section 47 of this act.

b. Any veteran becoming a member after January 1, 1955, who shall be in office, position, or employment of this State or of a county, municipality or school district, board of education or other employer, and who shall have

attained 62 years of age and who shall present to the board of trustees satisfactory evidence of 20 years of aggregate service in such office, position, or employment shall have the privilege of retiring and of receiving a retirement allowance of  $\frac{1}{2}$  of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made with the optional privileges provided for in section 47 of this act.

c. Any veteran member who has been for 20 years in the aggregate in office, position, or employment of this State or of a county, municipality or school district, board of education or other employer as of January 1, 1955, shall have the privilege of retiring for ordinary disability and of receiving a retirement allowance of  $\frac{1}{2}$  of the compensation received during the last year of employment upon which contributions to the annuity savings fund or contingent reserve fund are made with the optional privileges provided for in section 47 of this act. Such retirement shall be subject to the provisions governing ordinary disability retirement in sections 39 and 40 of this act.

72. Any other provision of this act notwithstanding, the board of trustees shall adjust the account of any member or of any beneficiary of the retirement system as though this act had been in effect on January 1, 1955; provided that

(a) Within 1 year the board of trustees shall compute any benefits which would have been available to any beneficiary who retired on or after January 1, 1955, and before the effective date of this act, had this act been in full force and effect at the time of such retirement. The board shall notify such beneficiary of such benefits, and the beneficiary may elect to receive such benefits, including, after payment of an amount deemed necessary by the board of trustees, Class B credit for all or part of his service. Such benefits shall be in lieu of those benefits available to him at the time of his retirement; provided, however, that such beneficiary may not change any optional section made at the time of his retirement.

(b) In the case of any beneficiary of the retirement system who retired on or after January 1, 1955, and before the effective date of this act, and whose death occurs prior to the exercise of the election as described in "(a)" of this section, the board of trustees shall compute any benefits which would have been available had this act been in full force and effect at the time of retirement, and shall make any additional payments over and above those available under the retirement allowance fixed at the time of retirement, to the retirant, his estate or any named beneficiary of the retirant upon the basis of the optional selections made at the time of his retirement; provided, however, that no death benefits provided under sections 41, 42, and 44 shall be payable in such case.

(c) In the case of any member of the retirement system who died on or after January 1, 1955, and before the effective date of this act, the board of trustees shall pay, in addition to his accumulated deductions at the time of death, to such person if living as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate, an amount equal to  $1\frac{1}{2}$  times the compensation received by the member in the last year of creditable service.

(d) Any veteran employed as a teacher on December 31, 1954, who retired on or after January 1, 1955, and before the effective date of this act, under provisions of sections 43:4-1, 43:4-2 and 43:4-3 of the Revised Statutes, as amended, shall have the option, within 1 year of the effective date of this act, of electing retirement from the Teachers' Pension and Annuity Fund as though this act had been in full force and effect at the time of his retirement. Such retirement shall be effective as of the date of exercising such option, but shall be based upon the veteran's age as of the effective date of exercising such option, and on his compensation and service at the time of his withdrawal from teaching service. As of the effective date of retirement under this act, such veteran shall have no further claims for retirement benefits under sections 43:4-1, 43:4-2 or 43:4-3 of the Revised Statutes as amended.

(e) An amount equal to the Social Security contribution required on behalf of any member for the year beginning January 1, 1955, and ending December 31, 1955, shall be deducted from amounts credited to such member in the annuity savings fund.

73. Except for section 65 and this section, which shall take effect immediately, this act shall take effect January 1, 1956; provided, that prior to said date a majority of the active, contributing members of the Teachers' Pension and Annuity Fund qualified to vote in a referendum as required by section 218 (d) (3) of the Social Security Act shall have voted to be covered under the terms of that act; that the Governor has made the official certification required, and that a contract has been entered into by the State for the coverage of such members under the Social Security Act.

Approved June 1, 1955.

#### CHAPTER 41, LAWS OF 1955

AN ACT concerning dentistry, and amending section 45:6-16 of the Revised Statutes.

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

1. Section 45:6-16 of the Revised Statutes is amended to read as follows:

45:6-16. The words "college," "school" or "university," when used in connection with a place where the science of dentistry in any of its branches may be practiced, demonstrated or taught, mean any educational institution authorized by the Legislature of this State to teach the science of medicine or dentistry and approved by the State Board of Education and by the State Board of Registration and Examination in Dentistry.

*Any educational institution, including a college, school, university, institute or department of a university, incorporated or organized and operating under Title 15 of the Revised Statutes or under any other law of this State, which has been or shall be approved by the State Board of Education and by the State Board of Registration and Examination in Dentistry to teach the science of dentistry in any of its branches, shall be deemed to be authorized by the Legislature of this State to teach the science of den-*

*tistry in any of its branches and to have complied with the requirements of this section in respect to authorization by the Legislature of this State.*

*Any such educational institution so authorized to teach the science of dentistry in any of its branches may use the words "college" or "school" in connection with its place where the science of dentistry in any of its branches may be taught, practiced or demonstrated.*

2. This act shall take effect immediately.

Approved June 6, 1955.

#### CHAPTER 47, LAWS OF 1955

AN ACT concerning standard time, and amending section 1:1-2.3 of the Revised Statutes.

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

1. Section 1:1-2.3 of the Revised Statutes is amended to read as follows:

1:1-2.3. The standard time of this State shall be the time of the seventy-fifth meridian west from Greenwich, and wherever time is named within this State, in any manner whatsoever, it shall be deemed and taken to be such standard time, except that the standard time of this State shall be 1 hour in advance of such prescribed time from 2:00 *A. M.* on the last Sunday in April until 2:00 *A. M.* on the last Sunday in *October* in each year, and except where otherwise expressed.

2. This act shall take effect immediately.

Approved June 6, 1955.

#### CHAPTER 73, LAWS OF 1955

AN ACT concerning highways, and amending section 27:15-16 of the Revised Statutes.

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

1. Section 27:15-16 of the Revised Statutes is amended to read as follows:

27:15:16. Such funds as are made available pursuant to this chapter may be utilized for the lighting of the roads mentioned in this chapter, including the construction of traffic lights, and for the construction of underpasses *and overpasses* for school children, where such underpasses *or overpasses* may be deemed necessary by the joint action of the governing body of any municipality and the State Highway Commissioner. The installation of any traffic lights pursuant to the provisions of this section shall first be approved by the Commissioner of Motor Vehicles.

2. This act shall take effect immediately.

Approved June 16, 1955.

CHAPTER 106, LAWS OF 1955

AN ACT to amend the "Savings and Loan Act," approved April 4, 1946  
(P. L. 1946, c. 56).

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

1. Section 78 of the act of which this act is amendatory is amended to read as follows:

Investments in loans may be made as follows:

(1) Mortgage loans. In direct reduction, sinking fund, and straight mortgage loans. Each such loan shall be evidenced by an obligation and secured by a mortgage which shall be a first lien on real estate in the State, or outside of the State if located within 50 miles of the principal office of the association. A mortgage shall be deemed a first lien notwithstanding the existence of a prior mortgage or mortgages held by the association, or liens of taxes or assessments which are not delinquent, building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments which the appraisers signing the appraisal provided for in section 81, report in their opinion do not materially affect the security for the mortgage loan. Such loans shall be on real estate used or to be used wholly or partially for dwelling purposes. *The granting of such loans shall be without regard to race, creed, color, national origin or ancestry. The granting of such loans shall be without discrimination of any nature including, but not limited to, interest rates, terms and duration, because of race, creed, color, national origin or ancestry.* If the proceeds of any such loan are used in whole or in part to improve the mortgaged real estate, they may be advanced in installments as the construction of a building or the making of other improvements thereon progresses and the value of the contemplated improvement may be included in arriving at the appraised value of the property.

Each direct reduction loan shall require periodical payments sufficient to pay the principal and interest of the loan in full in a period of 20 years or less. Any association may by agreement with the borrowing member reduce the amount of periodical payments, but the amount of the periodical payments thereafter required shall be sufficient to pay the balance of the loan and interest thereon within a period of 20 years or less from the time of making such agreement. Each sinking fund loan shall require periodical payments, at least monthly, on an account pledged as collateral security for such loan which shall be sufficient to pay such loan in a period of 20 years or less. Any association may by agreement with the borrowing member provide for the application of such account to the principal of the loan and for a reduction in the periodical payments required on an account thereafter; provided, however, that such periodical payments thereafter required shall be sufficient to retire the loan in a period of 20 years or less from the time of the making of such agreement. The amount of any direct reduction loan or sinking fund loan, less the withdrawal value of any account which may be pledged as collateral security therefor, shall not exceed 80% of the value of such real estate as found by appraisal at the time when the loan is granted.

A straight mortgage loan having a term of 1 year or less, the proceeds of which are used or are to be used in pursuance of a plan to improve the mortgaged real estate, may be made in an amount not to exceed 80% of the value of such real estate as found by appraisal at the time the loan is granted. Otherwise the term of any straight mortgage loan shall not exceed 3 years and the amount of any such straight mortgage loan shall not exceed 50% of the value of the property as found by appraisal at the time the loan is granted. An association may renew any straight mortgage loan held by it for a period not exceeding 3 years and for amounts not in excess of 50% of the value of the real estate as found by appraisal at the time of such renewal. The total amount invested in straight mortgage loans by any association shall not exceed 10% of its assets at the time any such investment is made.

(2) Improvement or repair loans. In additional loans to members for repairs, alterations, or improvements already made or to be made, of real estate owned by such members, upon which the lending association already holds a mortgage lien, or to pay the cost of insurance upon the life of such member which policy of insurance may also include health, accident or disability features, the proceeds of such policy to be applied in accordance with its terms and conditions; provided, however, the amount of such life insurance shall not exceed the amount loaned on the mortgage lien held by the association. If the mortgage already held by the lending association secures payment of a direct reduction loan, such additional loan shall not exceed the sum of \$2,500.00 or the amount which has been repaid in reduction of the principal of such mortgage loan, whichever is less. If the mortgage already held by the lending association secures payment of a sinking fund loan, such additional loan shall not exceed the sum of \$2,500.00 or the withdrawal value of the installment account which is pledged as collateral security for the payment of such sinking fund loan, whichever is less. Each such additional loan shall be evidenced by an obligation which shall state the terms on which such loan is made, and the amount thereof shall be added to the amount due on the association's mortgage against such real estate, and payment thereof shall be secured thereby. All persons who acquire any rights in, or liens upon, the mortgaged real estate subsequent to the recording of any association's mortgage shall hold such rights and liens subject to the association's right to make such additional loans. For the purpose of such additional loans, no search or examination of the title to the mortgaged real estate shall be required. The power to make such additional loans is in addition to, and not to the exclusion of, the power to make any other lawful loan or any other lawful additional loan, or to make advances for any purpose expressly or impliedly reserved or provided for in any bond, mortgage or other obligation held by or hereafter acquired by any such association.

(3) Camp meeting leaseholds. In any obligation secured by first mortgage on any leasehold estate of real estate in this State of any camp meeting association, to the extent authorized by, and subject to, the limitations and restrictions contained in section 17:2-1 of the Revised Statutes.

(4) Purchase of loans. In the purchase of any loan which an association is authorized to make.

(5) Account loans. In loans secured by a pledge of a member's account. No such loan shall exceed the withdrawal value of the pledged account, less interest thereon for a period of 6 months.

(6) Guaranteed loans. In loans guaranteed or insured in whole or in part by the United States of America or the State of New Jersey, any instrumentality or agency of either of them, or for which a commitment to so guarantee or insure has been made. Such loans shall not be subject to the provisions of section 27, subdivision (13), section 78, subdivision (1), section 81 and section 82 of this act. Such loans may be made in accordance with the terms and conditions permitted by the agency guaranteeing or insuring such loans, notwithstanding any other provisions of law limiting interest or other charges or prescribing terms and conditions. Such loans shall include only those which are made for the purchase or improvement of real estate, or for the construction, alteration, repair, or improvement of buildings erected thereon, used or to be used, wholly or partially for dwelling purposes, in which case they may or may not be secured by mortgages; or those which may be made for any other purpose provided they be secured by a mortgage on real estate used or to be used wholly or partially for dwelling purposes. The real estate in connection with which any such loan is made shall be located in this State, or outside of the State if located within 50 miles of the principal office of the association.

2. This act shall take effect July 1, 1955.

Approved June 29, 1955.

#### CHAPTER 107, LAWS OF 1955

AN ACT to amend "The Banking Act of 1948," approved April 29, 1948 (P. L. 1948, c. 67).

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

1. Section 69 of the act of which this act is amendatory is amended to read as follows:

69. Limitations on mortgage loans.

A. No bank shall make a mortgage loan when the total cost of acquisition by the bank of all real property owned by it, other than real property held for the purposes specified in subparagraph (a) of paragraph (5) of section 24, and the total of all principal balances owing to the bank on mortgage loans, less all write-offs and reserves with respect to such real property and mortgage loans, together exceed, or by the making of such loan will exceed, 60% of the time deposits of the bank or 100% of the aggregate of its unimpaired capital stock and its surplus, whichever is the greater. For the purposes of this subsection, principal balances owing to the bank on mortgage loans subject to the provisions of subsection A of section 68 shall only to the extent of  $66\frac{2}{3}\%$  of such balances owing to the bank, be included in the total of all principal balances owing to the bank on mortgage loans. This subsection shall not, however, prevent the renewal or extension of the time for payment of a mortgage loan for the amount due thereon at the time of such renewal or extension.

B. Except as in this article otherwise provided, no bank shall, as sole lender or as a co-lender, make a loan secured by mortgage on real property

or by mortgage on a lease of the fee of real property, nor shall any bank purchase the entire interest or a part interest in any such mortgage, if the making of such loan or the purchase of such interest would cause the total of all unpaid balances secured by a mortgage or mortgages held by the bank as sole owner or as co-owner upon such real property or such leasehold, to exceed the limitations imposed by this article upon the amount of a mortgage loan which may be made upon the security of such real property or such leasehold.

*C. The granting of mortgage loans to any person shall be without regard to race, creed, color, national origin or ancestry. The granting of such loans shall be without discrimination of any nature including, but not limited to, interest rates, terms and duration, because of race, creed, color, national origin or ancestry.*

2. This act shall take effect July 1, 1955.

Approved June 29, 1955.

#### CHAPTER 133, LAWS OF 1955

AN ACT concerning elections, and amending section 19:31-6 of the Revised Statutes.

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

1. Section 19:31-6 of the Revised Statutes is hereby amended to read as follows:

19:31-6. Up to and including the fortieth day preceding any election the commissioner, in counties having a superintendent of elections, and the members of the county board in all other counties, or a duly authorized clerk or clerks acting for him or it, as the case may be, shall receive the application for registration of all eligible voters who shall personally appear for registration during office hours at the office of the commissioner or the county board, as the case may be, or at such other place or places as may from time to time be designated by him or it for registration.

*When any person shall apply to the commissioner in writing setting forth that due to a chronic or incurable illness, or that he is totally incapacitated and he cannot attend a place of registration and such application is accompanied by an affidavit by a physician duly licensed to practice medicine in this State certifying that such person is chronically or incurably ill or totally incapacitated, that such person is mentally competent and that such person cannot attend a place of registration, then the commissioner shall cause such person to be registered at his place of residence or confinement.*

A duly authorized clerk is any person that has been appointed by the commissioner or the county board, as the case may be, to accept such registrations.

When the commissioner or county board has designated a place or places other than his office or its office for receiving registrations, he or it, as the case may be, shall cause to be published a notice in a newspaper circulated

in the municipality wherein such place or places of registration shall be located. Such notice shall be published within at least 10 days before the time that such place or places shall be open for registration and shall contain the address or addresses of such place or places and the dates and hours upon which they shall remain open.

Any eligible voter who applies for registration shall subscribe to the following oath or affirmation, viz.:

“You do solemnly swear (or affirm) that you will fully and truly answer such questions as shall be put to you touching your eligibility as a voter under the laws of this State.”

Upon being sworn the applicant shall answer such questions as are provided for in the original and duplicate permanent registration forms hereinbefore set forth, and the person receiving the application shall fill out the forms which the applicant shall sign. If an eligible voter is unable to write his name, he shall be required to make a cross, which shall be followed by the writing of the words “his or her mark,” as the case may be, by the person receiving the application, and such applicant shall answer the additional questions required under this Title. Such additional questions shall be sworn to or affirmed in the manner above provided. Registration by mail is specifically prohibited.

2. This act shall take effect immediately.

Approved July 12, 1955.

#### CHAPTER 158, LAWS OF 1955

AN ACT concerning the issuance of bonds and other obligations and the incurring of indebtedness by county, city, borough, town, township, village or any other municipality, and amending section 40:1-77 of the Revised Statutes.

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

1. Section 40:1-77 of the Revised Statutes is further amended to read as follows:

40:1-77. Such annual debt statement shall also set forth in the form prescribed the deductions applicable thereto, as follows:

a. Funds in hand and sinking funds applicable only to the payment of any part of the gross debt not otherwise deductible, including the proceeds of any bonds or notes held to pay any part of such gross debt, and the estimated proceeds of any bonds or notes which have been authorized when such estimated proceeds are to be held for that purpose, and any accounts receivable from other public authorities applicable only to the payment of any part of the gross debt not otherwise deductible;

b. Notes or bonds issued, or authorized but not issued, for purposes hereinafter defined as “self-liquidating” within the limitations hereinafter prescribed, stating separately indebtedness for water systems, sewer systems and each other self-liquidating purpose;

c. In the case of a municipality, notes or bonds issued, or authorized but not issued, for school purposes and included in the gross debt, issued or authorized by a school district which is governed by or to which are applicable provisions of chapter 8 of the Title Education (§ 18:8-1 et seq.) pursuant to a proposal a copy of which was endorsed prior to its adoption with the consents of the State Commissioner of Education and of the *Local Government Board* provided for in section 18:5-86 of said Title Education (§ 18:1-1 et seq.), and also any other notes or bonds issued, or authorized but not issued for school purposes and included in the gross debt, issued or authorized by such a school district, to an amount not exceeding 6% of the average of the assessed valuations as set forth in such statement pursuant to subsection 2 of section 40:1-80 of this Title;

d. In the case of a municipality, notes or bonds issued, or authorized but not issued, for school purposes and included in the gross debt, issued or authorized by the municipality or by any school district other than one which is governed by or to which are applicable provisions of chapter 8 of the Title Education (§ 18:8-1 et seq.) to an amount not exceeding 6% of the average of the assessed valuations as set forth in such statement pursuant to subsection 2 of section 40:1-80 of this Title and also (1) if such a school district which includes the territory of the municipality is certified by the State Commissioner of Education as having an approved high school, an additional amount not exceeding 2% of such average, or (2) if no such school district which includes the territory of the municipality is certified by the State Commissioner of Education as having an approved high school, an additional amount not exceeding the lesser of (a) the amount of the notes or bonds issued, or authorized but not issued, for the purpose of providing a high school and included in the gross debt or (b) 2% of such average;

e. Notes or bonds issued, or authorized but not issued, only for the relief of the poor, if included in the gross debt.

2. This act shall take effect immediately.

Approved July 20, 1955.

#### CHAPTER 169, LAWS OF 1955

AN ACT concerning municipalities in relation to certain funds for school purposes, and supplementing chapter 48 of Title 40 of the Revised Statutes.

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

1. Any municipality may by ordinance establish a special reserve account for the construction of new school buildings by the board of education of the school district coextensive with the municipality or of which the municipality comprises a part. There may be paid into such special reserve account surplus revenues, in whole or in part, derived from licensing or permit fees as designated by resolution of the governing body of the municipality.

The said governing body may, by resolution, authorize the transfer of and cause to be transferred all or such part of such special reserve account as it shall deem advisable, to the board of education of the school district co-

extensive with the municipality or of which the municipality comprises a part to be used for the construction of new school buildings but no such transfer of funds from any such special reserve account, under the authority conferred by this section, shall be made unless and until such proposed transfer shall have been included in the local annual municipal budget for the year in which it is intended to make such transfer available.

In any case in which the municipality establishing such special reserve account is in a school district of which the municipality comprises a part, the governing body may as a condition upon such transfer, require the board of education of such school district to give credit to such municipality on account of the amount of school tax, for the construction of new school buildings, due or to become due from such municipality in any year.

2. This act shall take effect immediately.

Approved July 26, 1955.

#### CHAPTER 174, LAWS OF 1955

AN ACT concerning the education of war orphans, and amending sections 38:20-1, 38:20-2 and 38:20-3 of the Revised Statutes.

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

1. Section 38:20-1 of the Revised Statutes is amended to read as follows:

38:20-1. For the purpose of this chapter, the term "war orphans" shall mean and include any child between the ages of 16 and 21 years, domiciled in this State for at least 12 months prior to the time of application for benefits under this chapter, who *being otherwise qualified* is the child of any resident of this State who was killed in action or died from other causes while a member of the Armed Forces of the United States in time of war or emergency or who died or shall hereafter die of disease or disability resulting from such war or emergency service.

*As used in this act, "war" shall mean World War I, being any time between April 6, 1917, to July 2, 1921, and World War II, being any time between September 16, 1940, and September 2, 1945.*

As used in this act, the term "in time of emergency" shall mean and include any time after June 23, 1950, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December 16, 1950, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.

2. Section 38:20-2 of the Revised Statutes is amended to read as follows:

38:20-2. *There is appropriated for the purposes of this chapter such sum not to exceed \$15,000.00 as shall be included in any annual or supplemental appropriation act. In no case shall the sum exceed \$500.00 for any 1 child annually. Such sum shall be used to defray the cost and expense of the attendance of any such orphan at any State educational or other technical or professional school of a secondary or college grade, approved by the State*

*Board of Education located in this State or outside the State if the desired course is not offered by a school or college in the State.* The sum so allotted in each case shall be used for tuition or matriculation fees, board and room rent, books and supplies and other purposes incidental thereto.

3. Section 38:20-3 of the Revised Statutes is amended to read as follows:

38:20-3. Application for such benefits shall be made to the Department of Conservation and Economic Development, which *shall* make rules and regulations to effectuate the provisions thereof. It *shall* ascertain and *approve the educational aptitude of the applicant for the course of study desired to be pursued in accordance with tests or standards prescribed or approved by the State Department of Education and the financial need of the applicant and may* satisfy itself of the attendance of such applicants and the accuracy of the charges made by the institution which the applicant attends. No more than 4 annual allotments of \$500.00 each shall be allowed any such applicant.

4. This act shall take effect immediately.

Approved July 28, 1955.

#### CHAPTER 196, LAWS OF 1955

AN ACT to amend "An act concerning public holidays and regulating the transaction of business in the public offices in this State and the counties and municipalities in this State on such days, and supplementing chapter 1 of Title 36 of the Revised Statutes," approved July 23, 1954 (P. L. 1954, c. 196).

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

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

1. Each Saturday in each year shall, for all purposes whatsoever as regards the transaction of business in the public offices of this State, and the counties and municipalities in this State, be considered as the first day of the week, commonly called Sunday, and as public holidays.

2. This act shall take effect immediately.

Approved August 5, 1955.

CHAPTER 199, LAWS OF 1955

AN ACT to amend "An act concerning annual leave for vacation purposes of certain employees in the classified service of the State, and supplementing chapter 14 of Title 11 of the Revised Statutes," approved June 11, 1953 (P. L. 1953, c. 193).

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

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

1. In determining the annual leave for vacation purposes to which any employee in the classified service of the State service shall be entitled pursuant to section 11:14-1 of the Revised Statutes, credit shall be given for all *continuous* full time service or *permanent part time service* which such employee shall have served whether the same shall have been under temporary or permanent appointment in an office, position or employment in the classified or unclassified service of the State service, and for all *noncontinuous permanent service* prior to June 11, 1953. *Part time service shall be credited proportionately.*

2. This act shall take effect immediately.

Approved August 5, 1955.

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## SCHOOL LAW DECISIONS

1954-1955

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### I

#### BOARD OF EDUCATION REQUIRED TO ADMIT PUPIL FIVE YEARS OF AGE ON TRANSFER FROM PUBLIC OR PRIVATE SCHOOL

ROBERT R. WILCOX,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE BOROUGH OF OCEANPORT,  
MONMOUTH COUNTY,

*Respondent.*

For the Petitioner, William S. Throckmorton.

For the Respondent, Sidney Alpern.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The question to be decided is whether a child may be transferred from a private school in another district to the public schools of the district of residence when the child reaches the age of five, although the child had not reached the age required by the local board of education for admission at the opening of schools for the fall term.

Jane C. Wilcox, the daughter of the petitioner, was born on October 30, 1948, and entered the kindergarten at a private school in Long Branch in September, 1953. The petitioner and his daughter are residents of the Borough of Oceanport, New Jersey, and on November 20, 1953, the petitioner submitted his written request to the Secretary of the Board of Education of the Borough of Oceanport to transfer his daughter to the public schools of that borough, effective December 1, 1953. On December 11, 1953, the respondent board notified the petitioner in writing that the request to transfer his daughter had been denied by the Oceanport Board of Education. The petitioner requests that an order be issued by the Commissioner of Education directing the Board of Education of the Borough of Oceanport to permit Jane C. Wilcox to be transferred to the public schools of the Borough of Oceanport.

The respondent contends that Jane C. Wilcox was not five years of age at the opening of the fall term in 1953 and did not attain said age during the

ten days immediately following the opening of schools; that the child did not qualify for transfer since the petitioner and his daughter were legal residents of the Borough of Oceanport prior to the opening of school and remained such residents thereafter; that the petitioner sought to circumvent respondent's rules and regulations for entrance to kindergarten by entering his daughter in a school outside the district and requesting a transfer after his daughter reached the age of five; and further contends that the class to which the petitioner seeks to transfer his daughter is overcrowded and would present a serious problem if this and similar transfers were permitted.

This case is presented on a stipulation of fact, following a conference held in the office of the Assistant Commissioner of Education between counsel for petitioner and respondent.

Sections 18:14-1 and 18:14-3 of the Revised Statutes provide as follows:

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

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

"18:14-3. Children who have never attended any public or private school may be admitted to a public school during the ten days immediately following the opening of the school for the fall term, and at no other time except by a majority vote of all the members of the board of education of the school district in which the school is situated."

Section 18:14-1, *supra*, clearly states that all children between the ages of five and twenty shall be admitted free to the public schools. Special provision is made in section 18:14-3, *supra*, in regard to all children who have *never* attended any public or private school. That section plainly does not apply where the child in question has previously attended school.

In the instant case, the petitioner's child has attended a private school and, therefore, is not within the prohibition of section 18:14-3. There being no other exceptions provided in the law, the general rule of section 18:14-1 requires the school district of the child's place of residence to admit the child, if between the ages of five and twenty years, on a transfer from another school.

Section 18:14-78.2 of the New Jersey Statutes Annotated provides:

"The board of education of each school district shall prescribe the necessary rules and regulations to carry out the purposes of this act."

The respondent asserts that pursuant to the said statutory authority it was properly enabled to adopt rules and regulations pertaining to the initial entrance of students and to provide that no child shall be admitted for the first time who had not reached the age of five years at the opening of schools or did not attain such age during the ten days immediately following such opening. A board of education has no power, however, to adopt a rule or regulation in conflict with the express provisions of the statute. *Frigiola vs. State Board of Education and Board of Trustees of the Teachers' Pension and Annuity Fund*, 25 N. J. Super. 75. In view of the mandatory provisions of

section 18:14-1, the Commissioner cannot agree with the respondent that it is discretionary with the board of education through the adoption of regulations to admit or exclude a child on a transfer from any public or private school.

Respondent raises a question regarding the overcrowding of the class by permitting transfers to the school system and petitioner's alleged attempt to circumvent the rules and regulations of the school district.

Section 18:11-1 of the Revised Statutes provides as follows:

"Each school district shall provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. Such facilities and accommodations shall include proper school buildings, together with furniture and equipment, convenience of access thereto, and courses of study suited to the ages and attainments of all pupils between the ages of five and twenty years. Such facilities and accommodations may be provided either in the schools within the district convenient of access to the pupils, or as provided in sections 18:14-5 to 18:14-9 of this Title."

The statute clearly states that it is the duty of the local board of education to provide suitable facilities and accommodations for the education of children who reside in the district. It is the opinion of the Commissioner that since this duty is imposed by law upon boards of education, the contention of respondent of overcrowded facilities is not a valid issue for determination in this case.

The Commissioner concludes that since the petitioner's daughter attended a private school from September, 1953, that the request for transfer was made on November 20, 1953, and that on December 1, 1953, the effective date of her transfer, the child would have attained the age of five years and one month, petitioner's daughter is entitled to be transferred from the school she is now attending to the public schools of the Borough of Oceanport. The Board of Education of the Borough of Oceanport, Monmouth County, will determine in its discretion the grade in which the child shall be placed. (See R. S. 18:11-1.)

The Board of Education of the Borough of Oceanport is directed to admit Jane C. Wilcox to its schools.

August 12, 1954.

II

RETIREMENT APPLICATION NOT SIGNED BY MEMBER OF  
TEACHERS' PENSION AND ANNUITY FUND NOT VALID

NILDA JACULLO,

*Petitioner,*

*vs.*

BOARD OF TRUSTEES OF THE TEACHERS' PENSION AND ANNUITY FUND,  
*Respondent.*

For the Petitioner, Ray H. Flanagan.

For the Respondent, Office of Attorney General.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case, the widow of Sal Jacullo, asks that the Commissioner of Education declare Sal Jacullo a member of the Teachers' Pension and Annuity Fund at the time of his death and hold that, as such, his widow is entitled to receive the accumulated deductions standing to his credit in accordance with his designation of Nilda Jacullo as his beneficiary.

On September 1, 1931, Sal Jacullo became a member of the Teachers' Pension and Annuity Fund upon his employment as janitor in Wood-Ridge, Bergen County, public schools. On August 13, 1953, the Teachers' Pension and Annuity Fund received an application for retirement on the form prescribed by the Fund, stating that Sal Jacullo desired to retire on September 1, 1953, and under paragraph 9: "Do you wish to receive the maximum allowance without option?" appears the word "Yes." Both in the original Application for Enrollment and in the Application for Retirement, Nilda Jacullo, wife, is designated as beneficiary. On September 10, 1953, Sal Jacullo died. If the application for Retirement had not been filed, Nilda Jacullo would have been entitled to receive his total contributions, totalling \$2,512.81, plus interest at  $3\frac{1}{2}\%$ , or approximately \$3,475.00. However, in accordance with the Application for Retirement, without option, Nilda Jacullo received a check in the amount of \$18.03, representing the balance of the allowance for the period from retirement to the end of the month, which she returned, uncashed, to the Teachers' Pension and Annuity Fund.

On January 13, 1954, Mrs. Jacullo appealed to the Commissioner of Education, alleging that the Application for Retirement was not signed by her husband but by her son, Peter Jacullo, and, therefore, contending that Sal Jacullo was a member of the Teachers' Pension and Annuity Fund and had not retired prior to his death.

A hearing in this case was conducted on Friday, April 9, 1954, in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes, and testimony was taken.

The testimony shows that at the time the Application for Retirement was filed and for several weeks prior thereto, Sal Jacullo was a complete invalid, physically and mentally, and was unable to handle his affairs or even to communicate intelligently under those circumstances, that Peter Jacullo, Sal

Jacullo's son, acting in good faith and in the interest of his mother, filled out and signed the Application for Retirement, requested a Notary Public to complete the affidavit, and subsequently filed the application with the Teachers' Pension and Annuity Fund. Peter testified that he believed that his answering "Yes" to Question 9 on the application form would give his mother a lump sum—a few thousand dollars—upon his father's death.

Although the act of Peter Jacullo in signing his father's name to the retirement application was unauthorized and without warrant in law, the Commissioner does not find in the evidence a sufficient basis for imputing to the petitioner the "unclean hands" of her son. She apparently did not know that what he was doing was wrongful or even that he was, in fact, signing his father's name. Moreover, the action of Peter Jacullo did not actually result in prejudice to the Fund. The only pension check which was actually sent by the Fund to Nilda Jacullo was never cashed but was returned to the Fund, so that the Fund has not changed its position from that which it would have occupied had the application in question never been made. If the application is regarded as a nullity, the Fund will pay nothing to the petitioner except what the decedant paid into the Fund with interest thereon which that sum has earned while on deposit with the Teachers' Pension and Annuity Fund.

This is not, in the Commissioner's view, the kind of prejudice which constitutes an essential element in the law of estoppel. See *Laws vs. Lynch*, 6 N. J. 1, 11 (1950); *Bendle vs. Bendle*, 3 N. J. 161, 173 (1949). Under all the circumstances here presented, the Commissioner believes that a repudiation of the retirement application by the petitioner will not work such injustice to the respondent as would warrant denying, in equitable principles, the relief herein sought. Cf. *N. J. Suburban Water Co. vs. Harrison*, 122 N. J. L. 189, 194 (E. and A., 1938); *Snyder Pasteurized Milk Co. vs. Burton*, 80 N. J. Eq. 185, 188 (E. and A., 1912).

Section 18:13-50 of the Revised Statutes reads as follows:

"A member who has attained the age of sixty-two years may retire upon his request, or, upon the request of his employer, shall be retired from the service if a written statement duly attested is filed by him or by his employer with the board of trustees setting forth at what time subsequent to the execution and filing thereof he or his employer desires such retirement. The board of trustees shall retire the member at the time specified or at such other time within thirty days thereafter as it may find advisable."

Accordingly, a member can only be retired after he attains age sixty-two upon his application or upon application of his employer. It is clear from the facts that Sal Jacullo's employer, the Board of Education of Wood-Ridge, did not make application for his retirement. The evidence clearly indicates that the mental and physical condition of Sal Jacullo was such that he could not have executed his application for retirement. There was no legal authority for Peter J. Jacullo to execute an Application for Retirement on behalf of his father, Sal Jacullo. It is clear that no request for retirement was legally made in accordance with section 18:13-50 of the Revised Statutes from which it

follows that the purported retirement of Sal Jacullo by the Board of Trustees of the Teachers' Pension and Annuity Fund was a nullity.

Therefore, Sal Jacullo was a member of the Teachers' Pension and Annuity Fund at the time of his death, and Nilda Jacullo is lawfully entitled to receive from the Teachers' Pension and Annuity Fund the accumulated deductions standing to Sal Jacullo's credit on that date.

August 16, 1954.

### III

#### SCHOOL DISTRICT IN WHICH PUPILS ARE DOMICILED RESPONSIBLE FOR HIGH SCHOOL EDUCATION

BOARD OF EDUCATION OF THE BOROUGH OF FRANKLIN, SUSSEX COUNTY,  
*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF HARDYSTON, SUSSEX COUNTY,  
BOARD OF EDUCATION OF THE TOWNSHIP OF JEFFERSON, MORRIS COUNTY,  
AND JOHN BENJAMIN BROWN,

*Respondents.*

For the Petitioner, Harry C. Hulbert.

For the Respondent, Hardyston Township Board of Education, Thomas H. Davis.

For the Respondent, Jefferson Township Board of Education, Scerbo, Porzio & Kennelly.

(Frank Scerbo of Counsel)

For the Respondent, John Benjamin Brown, Morris, Downing & Sherred.  
(James E. Quinn of Counsel)

#### DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case seeks to have the domicile of Carole, Alfred and Thomas Brown fixed for school purposes for the school year 1952-1953, and the board of education of the school district in which said children were domiciled directed to pay to the petitioner the tuition due for said children for the school year 1952-1953, in the amount of \$982.62.

The stipulated facts in this case are as follows:

The Boards of Education of Hardyston and Jefferson Townships sent pupils to the Franklin Borough schools on a tuition basis.

During April, 1951, John Benjamin Brown and family, consisting of his wife and three children, Carole, Alfred and Thomas Brown, moved from Malvern, Long Island, to Orchard Road, Lake Stockholm, Hardyston Township, Sussex County, and the children entered the schools of Franklin Borough.

In November or December, 1951, Mr. Brown bought a house situated at Hillside Avenue, Lake Stockholm, Jefferson Township, Morris County, still retaining the Orchard Road property. Jefferson Township paid the tuition for these children to the Borough of Franklin from April, 1951 until June 30, 1952.

In July, 1952, the Jefferson Township Board of Education notified the Franklin Borough Board of Education that only pupils in grades 9 to 12 would be sent to its schools. As a result of this notice, in September, 1952, Carole Brown was admitted to the 12th grade, Alfred Brown to the 10th grade, and Thomas Brown was refused admittance to the 8th grade.

On September 10, 1952, the Superintendent of Schools of Franklin Borough received a letter from the President of the Hardyston Township Board of Education stating that John Brown had established residence in Hardyston Township to the satisfaction of the Hardyston Township Board of Education. On the strength of this letter, Thomas Brown was subsequently admitted to the 8th grade in the Franklin Borough Schools.

On January 31, 1953, Jefferson Township Board of Education advised the petitioner that it had come to a decision that tuition for the Brown children should be paid by the Board of Education of Hardyston Township based on the fact that John Brown claimed Hardyston Township as his legal residence.

John Brown kept both houses completely furnished and all members of his family kept clothing in both houses. The family stayed for periods of two weeks in the Hardyston residence. Mr. Brown slept at least one night a week in the Hardyston residence. He intended to put an addition on the Hardyston residence as soon as he sold the Jefferson Township dwelling.

It was established by affidavit that Mr. Brown listed his Jefferson Township dwelling for sale with real estate brokers during March, 1953.

The following is the voting record of Mr. and Mrs. John Benjamin Brown:

May 8, 1952—Mr. and Mrs. Brown registered in Jefferson Township, Morris County.

October 5, 1952—Mrs. Brown notified the Board of Elections in Morris County that she had moved to Hardyston Township, Sussex County.

March, 1953—Mr. Brown attempted to register in Hardyston Township, but registration was closed.

March, 1953—Mr. and Mrs. Brown both sent cards to the Board of Elections in Morris County disclaiming residence in Jefferson Township.

May 20, 1953—Mr. and Mrs. Brown returned check-up cards to the Board of Elections in Morris County, stating they were residing on Orchard Road, Stockholm, Sussex County.

Records of Boards of Elections in Morris County show that Mr. and Mrs. Brown never voted in Morris County.

Affidavit from the Board of Elections of Sussex County shows that Alice R. Brown, Lake Stockholm, registered on September 25, 1952.

Mr. and Mrs. Brown voted in Hardyston Township, Sussex County, at the General Election on November 3, 1953.

Evidence stipulated states that after July, 1952, John Benjamin Brown claimed to have become a resident of Hardyston Township, Sussex County.

In the case of *Cromwell vs. Neeld*, 83 A. 2d, 237, "domicile" is distinguished from "residence" as follows:

"A person's 'domicile' in strict legal sense, is place where he has his true, fixed, permanent home and principal establishment, to which he

intends to return, whenever absent therefrom, and from which he has no present intention of removing.

“A person may have several residences or places of abode, but can have only one domicile at a time.

“A person’s domicile is place wherein he has voluntarily fixed his habitation, not for mere temporary or special purpose, but with present intention of making it his home, unless or until something uncertain or unexpected happens to induce him to adopt some other place as his permanent home.”

In *King vs. Ocean Township Board of Education*, Monmouth County, 1938 School Law Decisions, 27, the Commissioner quoted from *Snyder vs. Callahan*, 3 N. J. Misc. 269, at 271, as follows:

“The general rule in respect to the acquisition of a new domicile is, that after a person has abandoned his domicile of origin, or his acquired domicile, his domicile will be considered to be that place in which he has voluntarily fixed his habitation, not for a *special* or temporary purpose, but with a present intention of making it his home, unless or until, something which is uncertain or unexpected should happen to induce him to adopt some other permanent home.”

The stipulated facts, regarding residence, voting record, and stipulated evidence regarding the intent of Mr. and Mrs. Brown indicate that they intended to make Lake Stockholm, Sussex County, their legal residence and domicile after July, 1952.

It is, therefore, the opinion of the Commissioner that the domicile of Carole, Alfred and Thomas Brown, children of Mr. and Mrs. Brown was at Lake Stockholm, Hardyston Township, during the school year 1952-1953.

Section 18:14-1 reads in part as follows:

“Public schools shall be free to the following persons over five and under twenty years of age:

(a) Any person who is domiciled within the school district. . . .”

Section 18:14-5 reads in part as follows:

“ . . . The board of education of the district in which the child attends school shall be entitled to charge and collect from the school district in which the child resides a reasonable sum for the tuition of the child. . . .”

Section 18:14-6 provides:

“Any child who shall be a resident of a district which does not furnish a full high school course of study or course including the subjects such child may desire to pursue and who shall have completed the elementary course of study provided therein may be admitted to a school in another district.”

Section 18:14-7 reads in part as follows:

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

The Board of Education of the Township of Hardyston, Sussex County, is directed to pay to the Board of Education of the Borough of Franklin, Sussex County, the sum of \$982.62, tuition due for Carole, Alfred and Thomas Brown for the school year 1952-1953.  
September 23, 1954.

#### IV

#### VICE-PRINCIPAL WITH SENIORITY ENTITLED TO POSITION

AUGUST LASCARI,

*Petitioner,*

*vs.*

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

*Respondent.*

For the Petitioner, Parsonnet, Weitzman & Oransky.  
(Thomas L. Parsonnet, of Counsel)

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

#### DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks that the Commissioner issue an order rescinding the action of the Board of Education of the Borough of Lodi in removing him from the position of vice-principal of the high school and directing the Board to continue his employment as vice-principal of the high school.

This case is submitted to the Commissioner on pleadings, followed by a conference between the parties, a stipulation of facts, and briefs of counsel.

The Stipulation of Facts shows that the petitioner was first appointed as a high school teacher in the Lodi school district in 1940 and became vice-principal of the Wilson School (Elementary) in 1946. On September 14, 1948, he was transferred by resolution of the Board of Education from the Wilson School to be vice-principal of the high school during a two-year leave of absence granted by the Board to Pasquale Maggese.

On August 21, 1950, prior to the return of Mr. Maggese, the Board of Education passed the following resolution:

"BE IT RESOLVED by the Board of Education of the Boro of Lodi, N. J. that Pasquale Maggese, Vice-Principal of the High School, be assigned to serve in the capacity of the following:

1. Co-ordinator of Instruction.
2. Co-ordinator and Director of Curriculum Construction and Revision.
3. Integrator of the Audio-Visual Aids Program.
4. To perform duties connected with the instructional work which may be assigned to him from time to time at the direction of the Supervising Principal.

"BE IT FURTHER RESOLVED that all of the aforementioned assignments and duties be performed under the direct supervision of the chief administrator.

"BE IT FURTHER RESOLVED that the said Pasquale Maggese shall receive an annual salary of forty-eight hundred dollars effective as of July 1, 1950."

"RESOLUTION

"BE IT RESOLVED by the Board of Education of the Borough of Lodi, New Jersey that August Lascari be appointed Prin. to be known and designated as 'Vice-Principal of the High School' and that he be and is hereby assigned and placed in charge of all administrative duties pertaining to the office of vice principal, at present salary."

The petitioner discharged said duties as vice-principal of the high school until June 23, 1953, when the Board of Education took action to abolish the position of Co-ordinator of Instruction and Co-ordinator and Director of Curriculum Construction and Revision held by Pasquale Maggese, to return said Pasquale Maggese to his former position of vice-principal of the high school, and to return the petitioner and designate him as a teacher in the high school of said district.

Pasquale Maggese was first appointed as a teacher in the Lodi school district in July, 1927. On June 9, 1938, he was appointed vice-principal of the high school and served as such until September 15, 1948, when he was granted a two-year leave of absence for illness from October 1, 1948 to October 1, 1950. On August 21, 1950, by the resolution of the Board of Education quoted above, he was appointed as "Co-ordinator of Instruction, Co-ordinator and Director of Curriculum Construction and Revision, Integrator of the Audio-Visual Aids Program, and to perform duties connected with the instructional work which may be assigned him from time to time at the direction of the Supervising Principal." He served in this position until June 15, 1953, when he was returned to his former position as vice-principal of the high school. At no time has there ever been more than one vice-principal of the high school. The duties of the vice-principal have been established by regulations promulgated by the principal of the high school pursuant to authority granted to the principal by the respondent Board.

The petitioner was not given notice of any charges brought against him nor was he given notice of any hearing held or to be held concerning his contemplated removal from the position of vice-principal of the high school. The petitioner claims that his removal from office was a violation of the provisions of the Veterans' Tenure Act, R. S. 38:16-1, and was a violation of the Teachers' Tenure Act as contained in Chapter 13 of Title 18 of the Revised Statutes.

The respondent in a separate defense states that the respondent's action taken on June 23, 1953, removing the petitioner from his assignment as vice-principal and assigning him as a teacher in the Lodi High School, constitutes merely a re-assignment of teaching duties which action was clearly within the power of the respondent. The petitioner's re-assignment as a teacher in the high school was without reduction in salary he was receiving while assigned as vice-principal of the high school.

Respondent in its amended answer, sets forth, among others, the following separate defenses:

"SECOND DEFENSE. Appellant at no time while in the employ of the Respondent and during the times mentioned in his Petition, secured or enjoyed tenure status as a 'principal' by virtue of the provisions of R. S. 18:13-16. At all times when the Appellant was assigned as 'vice-principal' of the high school (there is only one high school in the Borough of Lodi) a qualified person (other than Appellant) enjoyed previous appointment as principal of said high school. Appellant's assignment or designation as 'principal' of said high school by the Board of Education of the Borough of Lodi on August 21, 1950, as set forth in paragraph 4 of his petition, was a nullity for there can be but one principal for a high school. Appellant's status therefore at all times was that of a 'teacher' nothing more or less. Bestowing upon him the title of 'principal' did not confer upon him the legal status of principal.

"THIRD DEFENSE. Appellant could not and did not enjoy tenure as a 'vice-principal.' Said assignment is not mentioned in the tenure statute, R. S. 18:13-16, and is not given tenure protection by law.

"FOURTH DEFENSE. The Board of Education of the Borough of Lodi has never adopted any resolution or taken any action whatsoever to define or limit or describe the duties and obligations of any teacher assigned to act as 'vice-principal' in any school in the school system of the Borough of Lodi. Respondent clearly at all times, had the power to assign a teacher theretofore assigned as 'vice-principal' to teaching duties, especially in a case such Appellant's where the re-assignment on June 23, 1953 was to teaching duties in the same high school he was theretofore assigned to, and without any reduction in salary."

It is not within the power of the Commissioner to decide the petitioner's rights under the Veterans' Tenure Act, R. S. 38:16-1. Therefore, in this decision, we are limited to the petitioner's claim for violation of tenure rights under Chapter 13 of Title 18.

R. S. 18:13-16, as amended by Chapter 236 of the Laws of 1952, states:

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

“An academic year, for the purpose of this section means the period between the time school opens in the district after the general summer vacation until the next succeeding summer vacation.”

Applying the principles of the case of *Lange vs. Board of Education of the Borough of Audubon*, 26 N. J. Super. 83; 97 A. 2d 416, it is evident that the petitioner did not acquire tenure rights as a “vice-principal.” The petitioner could not acquire tenure rights as a principal since another person served as principal of the high school and it has been well established that a school can have only one principal. According to R. S. 18:13-16, there are only four categories of tenure—“superintendent, assistant superintendent, principal and teacher.” Since the petitioner did not have tenure as superintendent, assistant superintendent, or principal, his tenure status was that of teacher.

R. S. 18:13-19 provides:

“Nothing contained in sections 18:13-16 to 18:13-18 of this Title or any other provision of law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of superintendents of schools, assistant superintendents, principals or teachers employed in the school district whenever, in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause. Dismissals resulting from such reduction shall not be by reason of residence, age, sex, marriage, race, religion or political affiliation. Any dismissals occurring because of the reduction of the number of persons under the terms of this section shall be made on the basis of seniority according to the standards to be established by the Commissioner of Education with the approval of the State Board of Education. In establishing such standards, the Commissioner shall classify, in so far as practicable, the fields or categories of administrative, supervisory, teaching or other educational services which are being performed in the school districts of this State and may, at his discretion, determine seniority upon the

basis of years of service and experience within such fields or categories of service as well as in the school system as a whole. Whenever it is necessary to reduce the number of persons covered by this section, the board of education shall determine the seniority of such persons according to the standards established by the Commissioner of Education with the approval of the State Board of Education and shall notify each person as to his seniority status. A board of education may request the Commissioner of Education for an advisory opinion with respect to the applicability of the standards to particular situations and all such requests shall be referred to a panel to consist of the county superintendent of schools of the county in which the school district is situate, the secretary of the State Board of Examiners, and one assistant commissioner of education to be designated by the Commissioner of Education. No determination of any panel shall be binding upon the board of education or any other party in interest, nor upon the Commissioner of Education and the State Board of Education in the event of an appeal pursuant to sections 18:3-14 and 18:3-15 of the Revised Statutes. All persons dismissed shall be placed upon a preferred eligible list to be prepared by the board of education of the school district, and shall be re-employed by the said board of education of the school district in order of seniority as determined by the said board of education. In computing length of service within the district, the time of service of such superintendents of schools, whether served as superintendents of schools, city superintendents of schools or supervising principals, assistant superintendents, principals or teachers in or with the military or naval forces of the United States of America or of this State subsequent to September first, one thousand nine hundred and forty, shall be credited in determining seniority under this act as though such superintendents, assistant superintendents, principals or teachers had been regularly employed within the district during the time of such military service. Should any superintendent of schools, assistant superintendent, principal or teacher under tenure be dismissed as a result of such reduction such person shall be and remain upon a preferred eligible list in the order of seniority for re-employment whenever vacancies occur and shall be re-employed by the body causing such dismissal in such order when and if a vacancy in a position for which such superintendent, assistant superintendent, principal or teacher shall be qualified. Such re-employment shall give full recognition to previous years of service.

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

This statute clearly gives the Board of Education the right to abolish the position of Co-ordinator of Instruction, Co-ordinator and Director of Curriculum Construction and Revision and Director of the Audio-Visual Aids Program.

The petitioner claims that Pasquale Maggese was not entitled to the position of vice-principal since he was not the holder of that position when the above statute became effective. He cites the Supreme Court's decision in the

case of *Nichols vs. Board of Education of Jersey City*, 9 N. J. 241, in support of his contention. The *Nichols* case is not comparable with the instant controversy. When Miss Nichols' position was abolished in 1949, R. S. 18:13-19 had not been enacted into law. The Court held that the 1951 amendment to R. S. 18:13-19 was not a clarification of the earlier seniority statute but was an entirely new legislative scheme, one of far greater scope. The language of the 1951 amendment is clear and unambiguous and makes no provision for retroactive operation.

In the instant case, the petitioner was removed from his assignment as vice-principal of the high school in 1953, therefore, the application of R. S. 18:13-19 does not have retroactive effect.

The petitioner does not attempt to secure an adjudication of the legal status of Pasquale Maggese, but alleges that his right to the position of vice-principal of the high school is superior to that of Mr. Maggese. This requires the Commissioner to examine the seniority status of both under the standards established by the Commissioner with the approval of the State Board of Education, as provided in Section 18:13-19, *supra*. The "Standards Established to Determine Seniority Pursuant to R. S. 18:13-19," include the following:

"2. Seniority, pursuant to R. S. 18:13-19, shall be determined according to the number of academic or calendar years of employment, or fractions thereof, as the case may be, in the school district in specific categories as hereinafter provided. Seniority status shall not be affected by occasional absences or leaves of absence.

"3. Employment in the district prior to the adoption of these standards shall be counted in determining seniority.

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

"7. Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his seniority in any or all categories in which he previously held employment."

Under Rule 3, it is necessary to count employment in the district prior to the adoption of these standards in determining seniority. Mr. Maggese was employed in the district in 1927, served as a teacher until 1938, when he was assigned to be vice-principal of the high school where he served until 1948, when he was granted a two-year leave of absence for illness. From 1950 to 1953 he served as Co-ordinator of Instruction and Co-ordinator and Director of Curriculum Construction and Revision. The petitioner was first appointed as a teacher in 1940, served as high school teacher until 1946, when he was appointed vice-principal of the Wilson Elementary School, and in 1948 was assigned to the vice-principalship of the high school where he served until 1953.

There can be no question as to the tenure of the petitioner or that of Mr. Maggese. Since the position of vice-principal is not provided for in the stat-

utes, the tenure status of both must be that of teacher. Since the enactment of the 1951 amendment to R. S. 18:13-19 did not create new positions to which tenure attaches but only established seniority rights within the categories provided in R. S. 18:13-16 to give any other construction to this legislation would mean that the Legislature had established positions to which tenure attaches, and, immediately upon being transferred or assigned to any of the numerous categories set up by the Commissioner, a person is protected in that position by tenure. This definitely was not the intent of the Legislature.

Reviewing the seniority status of Pasquale Maggese and the petitioner, Mr. Maggese has had a longer service record in the district, both as a teacher and as a vice-principal, than that of the petitioner. It is, therefore, the opinion of the Commissioner that, according to the Standards Established for Determining Seniority Pursuant to R. S. 18:13-19, the Board of Education of the Borough of Lodi acted within its legal authority.

The petition is dismissed.

October 11, 1954.

Affirmed by State Board of Education without written opinion February 4, 1955.

DECISION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION  
A-424—54

Argued July 18, 1955. Decided July 29, 1955.

Before Judges Clapp, Waesche and Artaserse.

Mr. Carman M. Belli argued the cause for appellant.

Mr. Harold D. Green argued the cause for respondent, The Board of Education of the Borough of Lodi, Bergen County.

The opinion of the court was delivered by ARTASERSE, J. S. C. (Temporarily assigned).

This is an action in lieu of prerogative writ. The appeal is brought under R. R. 4-88-8 to review a decision of the State Board of Education of the State of New Jersey, which affirmed a decision of the Commissioner of Education holding that the appellant, August Lascari, did not have seniority over one Pasquale Maggese to the position of vice-principal of the high school in the Borough of Lodi. The proceeding before the Commissioner had been instituted by the appellant to test the validity of the action taken by the defendant, Board of Education of the Borough of Lodi, in the County of Bergen.

The State Board of Education was named as a respondent on this appeal and on its behalf the Attorney General filed a statement pursuant to R. R. 1:7-4 (7) (b), but took no part in the oral argument.

The facts are stipulated. The appellant was appointed a teacher in the Lodi School district in 1940. In 1946 he became vice-principal of the Wilson School, an elementary school. On September 15, 1948, he was transferred from his position as vice-principal of the Wilson School to vice-principal of the High School during the absence of one Pasquale Maggese who was then the vice-principal of the high school and who had been granted a leave of absence on account of illness from October 1, 1948 to September 1, 1950. On August 21, 1950, by resolution of the Board of Education of the said school

district the appellant was appointed "principal to be known and designated as 'vice-principal of the high school.'" On the same date Pasquale Maggese was appointed "co-ordinator of instruction." Pasquale Maggese voluntarily accepted this new position and served in said capacity until June 23, 1953, during which time the appellant served as vice-principal of the high school. On June 23, 1953, the local Board abolished the position held by Pasquale Maggese as "co-ordinator of instruction" and returned him to the position of vice-principal of the high school and at the same meeting the Board removed the appellant as vice-principal of the high school and transferred him to teaching duties in the high school in which capacity he has been serving ever since without reduction of salary. The appellant is an honorably discharged veteran of World War II and no charges were made against him. Pasquale Maggese has been serving as vice-principal of the high school from June 23, 1953.

The appellant on or about August 10, 1953, filed a petition of appeal with the Commissioner of Education of this State by which he requested an order rescinding the action of the local Board in removing him from the position of vice-principal of the high school and directing the local Board to restore him to said position. The local Board by its amended answer to the petition asserted eight separate defenses. The Commissioner of Education dismissed the appellant's petition. Thereafter the appellant appealed from the decision of the Commissioner and on February 4, 1955, the State Board of Education affirmed the decision of the Commissioner.

The appellant has made no claim with regard to his alleged appointment as "Principal" and it is therefore considered abandoned.

There are four questions involved in this appeal. These may be stated as follows: (a) What was the status of appellant's employment with the local Board immediately prior to his re-assignment to teaching duties on June 23, 1953? (b) Do the provisions of *R. S. 18:13-19* apply in determining the status of the appellant's employment with the local Board? (c) Did appellant have greater seniority to the position of vice-principal of the high school than Pasquale Maggese according to the standards established to determine seniority pursuant to *R. S. 18:13-19*? (d) Did the appellant have tenure to the position of vice-principal of the high school because of the Veteran's Tenure Act, *R. S. 38:16-1*?

a. STATUS OF APPELLANT'S EMPLOYMENT IMMEDIATELY PRIOR TO HIS RE-ASSIGNMENT TO TEACHING DUTIES ON JUNE 23, 1953:

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

“The district boards are expressly invested with authority to transfer principals and teachers. *R. S. 18:6-20*. The exercise of the power rests in sound discretion, conditioned by the provisions of section *18:13-17*. *Cheeseman vs. Board of Education of Gloucester City*, 1 N. J. Misc. R. 318; *Downs vs. Board of Education of Hoboken*, 12 Id. 345; affirmed, 113 N. J. L. 401. The transfer was in no sense a demotion; \* \* \*”

A transfer is not a demotion or dismissal. *Cheeseman vs. Gloucester City*, 1 N. J. Misc. R. 318, 319 (Sup. Ct., 1923).

b. APPLICATION OF R. S. 18:13-19:

R. S. 18:13-19 as amended, L. 1951, c. 292 and L. 1952, c. 236, effective July 1, 1952, provides in part as follows:

“Nothing contained in sections 18:13-16 to 18:13-18 of this Title or any other provision of law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of superintendents of schools, assistant superintendents, principals or teachers employed in the school district whenever, in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause. \* \* \* \* Any dismissals occurring because of the reduction of the number of persons under the terms of this section shall be made on the basis of seniority according to standards to be established by the Commissioner of Education with the approval of the State Board of Education. In establishing such standards, the Commissioner shall classify, in so far as practicable, the fields or categories of administrative, supervisory, teaching or other educational services which are being performed in the school districts of this State and may, at his discretion, determine seniority upon the basis of years of service and experience within such fields or categories of service as well as in the school system as a whole. Whenever it is necessary to reduce the number of persons covered by this section, the board of education shall determine the seniority of such persons according to the standards established by the Commissioner of Education with the approval of the State Board of Education and shall notify such person as to his seniority status. \* \* \* All persons dismissed shall be placed on a preferred eligible list to be prepared by the board of education of the school district, and shall be re-employed by the board of education of the school district in order of seniority as determined by the said board of education. \* \* \* Should any superintendent of schools, assistant superintendent, principal or teacher under tenure be dismissed as a result of such reduction such person shall be and remain upon a preferred eligible list in the order of seniority for re-employment whenever vacancies occur and shall be re-employed by the body causing such dismissal in such order when and if a vacancy in a position for which such superintendent, assistant superintendent, principal or teacher shall be qualified. Such re-employment shall give full recognition to previous years of service.”

It is obvious that this statute gave to the local Board of Education the right to abolish the position of co-ordinator of instruction which was held by Pasquale Maggese. The appellant's change of assignment at no reduction in salary was

to make room for Mr. Maggese who was the former vice-principal of the high school and whose position of co-ordinator of instruction had been abolished. But the appellant contends that this statute cannot be applied to restore Mr. Maggese to the vice-principalship of the high school as he was not the holder of said position when the statute became effective and that the Commissioner of Education gave retroactive operation to the statute whereas it is only prospective in effect. The appellant relies on the case of *Nichols vs. Board of Education of Jersey City*, 9 N. J. 241 (1952) and *Lange vs. Board of Education of Borough of Audubon*, *supra*. These cases do not help the appellant. R. S. 18:13-19 as amended in 1951 and 1952, was not in effect when said causes of action accrued and could not be applied to the facts in either case. To do so would have been to give retroactive operation to said statute. As was stated by Justice Burling in *Nichols vs. Board of Education of Jersey City*, *supra*, on page 248 "words in a statute ought not to have a retrospective operation unless they are so clear, strong and imperative that no other meaning can be annexed to them. \* \* \* The language of the 1951 amendment is clear and unambiguous and makes no provision for retrospective operation." See *Lange vs. Board of Education of Borough of Audubon*, *supra*, to the same effect. It is clear that the Commissioner of Education did not give retroactive operation to the statute in the instant case. The enactment of Chapter 292 of the Laws of 1951 as stated by the Court in *Nichols vs. Board of Education of Jersey City*, *supra*, indicated a change in policy and did not inure to the benefit of persons who had been dismissed, or had a change of employment category prior to the enactment of said statute. However, it does apply to all dismissals and changes of employment category occurring after its enactment. Inasmuch as the changes in employment category affecting both the appellant and Maggese occurred in 1953, after the enactment of the 1951 and 1952 amendments of said statute (R. S. 18:13-19), the Commissioner of Education properly gave only prospective effect to said legislation. The provisions of R. S. 18:13-19 as amended in 1951 and 1952, were properly applied in determining the status of the appellant's employment with the school district.

c. DID THE APPELLANT HAVE GREATER SENIORITY THAN MAGGESE TO THE POSITION OF VICE-PRINCIPAL OF THE HIGH SCHOOL?

We have already determined there is no tenure status in the position of vice-principal, but even if there were such status the appellant would have been denied no right his tenure afforded him. N. J. S. A. 18:13-19, *supra*, states: "any dismissals occurring because of the reduction of the number of persons under the terms of this section shall be made on the basis of seniority according to the standards to be established by the Commissioner \* \* \* ." The standards established by the Commissioner of Education to determine seniority pursuant to R. S. 18:13-19 among others provide:

"2. Seniority, pursuant to R. S. 18:13-19, shall be determined according to the number of academic or calendar years of employment, or fractions thereof, as the case may be, in the school district in specific categories as hereinafter provided. Seniority status shall not be affected by occasional absences or leaves of absence.

"3. Employment in the district prior to the adoption of these standards shall be counted in determining seniority.

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

“7. Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his seniority in any or all categories in which he previously held employment.

Whenever any person's particular employment shall be abolished in a category, he shall be given that employment in the same category to which he is entitled by seniority. If he shall have insufficient seniority for employment in the same category, he shall revert to the category in which he held employment immediately prior to his employment in the same category, and shall be placed and remain upon the preferred eligible list of the category from which he reverted until a vacancy shall occur in such category to which his seniority entitles him.”

Among the specific categories set forth in the standards so established is “high school vice-principal or assistant principal.” The appellant was first employed in the school district in 1940 and on June 3, 1953, had served thirteen years within the district and had served as vice-principal of the high school from October 1, 1948, to June 23, 1953, a period of a little less than five years. Pasquale Maggese was first employed in the district in July, 1927, and on June 23, 1953, except for the period from October 1, 1948, to September 1, 1950, had served for an overall period of approximately twenty-four years and had served as vice-principal of the high school from June 9, 1938, to September 15, 1948, a period of over ten years. In accord with the standards established to determine seniority, *supra*, it is clear that Mr. Maggese had seniority over the appellant as to calendar years of employment and also in the specific category of vice-principal of the high school. The appellant, August Lascari, having been removed from the category of vice-principal of the high school has a right to be placed upon a preferred eligible list to be prepared by the local Board for re-employment as vice-principal of the high school.

d. DID THE APPELLANT HAVE TENURE TO THE POSITION OF VICE-PRINCIPAL BECAUSE OF THE VETERAN'S TENURE ACT, R. S. 38:16-1?

This question we need not consider. It has been raised but not argued. Pasquale Maggese, not having been made a party to these proceedings, our expressions herein are not intended to adjudicate his rights in any respect.

Affirmed.

V

“ACADEMIC YEAR” AS DEFINED IN STATUTE MEANS THE PERIOD  
OF TIME BETWEEN THE OPENING OF SCHOOL AFTER GENERAL  
SUMMER VACATION AND THE CLOSING OF SCHOOL FOR NEXT  
SUCCEEDING SUMMER VACATION AS SPECIFIED IN CALEN-  
DAR ADOPTED BY LOCAL BOARD OF EDUCATION

ALVIN A. FRY,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF LOWER PENNS NECK,  
SALEM COUNTY,

*Respondent.*

For the Petitioner, Cassel R. Ruhlman, Jr.

For the Respondent, Thomas L. Smith.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner seeks to have the Commissioner declare the action of the respondent in refusing to continue him in his employment as Superintendent of Schools to be void and of no effect, to direct the respondent to reinstate him as Superintendent and to pay his salary in full as Superintendent of Schools from June 30, 1954.

This case is submitted on the pleadings, stipulation of facts, and briefs of counsel. A conference between counsel for both sides was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes on August 9, 1954, following which the stipulation and briefs were filed.

The Stipulation reads as follows:

“1. At its meeting of May 5, 1951, the following action was taken by Respondent:

‘Mr. Brabham moves that Dr. Alvin Fry be employed as Supervising Principal of Lower Penns Neck Schools, beginning August 1, 1951, ending June 30, 1954, at a salary of \$6,500.00 for the first year, \$6,800.00 for the second year, and \$7,100.00 for the third year, seconded by Mr. Brandriff. Roll call vote carried unanimously.’

“2. At its meeting of May 15, 1951, the following action was taken by Respondent:

‘On motion by Mr. Parker seconded by Mr. Brandriff that the board substantiate the President’s agreement with Dr. Fry to work 2 weeks in June and take 2 weeks off in August. Voice vote carried.’

“3. On May 24, 1951, Appellant and Respondent entered into a contract a true copy of which is annexed hereto as Schedule ‘A’.

- "4. Pursuant to said action of May 15, 1951, Appellant was employed by and worked for Respondent from June 18, 1951 to June 30, 1951, inclusive.
- "5. Following said employment from June 18, 1951 to June 30, 1951, Appellant was paid by Respondent the sum of \$250.00 less tax deduction of \$35.40, or a net sum of \$214.60, by check No. 1 dated July 14, 1951, a true copy of which is annexed hereto as Schedule 'B'.
- "6. Said payment is shown on the payroll record of Respondent dated July 10, 1951, as follows:

Name	Time	Salary	Other	Total	Tax	Amount of Warrant
Fry, Alvin A. <i>Sup. Prin.</i>	2 wks.	\$250.00		\$250.00	\$35.40	\$214.60

- "7. That portion of the payroll record of Respondent dated June 15, 1951, relating to Pauline Peterson, Appellant's predecessor as Supervising Principal, reads as follows:

Name	Time	Salary	Other	Total	Tax	Amount of Warrant
Peterson, Pauline H. <i>Sup. Prin.</i>	1 mo.			\$566.67	\$24.82	\$449.25

- "8. On August 13, 1951, Appellant reported to Respondent for work and thereafter was continually employed by Respondent until June 30, 1954, pursuant to the aforesaid contract (Schedule 'A')

- "9. That portion of the payroll record of Respondent dated September 10, 1951, relating to Appellant is as follows:

Name	Time	Salary	Other	Total	Tax	P & A	Amount of Warrant
Fry, Alvin A. <i>Sup. Prin.</i>	Plus 3 wks. 1 mo. Plus Adjustment			\$968.76	\$139.30	\$10.61	\$809.25

- "10. All teachers employed by the Respondent by contract for the year 1950-51 were employed by the terms of said contract from September 5, 1950, to June 30, 1951.

- "11. At its meeting of April 30, 1950, the following action was taken by Respondent:

'On motion of Mr. Banger, seconded by Mr. Parker and passed by unanimous vote of those members present, it was ordered that the following teachers be elected and paid for the ten-month term of 1950-1951 the salaries set opposite their respective names, in accordance with the schedule prepared and recommended by the

Teachers Committee and that this schedule be included in these minutes: . . . ' (followed by list of 47 names and respective salaries).

- "11. For the year 1950-1951, Respondent's schools were opened for pupils on September 6, 1950, and closed for pupils on June 15, 1951.
- "12. Pauline Peterson, Appellant's predecessor as Supervising Principal, ceased working on June 15, 1951, and performed no services for Respondent thereafter."

The above facts show that the petitioner was employed by respondent board of education as supervising principal of the Lower Penns Neck School beginning August 1, 1951, ending June 30, 1954. At his request, the respondent permitted him to work from June 18, to June 30, 1951, in order to be released from his duties during the first two weeks in August. The stipulated facts further state that Mrs. Pauline Peterson was the Supervising Principal of the Lower Penns Neck School District and was paid in full until June 30, 1951. Therefore, any employment of the petitioner as supervising principal prior to July 1, 1951, must have been in the capacity of a substitute supervising principal, since it has been well established that a school district can have only one supervising principal.

The Court of Errors and Appeals held in the case of *Schulz vs. Newark*, 132 N. J. L. 345:

"We conclude that the word 'teachers' as used in R. S. 18:13-16, amended by chapter 43, P. L. 1940, is to be distinguished from and is not inclusive of the expression 'substitute teachers.'"

Since the petitioner was not employed by the respondent for the period June 18 to June 30 as teacher, principal or assistant superintendent, and the supervising principalship was held by another properly certified person, his only capacity was that of substitute supervising principal; and, therefore, his employment was not within the provisions of R. S. 18:13-16 which reads as follows:

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

“An academic year, for the purpose of this section means the period between the time school opens in the district after the general summer vacation until the next succeeding summer vacation.”

The petitioner further contends that his employment from June 18 to June 30, 1951, was within the academic year and that, therefore, he has been employed by the respondent for the equivalent of more than three academic years in a period of four consecutive academic years, entitling him to tenure under section 18:13-16, *supra*.

The petitioner in his argument claims that the summer vacation within the meaning of section 18:13-16 did not start for teachers until June 30, 1951, since the termination date of the teachers' contracts in the district was June 30, 1951, although it is admitted that the schools of the district were closed on June 15, 1951, and teachers in general were not required to perform additional services after that date.

In interpreting a statute a court looks to the subject of the act and the object which it intends to accomplish. Statutory Construction, 3 Ed. Vol. 2 sec. 4814, p. 358. The Commissioner must look to the intent of the Legislature in the construction of R. S. 18:13-16, *supra*, in so far as academic year is concerned. In defining “academic year,” the Legislature used the statement “period of time between the time schools open in the district after the general summer vacation and the next succeeding summer vacation.”

“Vacation” is defined as follows:

*Webster's Columbia Concise Dictionary:*

“A stated interval in a round of duties. . . .”

*Funk & Wagnells Practical Standard Dictionary:*

“The intermission of the course of studies and exercises in an educational institution.”

*Black's Law Dictionary, 3d Edition:*

“The act or result of vacating, an intermission of procedure; a stated interval in the round of duties of one's employment.”

The Legislature in section 18:13-16, *supra*, provides that a person could acquire tenure:

“(a) after the expiration of a period of employment of three consecutive calendar years in that district unless a shorter period is fixed by the employing board, or (b) after employment for three consecutive academic years together with employment at the beginning of the next succeeding academic year, or (c) after employment, within a period of any four consecutive academic years, for the equivalent of more than three academic years, some part of which must be served in an academic year after July first, one thousand nine hundred and forty; . . . .”

It was not the intent of the Legislature in this statute to limit the employment by a board of education of a teacher, principal, superintendent, or assistant superintendent to an academic year; therefore, although “academic year” is used for the purpose of acquiring tenure, the statute does not prohibit the board from the employment of teachers, principals, superintendents, or assistant superintendents for a term over and above the academic year.

We must conclude that the academic year, as defined in the statute, means "the time between the opening of the schools after the general summer vacation and the next succeeding summer vacation" to be interpreted as the time between the opening of schools after the general summer vacation and the closing of school for the next succeeding summer vacation, as specified in the calendar adopted by the board of education of the local school district.

The Commissioner finds and determines that the employment of the petitioner by the respondent does not come within the provisions of R. S. 18:13-16, *supra*. The petition of appeal, therefore, is hereby dismissed. November 9, 1954.

VI

RESIGNATION WITHDRAWN BEFORE ACCEPTANCE IS NOT  
BEFORE BOARD FOR ACTION

ROY S. AUSTIN,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF MAHWAH, BERGEN COUNTY,  
*Respondent.*

For the Petitioner, Ruhlman & Ruhlman.

(Mr. Cassel Ruhlman, Jr., of Counsel)

For the Respondent, John Warhol, Jr.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner asks that the Commissioner issue an order to declare the action of the respondent in refusing to continue the employment of the petitioner as superintendent of schools to be void and of no effect, and to direct the respondent to reinstate the petitioner as superintendent of schools with full salary payment from June 15, 1954.

This case is submitted on the pleadings, stipulation of facts and briefs of counsel. A conference between counsel for petitioner and respondent was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes on August 9, 1954, following which the stipulation and briefs were filed.

The following facts have been stipulated:

The petitioner was employed by the respondent pursuant to three written contracts for the period from July 1, 1951, to June 30, 1954. Each of said contracts contained a provision by which either party could terminate said contract by giving the other party thirty days written notice.

The minutes of the respondent Board of Education meeting on April 12, 1954, contain the following:

"12. *Contract for Mr. Austin for 1954-1955 School Year: . . . .*  
It was moved by Mr. Gustafson, seconded by Mrs. Bartholf, that Mr.

Austin be given a contract as superintendent for the 1954-1955 school year at \$6,900.00. Vote by roll call. Ayes: Mrs. Bartholf, Messrs. DeYoe, Gustafson and Tibbals. Nays: Mesdames Glasgow, Macarthur and Petri. Messrs. Hopkins and Knowlton. The motion was defeated.”

“13. *Mr. Austin's Resignation*: Mr. Tibbals then read the following, dated April 12, 1954. “Please accept this my resignation as superintendent of schools to become effective thirty days from date according to contract. Sincerely,” signed by Roy S. Austin. Mr. Tibbals called a ten minute recess at 10:30.”

The respondent Board of Education took no action on the resignation at the April 12 board meeting.

The minutes of the respondent Board of Education of May 10, 1954, contain the following:

“6. *Mr. Austin to remain to July 1, 1954*: Mr. Tibbals announced that Mr. Austin, who had been informally requested to continue as superintendent of schools to July 1, 1954, had agreed to do so.”

The Board took action on several resignations, but no action was taken on the resignation submitted by Mr. Austin on April 12.

The minutes of May 27, 1954, reveal the following:

“4. *Minutes Approved*: It was moved by Mr. Hopkins, seconded by Mr. DeYoe that in paragraph No. 10 of the minutes of May 10, 1954, starting with “all of which” and ending with “at the present time” be stricken from the minutes and a corrected copy be sent to all board members, and that paragraph No. 6 be changed to read that Mr. Austin had been informally requested to continue as superintendent of schools through June 30, 1954. Carried. It was moved by Mr. Hopkins, seconded by Mrs. Macarthur, that the minutes as corrected be accepted. Carried.

“5. *Mr. Austin's Salary for June, 1954*: It was moved by Mr. Knowlton, seconded by Mrs. Macarthur, that Mr. Austin be paid in full for the month of June on the 30th of June, 1954. Carried.”

On June 2, 1954, the petitioner by letter to the respondent withdrew his resignation of April 12, 1954. The minutes of the respondent Board of June 8, 1954, contain the following:

“6. *Mr. Austin Removed from Superintendency*: It was moved by Mr. Hopkins, seconded by Mrs. Petri, that Mr. Austin's contract be terminated as of this date and his services be no longer required or accepted as of this date and he is notified that he surrender all school property to the clerk of the board no later than June 10, 1954, and he absent himself from school premises as of June 10, 1954, and that he be notified of this action by registered mail, return receipt requested. Mr. Warhol's opinion was that Mr. Austin had given the board unilaterally a thirty day notice, dated April 12, 1954. Mr. DeYoe said he did not think there had been a resignation, but that he did feel that Mr. Hopkins' motion was consistent with the statement that he had made at the meeting of April 12, 1954 to

the effect that on that date, Mr. Austin had given the board 30 days notice of termination of his contract. Vote by roll call. Ayes: Mesdames Glasgow, Macarthur and Petri. Messrs. DeYoe, Hopkins and Knowlton. Nays: Mrs. Bartholf, Messrs. Gustafson and Tibbals. Motion carried.

“7. *Mr. Austin Paid June 25, 1954:* It was moved by Mrs. Macarthur, seconded by Mr. Hopkins, that Mr. Austin be paid for the period terminating June 10, 1954 and that his pay be granted without request for any services until June 25, 1954, this to be without prejudice to the board and that the board does not waive any rights by reason of any action taken heretofore. Vote by roll call: Ayes: Mesdames Bartholf, Glasgow, Macarthur and Petri. Messrs. DeYoe, Hopkins and Knowlton. Nays: Messrs. Gustafson and Tibbals. Motion carried.”

The petitioner continued serving the respondent as Superintendent of Schools until June 25, 1954, but the question of whether under the contract or otherwise was left by the stipulation to the discretion of the Commissioner of Education. The appellant received from the respondent his regular salary to June 15, 1954, but refused to accept a check from the respondent purporting to pay him from June 15 to June 25, 1954, for the reason that it was inadequate to cover his salary pursuant to said contract of May 14, 1953.

On June 10, 1954, petitioner received the following letter from the respondent:

“June 9, 1954

“Mr. Roy S. Austin  
Superintendent of Schools  
Mahwah, New Jersey

“Dear Mr. Austin:

I am in receipt of your letter of June 2, 1954, in which you withdraw your resignation of April 12, 1954.

“The above letter was read at a special meeting of the board on June 8, 1954, and I am instructed to inform you that your resignation, dated April 12, 1954, was accepted at that time.

“I also was instructed to inform you that at last night’s meeting the board terminated your contract as of last night. You are to surrender all school property to me no later than June 10, 1954 and absent yourself from school premises as of that date.

Very truly yours,  
MILDRED A. HELLER  
Secretary.”

MAH

The minutes of June 14 meeting contain the following letter from Mr. Austin:

(Delivered in person to Mildred A. Heller, Secretary to Mahwah Board of Education with a copy to Mr. Tibbals, President of Mahwah Board of Education.)

"Mahwah, New Jersey  
June 19, 1954

"Board of Education  
Mahwah Township Schools  
Mahwah, New Jersey.

"Ladies and Gentlemen:

"This is to acknowledge your letter dated June 9, 1954, in which you informed me that the Mahwah Board of Education terminated my contract as of June 8, 1954 and requested that I surrender all school property to the Secretary of the Board of Education not later than June 10, 1954.

"It is my contention that I have tenure and, therefore, I am taking appropriate action to protect my rights in this regard. Moreover, I shall continue to report to school each weekday, except Saturday, unless the solicitor for the Mahwah Board of Education and my attorney, Mr. Cassel R. Ruhlman, Jr., of Trenton, N. J., enter into a stipulation, that it won't be necessary for me to report to work and, furthermore, this will, in no way, prejudice my status as Superintendent of the Mahwah Public Schools.

"I have returned all school property as requested in your letter, dated June 9, 1954, without prejudice to my tenure rights.

"Sincerely yours,

(Signed) ROY S. AUSTIN."

The respondent presented seven separate defenses, none of which is valid in the opinion of the Commissioner. The defenses and the Commissioner's views on each are as follows:

#### FIRST SEPARATE DEFENSE

"Appellant resigned as superintendent and resignation was accepted by the Respondent."

In answer to this defense, the petitioner argues that a resignation, to become effective, must be accepted. A resignation withdrawn before acceptance is not legally before a board of education and can no longer be accepted. In the case of *Belles vs. Board of Education of the Township of Wayne, Passaic County*, 1938 S. L. D. 556, it is stated on page 557:

"Acceptance is to offer what a lighted match is to a train of gun powder. It produces something which cannot be recalled or undone. But the powder may have laid until it has become damp, or the man may

remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance." *Anson in "Principles of the Law of Contracts," 4th American Edition, 34.*

In New Jersey, it has been held that in many cases in which resignations have appeared to be immediate and unconditional, that such resignations were not complete until accepted by the proper authority. *Townsend vs. Trustees of School District No. 12 of Essex County*, 41 N. J. L. 312; *State vs. Board of Freeholders*, 44 N. J. L. 390; *Love vs. Mayor of Jersey City*, 40 N. J. L. 459; *State vs. Ferguson*, 31 N. J. L. 107. In *Fryer vs. Norton*, 67 N. J. L. 23, it was also specifically held by the Supreme Court:

"The general rule is that the resignation of a municipal officer, to be complete, must be accepted by the authority having power to fill the vacancy created thereby."

The Commissioner of Education held in the case of *Belles vs. Board of Education of the Township of Wayne, Passaic County, supra*, at page 558:

"It therefore follows that since a resignation of a public officer, whether prospective or unconditional, must in New Jersey be accepted by the proper authority before it can be considered complete, such resignation is capable of being withdrawn at any time before actual acceptance."

#### SECOND SEPARATE DEFENSE

"Appellant terminated his employment by notice to the respondent."

It is true that the petitioner did submit a resignation to the respondent on April 12 to become effective in thirty days. The respondent, however, not only did not accept this resignation at its meetings of April 12, May 10 or May 27, but by continuing to accept services from the petitioner and to pay his salary, the Board entered into an agreement with him which superseded his resignation and, thus, left his employment in its previous status. On June 2, 1954, the petitioner withdrew his resignation by letter to the respondent.

#### THIRD SEPARATE DEFENSE

"Respondent terminated the employment of the superintendent by appropriate action and by notice."

The minutes of the respondent of May 10 state that the President announced that the petitioner had agreed to continue until July 1, 1955, as Superintendent of Schools. This was confirmed by the respondent board at the May 10 meeting and also by action of the Board at the meeting of May 27, as expressed in the official minutes of the meeting:

"It was moved by Mr. Knowlton, seconded by Mrs. Macarthur that Mr. Austin be paid in full for the month of June on June 30, 1954—Carried."

There is no evidence that the respondent attempted to terminate the employment of the petitioner until after the withdrawal of his resignation on June 2, 1954.

#### FOURTH SEPARATE DEFENSE

“Appellant breached his agreement of employment with respondent.”

The Commissioner can find no evidence submitted to support this contention.

#### FIFTH SEPARATE DEFENSE

“The employment of the appellant originally was not in accordance with the statute in such case made and provided.”

The stipulated facts do not support this separate defense. The respondent accepted services of the petitioner under terms of the regular contracts as prescribed by statute.

#### SIXTH SEPARATE DEFENSE

“Alleged agreements of employment between appellant and respondent contained terminal dates and as such could not give rise to tenure.”

The contracts in question contained terminal dates as do all contracts made by boards of education with teachers, principals, and superintendents when the standard form prescribed and supplied by the Commissioner of Education pursuant to R. S. 18:13-7 is used. Terminal dates in such contracts do not prevent the employee from obtaining tenure pursuant to R. S. 18:13-16. A person holding a position protected by said statute may not waive his tenure rights while keeping his position. *Lange vs. Board of Education of the Borough of Audubon*, 26 N. J. Super. 83. (Appellate Division, 1953.)

#### SEVENTH SEPARATE DEFENSE

“Appellant is not entitled to tenure as superintendent within the meaning of the statutes in such case made and provided.”

The statute in question, R. S. 18:13-16, provides:

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

year immediately preceding July first, one thousand nine hundred and forty, shall be counted in determining such period or periods of employment in that district.

“An academic year, for the purpose of this section, means the period between the time school opens in the district after the general summer vacation until the next succeeding summer vacation.”

It is apparent from the facts in this case that the petitioner was employed by the respondent from July 1, 1951, to June 30, 1954. As previously stated under the Second Separate Defense, the original resignation of the petitioner was superseded by agreement with the Board and his employment, therefore, remained unaffected by it. The petitioner in fulfilling the contract of May 14, 1953, completed three full calendar years of employment, thus meeting the requirements for tenure of office under the provisions of R. S. 18:13-16, *supra*.

It is the opinion of the Commissioner in this case that the resignation of the petitioner, which was submitted on April 12, 1953, was withdrawn by him before its acceptance by the respondent Board of Education. The action of the respondent in the attempted dismissal of the petitioner on June 8 was a nullity. The petitioner has completed a period of employment of three full calendar years and is, therefore, entitled to tenure in his position as superintendent of schools under R. S. 18:13-16, *supra*.

The petition is sustained and the respondent Board of Education is directed to reinstate the petitioner as superintendent of schools in the Township of Mahwah and to pay his full salary from June 15, 1954. January 13, 1955.

VII

RICHARD BLACK

IN RE RECOUNT OF BALLOTS CAST AT THE SPECIAL SCHOOL ELECTION IN THE TOWNSHIP OF EGG HARBOR, ATLANTIC COUNTY.

For the Petitioner, Mr. Harry Gaines.

For the Board of Education, Mr. Louis D. Champion.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the special election held on December 16, 1954, in the Township of Egg Harbor, Atlantic County, on a proposed bond issue of \$375,000 for the construction of a new school:

<i>Voting District</i>	<i>Polling Place</i>	<i>Yes</i>	<i>No</i>	<i>Void</i>	<i>Total</i>
District No. 1	Scullville School	66	18	1	85
District No. 2	Bargaintown School	48	40	1	89
District No. 3	Cardiff School	49	47	1	97
District No. 4	Farmington School	36	54	1	91
District No. 5	West Atlantic City School	20	42	3	65
Totals .....		219	201	7	427

Richard Black petitioned the Commissioner for a review of the election and a recount of the ballots on the grounds that:

1. The various election boards did not count the votes properly and, if properly counted, would change the result of the election.
2. More votes were voted in one district than were counted by the election officials.
3. The election board failed to keep proper records and people were allowed to vote who were not properly registered.

The review and recount were conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Office of the County Superintendent of Schools of Atlantic County in Mays Landing on February 2, 1955.

At the opening of the review and recount, counsel for the Egg Harbor Township Board of Education moved that the petition be dismissed on the grounds that the petition had not been filed within the twenty days' period prescribed in section 18:7-89 of the Revised Statutes, which reads as follows:

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

Counsel for the petitioner contended that the appeal had been mailed on the twentieth day in order for it to have been received in the office of the Commissioner of Education on the twenty-first day after the election. At a conference of attorneys, it was agreed that decision on the motion to dismiss the petition would be reserved and that the recount should continue.

During the review of the election, several witnesses were called who were present at the various election districts. The testimony did not support the allegations in the petition. There was no evidence to support the contention in the petition that the votes were improperly counted, that more votes were cast in one district than had been counted by the election board. In this instance, the voters who testified did not know that the first ten ballots in every election district had been forwarded to the office of the County Superintendent of Schools for use by the County Clerk of Atlantic County in the event there had been requests for absentee ballots. The testimony did not support the claim that non-registered voters had been permitted to vote, but does support the fact that the election board had checked the signature copy register list as required by law.

After the testimony had been completed, the ballots were then recounted. In all districts there was complete agreement between the number of voters who had signed the poll books, the number of ballot stubs, and the number of ballots counted. The result of the recount are as follows:

217 votes for and 200 votes against the proposal, with 10 ballots voided by agreement of counsel for petitioner, counsel for the board of education, and the Assistant Commissioner of Education in charge of the recount.

At the conclusion of the recount, counsel for the board of education stated that he would not press for a ruling on his motion to dismiss the appeal.

The Commissioner finds and determines that there were 217 votes for and 200 votes against the proposed bond issue of \$375,000 for the construction of a new school which was submitted to the voters of Egg Harbor Township at a special election held on December 16, 1954; therefore, the proposal was adopted.

March 16, 1955.

### VIII

#### IN THE MATTER OF THE RECOUNT OF BALLOTS CAST IN THE ANNUAL SCHOOL ELECTION IN THE BOROUGH OF WANAQUE, PASSAIC COUNTY.

##### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the results of the annual meeting of the legal voters held on February 8, 1955, for the election of members of the Board of Education of the Borough of Wanaque in the County of Passaic:

George Hildebrand .....	243 votes
Gertrude Joseph .....	177 votes
Raymond L. Jobes .....	148 votes
Louis H. Carlson .....	177 votes
Leonard DeVito .....	247 votes

Mrs. Gertrude Joseph petitioned the Commissioner for a recount on the grounds that there was a tie vote between her and Louis H. Carlson for the third person to be elected to membership on the Board of Education.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes on March 11, 1955, in the Passaic County Court House.

There were six votes which could not be counted, one of which showed votes for all five candidates; three wherein there was no cross (×) or plus (+) or check (√) in the place or square at the left of the names of the candidates; and two as a result of distinguishing marks.

At the conclusion of the recount in Paterson, the vote stood as follows:

George Hildebrand .....	240 votes
Gertrude Joseph .....	176 votes
Raymond L. Jobes .....	148 votes
Louis H. Carlson .....	178 votes
Leonard DeVito .....	245 votes

The Commissioner of Education finds and determines that Leonard DeVito, George Hildebrand and Louis H. Carlson were elected to membership on the Board of Education of the Borough of Wanaque, Passaic County, for a term of three years.

March 16, 1955.

IX

IN THE MATTER OF THE PETITION OF THE BOARD OF EDUCATION OF THE  
TOWN OF MORRISTOWN FOR A RECOUNT OF THE BALLOTS CAST AT  
THE ANNUAL SCHOOL ELECTION HELD ON FEBRUARY 8, 1955.

For the Board of Education, Schenck, Price & Smith.  
(Mr. Ben D. White, of Counsel)

For the N. J. Education Association, Mr. Cassel R. Ruhlman, Jr.

DECISION OF THE COMMISSIONER OF EDUCATION

At the annual meeting of the legal voters, eight proposals were submitted for approval or rejection. The announced result on Proposal No. 7, which reads as follows: "Resolved, That there be raised for additional salary adjustments \$37,500.00 for the ensuing school year (1955-1956)" was 832 "Yes" and 831 "No."

The Board of Education, by formal petition of appeal signed by the President, petitioned the Commissioner for a recount of the ballots cast on Proposal No. 7, for the following reasons:

1. The said Board is informed and asserts the fact to be that in three of the polling districts twenty ballots were rejected, some of which were against Proposal No. 7 and some should have been counted.
2. The Board is informed and asserts the fact to be that various improperly marked ballots were counted in favor of Proposal No. 7 in sufficient number to change the result.
3. The Board is informed and asserts the fact to be that many errors were made in counting of said ballots on Proposal No. 7 sufficient to change the result.

A recount of the ballots cast at the annual meeting on Proposal No. 7 was conducted by the Assistant Commissioner in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Morris County in Morristown on March 9, 1955.

At the conclusion of the recount of the 1,711 votes cast, the results were as follows: "Yes"—819; "No"—820; 72 ballots referred for determination by the Assistant Commissioner and attorneys. It was agreed that 28 of these could not be counted because they had not voted either "Yes" or "No" on Proposal No. 7; 4 ballots could not be counted as they had been voted both "Yes" and "No" on Proposal No. 7; 27 ballots which had crosses or check marks over the word "Yes" or "No" could not be counted as there was no cross (×) plus (+) or check (√) in the square to the left of and opposite the word "Yes" or "No" as required in section 18:7-32 which states:

"If the voter makes a cross (×) or plus (+) or check (√) mark in black ink or black pencil in the square to the left of and opposite the word 'Yes' it shall be counted as a vote in favor of the proposition.

"If the voter makes a cross (X) or plus (+) or check (V) mark in black ink or black pencil in the square to the left of and opposite the word 'No,' it shall be counted as a vote against the proposition. In case no marks are made in the square to the left of and opposite either word 'Yes' or 'No,' it shall not be counted as a vote either for or against the proposition."

There were 12 ballots which had the words "Yes" or "No" written in the square to the left of the words "Yes" or "No." These ballots could not be counted since there was no cross (X) plus (+) or check (V) mark in the square to the left of the word "Yes" or "No" as required by section 18:7-32, *supra*. One ballot was marked with a cross (X) opposite the word "Yes" which had been erased and then a cross (X) had been marked plainly opposite the word "No." This ballot, at the request of counsel, was referred to the Commissioner for determination.

The Commissioner, on review of the finding of the recount, will not determine whether the referred ballot should be counted as a "No" vote or not counted, since it would not change the result of the vote on Proposal No. 7.

The Commissioner finds and determines that at the annual meeting of the legal voters of the Town of Morristown, Morris County, held on February 8, 1955, 819 votes were cast in favor of the Proposal No. 7:

"Resolved, That there be raised for additional salary adjustments \$37,500.00 for the ensuing school year (1955-1956)"

and 820 votes were cast against the proposal. Therefore, the proposal was not approved at the annual meeting.

March 16, 1955.

X

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST IN THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF EAST GREENWICH, GLOUCESTER COUNTY.

For the Petitioner, William B. Kramer, Esq.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters of the School District of the Township of East Greenwich, Gloucester County, held on February 8, 1955, for the one-year term:

William H. Doerrmann, Jr. ....	110 votes
William A. Mullen, Jr. ....	112 votes

William H. Doerrmann, Jr. petitioned the Commissioner for a recount for the following reasons:

1. The election board made the public announcement at the close of the meeting that he had been elected to the one-year term by a vote of

112 to 110 and, after some discussion with persons present at the polling place and a recheck of tally sheets, determined that his opponent had been elected by a vote of 112 to 110.

2. Only one tally sheet was kept.
3. Four ballots were rejected which could have been counted.

A recount of the ballots cast was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Court House in Gloucester County, Woodbury, on February 15, 1955.

There were no ballots rejected by the local election officials as stated in the petitioner's request for a recount. At the conclusion of the recount for membership to the one-year term on the Board of Education of the Township of East Greenwich, the results were as follows:

William H. Doerrmann, Jr. ....	110 votes
William A. Mullen, Jr. ....	110 votes

At the request of the attorney for the petitioner, two ballots marked Exhibit P-1, were referred to the Commissioner for determination. These two ballots were properly marked with a cross (X) in the square to the left of the name of William A. Mullen, Jr. They were also properly marked for the five questions also on the ballot. However, the voter on one ballot had crossed out the word "Yes" on all five questions, and on the other the voter had marked out the word "Yes" on four questions and the word "No" on the fifth.

In reviewing this recount and the ballot referred to him for determination, the Commissioner finds that the ballots marked Exhibit P-1 are properly marked with a cross (X) in the square to the left of the name of William A. Mullen, Jr., in accordance with section 18:7-31 of the Revised Statutes, which reads in part as follows:

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

These two ballots will be counted because it is the opinion of the Commissioner that the marks over the words "Yes" and "No" on the public question were not made with the intention of making them other than secret ballots. In cases involving school elections, the Commissioner held

"that in the absence of any provision in the School Law regarding other marks on the ballot or erasures, ballots should be counted if properly marked in the square even though other marks appeared or erasures appeared on the ballot, unless the markings are extremely irregular with intention to make it other than secret ballot." In *re East Rutherford Annual School Election*, 1938 School Law Decisions, at p. 186; *Annual School Election in the Township of Union, Union County*, decided April 19, 1948; *Annual School Election in the Borough of Lodi*, decided May 25, 1948.

The Commissioner's determination to count these ballots is also in accord with N. J. S. A. 19:16-4, which 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."

The Commissioner finds and determines that at the Annual School Election held on February 8, 1955, for membership to the Board of Education of the Township of East Greenwich, William A. Mullen, Jr. received 112 votes and William H. Doerrmann, Jr. received 110 votes for the one-year term. Therefore, William A. Mullen, Jr. was duly elected to membership for the one-year term.

March 16, 1955.

## XI

### IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE BOROUGH OF NORTH CALDWELL, ESSEX COUNTY.

#### DECISION OF THE COMMISSIONER OF EDUCATION

At the annual meeting of the legal voters of the Borough of North Caldwell, Essex County, held on February 8, 1955, the following special question was placed on the ballot:

"Resolved, that the Board of Education of the Borough of North Caldwell, in the County of Essex, is hereby authorized:

- (a) To construct additions to the new North Caldwell Public School situate in the school district on the westerly side of Mountain Avenue at Gould Avenue, North Caldwell, purchase the school furniture and other equipment necessary for said additions, and to expend therefor not exceeding \$195,000; and
- (b) To issue bonds of the school district for said purpose in the principal amount of \$195,000, thus using up \$195,000 of the \$215,208.30 borrowing margin of the Borough of North Caldwell previously available for other improvements.

The voters were asked to vote "Yes" or "No" on the proposition. The results of the election as announced, showed 384 votes in favor of and 382 votes against the proposal.

Mr. Charles F. Doerk, a voter and citizen of the Borough of North Caldwell, filed a petition of appeal with the Commissioner of Education, request-

ing an official review and recount of the votes cast on the proposal for the following reasons:

1. It was not until approximately 3:00 A. M. that the official tally clerks finally announced the result of the referendum. The reason for this situation is that a state of utter confusion surrounded the counting of the ballots. The tally clerks were not in accord by reason of errors committed in tallying the ballots, and on many occasions during the tallying, the tally clerks were indiscriminately changing their records.
2. The tally clerks were justifiably tired and did finally, in order to reach a decision, rely upon each other's tally rather than upon the official tally they had each separately made.
3. At least 7 or 8 ballots were counted as to the election of members of the board of education but were not counted as to the referendum, although the voters had definitely set forth their intention on the ballot.
4. Two other ballots were not counted by reason of the fact that the voters had not signified their intention by mark directed to be made on the ballot but had, in another fashion, expressed their intention to vote against the proposition.
5. It has been reported that one voter, who had voted an absentee ballot, also appeared in person at the election and voted.

A review and recount of the votes cast on the special question was conducted by the Assistant Commissioner in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Essex County in Newark on March 8, 1955.

The results of the review and recount were as follows:

1. There were 773 votes cast at the annual election, there were 773 names and addresses signed on the poll list, there were 773 stubs of ballots filed, and 773 ballots numbered by the local election officials.
2. The official list of absentee voters was checked against the poll list and no one who received and voted an absentee ballot had signed the poll list to vote at the election.
3. At the conclusion of the recount, there were 376 votes for and 367 votes against the proposal, with 30 ballots held for further review. Of these 30 ballots, 2 could not be counted since they showed votes for and against the proposal; 10 ballots could not be counted because the voters had failed to vote for or against the proposal; and 18 ballots were then referred to the Commissioner of Education for review. There were 7 ballots referred by the Assistant Commissioner, although representatives of both parties were agreeable that they could be counted. These ballots are marked Exhibit C-1—3 ballots with a cross (X) through the word "No" and no cross (X) plus (+) or check mark (✓) in the square to the left of the word "No." 1 ballot with a cross (X) through the word "Yes" and no cross (X) plus (+) or check mark (✓) in the square to the left of the word "Yes."

Exhibit C-2—1 ballot marked with two crosses (××) in the space at the left of the word “No.”

Exhibit C-3—2 ballots voted for three members of the board of education, instead of two, voided by election officials.

1 ballot marked with a cross (×) in the square to the left of the word “No.”

1 ballot marked with a cross (×) to the left of the word “Yes.”

Eight ballots were referred to the Commissioner at the request of the petitioner. These ballots are marked:

Exhibit A-1—3 ballots with the word “No” written in both the square to the left of the word “Yes” and in the square to the left of the word “No,” but no cross (×) plus (+) or check mark (√) in the square to the left of the words “Yes” or “No.”

Exhibit A-2—1 ballot with the word “No” written in the square to the left of the word “No,” but no cross (×) plus (+) or check mark (√) in the square to the left of the word “No.”

Exhibit A-3—1 ballot marked with a cross (×) in the square to the left of the word “No” and a line drawn under the word “No.”  
1 ballot marked with a cross (×) in the square to the left of the word “No” and a cross (×) over the word “No.”

Exhibit A-4—2 ballots marked with a cross (×) in the square to the left of the word “No” and a line drawn through the word “Yes.”

Three ballots were referred to the Commissioner at the request of a representative of the Board of Education and were marked:

Exhibit R-1—3 ballots with the word “Yes” written in the square to the left of the word “Yes,” but no cross (×) plus (+) or check mark (√) in the square to the left of the word “Yes.”

4. The official report of the count of the absentee votes was received from the Essex County Board of Elections. This report showed 7 votes for and 9 against the proposal.

After checking the review of the election, the results of the recount and examining the ballots referred to him for determination, it is the opinion of the Commissioner that ballots marked Exhibits C-1, A-1, A-2 and R-1 cannot be properly counted since they do not have a cross (×) plus (+) or check mark (√) substantially in the square to the left of the words “Yes” or “No.” Ballots without proper marks in the squares have always been voided by the Commissioner of Education.

In the case of *Evans vs. Clementon Township Annual School Election Recount*, 1938 School Law Decisions 180, the Commissioner said:

“Even though it might be considered that the intent of the voter could be ascertained, they do not meet the statutory requirement of having a cross or plus mark before the name.”

This is in accord with section 18:7-32, as amended by Chapter 183 of the Laws of 1954, which states in part:

“If the voter makes a cross (X) or plus (+) or check (✓) mark in black ink or black pencil in the square to the left of and opposite the word ‘Yes,’ it shall be counted as a vote in favor of the proposition.

“If the voter makes a cross (X) or plus (+) or check (✓) mark in black ink or black pencil in the square to the left of and opposite the word ‘No,’ it shall be counted as a vote against the proposition. In case no marks are made in the square to the left of and opposite either the word ‘Yes’ or ‘No,’ it shall not be counted as a vote either for or against the proposition.”

Although the General Election Law is not binding in school elections, the Commissioner of Education in counting and voiding ballots in school elections has looked to the General Election Law for guidance. Voiding of these ballots is in accord with N. J. S. A. 19:16-3g which reads in part as follows:

“No vote shall be counted. . . . for or against any public question unless the mark made is substantially a cross (X), plus (+) or check (✓) and is substantially within the square.”

Exhibits A-3, A-4, C-2—Six ballots properly marked with a cross (X) in the square to the left of the word “No” with additional markings. Such markings are frequently observed in counting ballots and do not void the ballots unless, in the judgment of the Commissioner the unusual markings are intended to identify the ballots. The Commissioner is satisfied that the voters did not intend to identify the ballots and they will be counted. See *Annual School Election in the Township of Union, Union County*, decided April 19, 1948; *Annual School Election in the Borough of Lodi, Bergen County*, decided May 25, 1948. The Commissioner’s determination to count these ballots is in accord with N. J. S. A. 19:16-4, which reads:

“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.”

Exhibit C-3—One ballot properly marked with a cross (X) in the square to the left of the word “No.” One ballot properly marked with a cross (X) to the left of the word “Yes.” The voters had voted for three candidates instead of two, who were to be elected. The Commissioner determines that

these two ballots shall be counted for the proposal. This determination is in accordance with previous decisions of the Commissioner of Education, and N. J. S. A. 19:16-3f of the General Election Law, to which the Commissioner has looked for guidance in counting and voiding ballots in recounts. N. J. S. A. 19:16-3f reads as follows:

“If a voter marks more names than there are persons to be elected to an office, or writes or pastes the name of any person in the column designated personal choice, whose name is printed upon the ballot as a candidate under the same title of office, or his choice cannot be determined, his ballot shall not be counted for that office, but shall be counted for such other offices as are plainly marked.”

The following is a tabulation of votes counted for or against the proposal and ballots rejected:

	<i>Yes</i>	<i>No</i>	<i>Rejected</i>
Ballots recounted at Newark .....	376	367	12
Absentee votes .....	7	9	
Exhibit A-1 .....			3
Exhibit A-2 .....			1
Exhibit A-3 .....		2	
Exhibit A-4 .....		2	
Exhibit R-1 .....			3
Exhibit C-1 .....			4
Exhibit C-2 .....		1	
Exhibit C-3 .....	1	1	
Totals .....	384	382	23

The Commissioner finds and determines that 384 votes were cast for and 382 votes were cast against the proposal submitted to the voters of the Borough of North Caldwell at the Annual School Election held on February 8, 1955. Therefore, the proposal was adopted.

March 16, 1955.

XII

SCHOOL CARPENTER NOT CLASSIFIED AS JANITOR

JAMES BOWEN,

*Petitioner,*

*vs.*

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

For the Petitioner, William A. Massa.

For the Respondent, Robert H. Doherty.  
(George Blaney, of Counsel)

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner appeals to the Commissioner of Education for reinstatement to the payroll of the Maintenance Department of the respondent Board of Education on the grounds that his removal from his office and employment is illegal, that he has tenure of office in his position and the right of appeal and a hearing before the Board of Education of the City of Jersey City.

The respondent in its answer denies that the petitioner's position is protected by the tenure statute and in a separate defense claims:

"There is no law, statutory or otherwise, or any rule or regulation which affords the petitioner tenure in his former position with respondent."

At a conference of counsel for petitioner and respondent held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes, the following facts were stipulated:

1. That the petitioner was employed as a carpenter in the Maintenance Department of the Board of Education of Jersey City on or about August, 1937, as a per diem employee at a wage of \$25.20 per diem.
2. That the petitioner remained in the employ of the Board of Education of Jersey City until October 5, 1953, on which date he was notified that his employment was terminated on October 1, 1953, for reasons of economy.

The petitioner contends that his dismissal was due solely to political considerations and that "reasons of economy" is palpably false as evidenced by the hiring of other employees in the same capacity since the date on which he was dismissed. He further contends that his dismissal was in violation of R. S. 18:5-66.1 and 18:5-67 which read 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 school district, subject to the following restrictions and conditions. No such reduction shall be made by reason of residence, age, sex, race, religion or political affiliation; but when any such janitor,

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

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

The petitioner further contends that his dismissal was not in accord with the Rules of the Jersey City Board of Education which read as follows on page 94:

- "(e) He shall have supervision over all mechanics that the Board of Education may appoint.
- "(h) The Supervisor of Buildings and Equipment shall have the power to employ suitable persons when necessary; to transfer employees at his direction; and to suspend employees for negligence, inefficiency, accepting imperfect or inferior materials, short quantities or weights, violations of the rules or other proper cause. He shall report immediately such action to the President of the Board of Education and the Chairman of the Committee on Buildings, who shall make a report with their recommendations thereon to the Board of Education at its next meeting."

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes on November 23, 1954, in the office of the County Superintendent of Schools of Hudson County in Jersey City.

The stipulation of facts and evidence show that the petitioner was in continuous employment by the Board of Education of Jersey City as a carpenter from August 1937 to October 1953, spending his time in the carpentry shop of the Board of Education and doing general carpentry work in the various schools of the district.

On October 5, 1953, the petitioner was shown a letter by Mr. Schaeffer, his immediate superior, stating that he was being dismissed for reasons of

economy. The petitioner refused to accept dismissal from Mr. Schaeffer and continued to report for work for two days. The letter was addressed to Mr. Louis J. Massano, Secretary, Board of Education, 2 Harrison Avenue, Jersey City, New Jersey, and reads as follows:

“For some time I have seriously considered the possibility of severing our relations with one of the carpenters employed in the Maintenance Department.

I am, therefore, taking this opportunity of respectfully requesting you to recommend to the Board of Education that James Bowen of 2540 Hudson Boulevard, Jersey City, N. J. be advised that his services are no longer required for reasons of economy.

“Sincerely yours,  
/s/ WALTER ECKERT  
Supervisor of Maintenance.”

Mr. Eckert, the Supervisor of Maintenance, testified that:

“Mr. Bowen’s duties as a carpenter in the Board of Education, as he stated before, was maintenance report work and we did have to cut the force down to a certain extent and, due to the type of work that Mr. Bowen was performing, his work was not satisfactory as far as me being Supervisor of Maintenance is concerned. I figured that he would be the logical man that I was going to lop off my payroll for reasons of economy.”

The Supervisor of Maintenance further testified that on October 1, 1953, he had twelve carpenters on the payroll of the Maintenance Department as of November, 1954, he had ten carpenters on the payroll, and that Mr. Bowen had not been replaced. His testimony continued to support the fact that Mr. Bowen had been the person selected to be dismissed for reasons of economy as a result of unsatisfactory performance of his duties and his attitude toward his superior.

The Commissioner finds and determines that the employment of the petitioner was that of a carpenter and not that of a janitor, janitor-engineer, custodian or janitorial employee and, therefore, is not within the statutory provisions of R. S. 18:5-66.1.

“Janitor” is defined in Words and Phrases, Permanent Edition, as follows:

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

School janitors, janitor-engineers, janitorial employees, custodians, are required to become members of the Teachers’ Pension and Annuity Fund in accordance with R. S. 18:13-25 which reads in part as follows:

“In addition to the above-mentioned persons defined as teachers, there shall also come under the provisions of this article, for pension and an-

nuity purposes, and subject to the same provisions as apply to teachers, any janitor, assistant janitor, janitress, engineer, fireman or any janitorial employees of a board of education of any school district, or of any public school, high school, normal school, model school, training school, vocational school, truant reformatory school or parental school within the State. . . .”

There was no evidence that the Board of Education of Jersey City had made any deductions or that the petitioner had made any contributions to the Teachers' Pension and Annuity Fund and, therefore, the respondent had not considered at any time that the petitioner was a janitorial employee within the purview of the above statute.

Accordingly, the provisions of R. S. 18:5-66.1 and 18:5-67 do not apply to the dismissal of the petitioner as a carpenter in the Jersey City public school system and, therefore, the petition is dismissed.  
March 29, 1955.

### XIII

#### SCHOOL SHEETMETAL WORKER NOT CLASSIFIED AS JANITOR

LOUIS CIMO,

*Petitioner,*

*vs.*

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

For the Petitioner, William A. Massa.

For the Respondent, Robert H. Doherty.  
(George Blaney, of Counsel)

#### DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner has asked the Commissioner to compel the Board of Education of the City of Jersey City to reinstate him to the payroll of its Maintenance Department on the grounds that:

He was protected in his employment by tenure of office and position and, therefore, had seniority rights and, furthermore, that the respondent had refused to grant him a hearing or an opportunity to present evidence to support his alleged rights to employment under the tenure statute.

The respondent in its answer denied that the petitioner had any tenure rights and that there was any requirement that a hearing be granted to the petitioner. In a separate defense the respondent claimed:

“There is no law, statutory or otherwise, which affords the petitioner tenure in his position as a sheet metal worker.”

At a conference of counsel for petitioner and respondent which was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes, the following facts were stipulated:

1. That the petitioner was employed as a maintenance sheetmetal worker by the respondent board of education on April 15, 1947 as a per diem employee at a wage of \$24.00 per diem.
2. That the petitioner remained in the employ of the respondent board of education until April 24, 1953, on which date he was notified that he was dismissed from his employment for reason of economy."

The petitioner contends that his employment was pursuant to the Revised Statutes of the State of New Jersey and the rules and regulations of the Board of Education of Jersey City, that notification to terminate his employment on April 24, 1953, was given to him orally by Walter Eckert, Supervisor of Maintenance, that he requested written confirmation, which was not forthcoming from the respondent. The rules of the respondent, upon which petitioner bases his contention, read as follows:

"(e) He shall have supervision over all mechanics that the Board of Education may appoint.

"(h) The Supervisor of Buildings and Equipment shall have the power to employ suitable persons when necessary; to transfer employees at his direction; and to suspend employees for negligence, inefficiency, accepting imperfect or inferior materials, short quantities or weights, violations of the rules or other proper cause. He shall report immediately such action to the President of the Board of Education and the Chairman of the Committee on Buildings, who shall make a report with their recommendations thereon to the Board of Education at its next meeting."

The petitioner further contends that his dismissal was due solely to political considerations, that the alleged reason of lay-off for economy is palpably false as evidenced by the hiring of other employees in the same capacity since the date of his dismissal, and that his dismissal was a violation of R. S. 18:5-66.1 and 18:5-67 which read as follows:

"18:5-66.1. The board of education of any school district may reduce the number of janitors, janitor-engineers, custodians or janitorial employees, in any such district, subject to the following restrictions and conditions. No such reduction shall be made by reason of residence, age, sex, race, religion or political affiliation; but when any such janitor, janitor-engineer, custodian or janitorial employee under tenure is dismissed, the janitor, janitor-engineer, custodian or janitorial employee, having the least number of years of service to his credit shall be dismissed in preference to those having longer terms of service; and any janitor, janitor-engineer, custodian or janitorial employee so dismissed shall be and remain upon a preferred eligible list in the order of years of service for re-employment whenever vacancies occur, and shall be re-employed by the board of education causing such dismissal in such order, and upon re-employment shall be given full recognition for previous years of service in his respective positions and employments.

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

A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes on November 23, 1954, in the office of the County Superintendent of Schools of Hudson County, Jersey City.

The petitioner testified that he had been employed as a sheetmetal worker on a per diem basis from April 10, 1947, that his duties were confined to sheetmetal work, that he had been assigned at various times to all the schools in the district, that he believed a Mr. Pat Cadden had been employed by respondent to replace him in the sheetmetal department.

The Supervisor of Maintenance testified that there were seven men on the sheetmetal department payroll when the petitioner was dismissed, that Pat Cadden was not employed as a replacement for the petitioner but as a replacement for Mr. Brocken, who retired on July 1, 1954, that there were now only six employees in the sheetmetal department, that the petitioner's dismissal had been for reasons of economy, that he had reported the dismissal to the respondent board of education, in accordance with its rules, that the Board had passed the required resolution, a copy of which was entered into the record and which reads as follows:

“Whereas, Louis Cimo, Sheetmetal worker in the Maintenance Department of the Board of Education of Jersey City, was dismissed by Walter Eckert, Supervisor of Maintenance, for reason of economy on April 24th, 1953,

“Resolved, That the action of the Supervisor of Maintenance be ratified and that this resolution be retroactive to April 24th, 1953.”

The stipulated facts and evidence in this case show clearly that the petitioner was employed as a sheetmetal worker on a per diem basis for a period of seven years, and, as such, was assigned to do only sheetmetal work in the several schools of the Jersey City school district.

The Commissioner finds and determines that the employment of the petitioner was that of a sheetmetal worker and not that of a janitor, janitor-engineer, custodian or janitorial employee, and, therefore, is not within the statutory provisions of R. S. 18:5-66.1.

“Janitor” is defined in Words and Phrases, Permanent Edition, as follows:

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

School janitors, janitor-engineers, janitorial employees and custodians are required to become members of the Teachers' Pension and Annuity Fund in accordance with R. S. 18:13-25, which reads in part as follows:

"In addition to the above-mentioned persons defined as teachers, there shall also come under the provisions of this article, for pension and annuity purposes, and subject to the same provisions as apply to teachers, any janitor, assistant janitor, janitress, engineer, fireman or janitorial employee of a board of education of any school district, or of any public school, high school, normal school, model school, training school, vocational school, truant reformatory school or parental school within the State. . . ."

There was no evidence that the Board of Education of Jersey City had made any deductions or that the petitioner had made any contributions to the Teachers' Pension and Annuity Fund and, therefore, the respondent had not considered at any time that the petitioner was a janitorial employee within the purview of the above statute.

Accordingly, the provisions of R. S. 18:5-66.1 and 18:5-67 do not apply to the dismissal of the petitioner as a sheetmetal worker in the Jersey City public school system and, therefore, the petition is dismissed.

March 29, 1955.

#### XIV

#### PERMISSION GRANTED TO BOARD OF EDUCATION TO HOLD THIRD SPECIAL ELECTION WITHIN SIX MONTHS' PERIOD

IN THE MATTER OF THE APPLICATION OF THE BOARD OF EDUCATION OF THE BOROUGH OF SAYREVILLE, MIDDLESEX COUNTY.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The Board of Education of the Borough of Sayreville, Middlesex County, requests the Commissioner of Education to grant approval to the Board of Education to hold a third election on a proposed bond issue within a six-months' period in accordance with section 18:7-46.1 of the Revised Statutes, which reads as follows:

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

An informal hearing was conducted in Trenton on Tuesday, April 25, 1955, at which the following facts were set forth by the Sayreville Board of Education:

On December 9, 1954, and on January 25, 1955, the Board of Education of the Borough of Sayreville conducted two special elections for the purpose of authorizing the issuance of bonds for the construction, erection and furnishing of a new school in the district. Proposals in the two elections were identical in substance and called for the expenditure of \$880,000.00 and authorization to issue bonds in the principal amount of \$880,000.00. The voters of the district defeated the proposal on both occasions.

The Board of Education submitted the following reasons for requesting permission to hold the third election:

1. In both of the foregoing elections, less than 15% of the persons eligible to vote cast their vote.
2. The elementary school population of the district has more than doubled since 1947. It has been necessary for the Board of Education to authorize half sessions and all elementary pupils will attend half sessions beginning September, 1955.
3. The proposal has been reduced to \$660,000.00 with no decrease in the number of classrooms to be provided.
4. Community groups have requested the Board of Education to hold another election.
5. Members of the Board of Education believe that the attitude of the community would be favorable to this proposal.
6. The proposed bond issue would be within the legal debt limit of the Board of Education.

It is the opinion of the Commissioner that, in view of the facts submitted by the Sayreville Board of Education, it is desirable that additional facilities be provided for the school district at the earliest possible moment. Therefore, the Commissioner hereby grants approval for the Sayreville Board of Education to hold a third election within a six-months' period in accordance with section 18:7-46.1, *supra*.

April 26, 1955.

DECISION OF THE SUPREME COURT RENDERED ON DECISIONS OF  
THE COMMISSIONER AND STATE BOARD OF EDUCATION  
PRINTED IN 1953-1954 BULLETIN

BENJAMIN MACKLER,  
*Defendant-Appellant,*

*vs.*

THE BOARD OF EDUCATION OF THE CITY OF CAMDEN,  
*Respondent.*

DECISION OF THE SUPREME COURT OF NEW JERSEY

No. A-25, SEPTEMBER TERM, 1954

Argued October 4, 1954. Decided November 1, 1954.

On appeal from a decision of the State Board of Education of the State of New Jersey.

Mr. I. V. DiMartino argued the cause for the appellant.

Mr. William G. Bischoff argued the cause for the respondent.

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

Benjamin Mackler, business manager of the Board of Education of the City of Camden (hereinafter referred to as the "Board"), since December 1, 1942, was, on September 25, 1952, discharged from his position. The resolution of dismissal was passed by the Board following lengthy hearings on charges preferred against Mr. Mackler pursuant to the statute N. J. S. A. 18:5-51. An appeal was taken to the Commissioner of Education and was dismissed by him and thereafter a further appeal was taken to the State Board of Education which affirmed the decision of the Commissioner. After a further appeal to the Appellate Division, Superior Court, and before argument there, we certified the cause here on our own motion.

Several months prior to April 16, 1952, a committee was appointed by the President of the Board, consisting of three of its members, to look into and study the business manager's office. This committee conducted an investigation, interviewed many witnesses and then made a report of its findings to the Board with recommendations. Thereafter two members of the investigating committee, Mr. Pierce and Mr. Sherman, signed a formal complaint against the defendant, charging him with inefficiency and neglect of office; failure to devote his full time to the duties of the office; failure to attend the meetings of the Board; and insubordination.

Hearings on the formal charges preferred against the defendant were commenced by the Board on May 15, 1952. At that first hearing there were present seven members of the Board, two being absent. The defendant was present and represented by counsel.

Prior to the commencement of the hearing the defendant objected to the two members of the Board who had signed the complaint against him participating in the hearing, the contention being they were disqualified by reason of their having preferred the charges. No objection was made by the defendant to the hearing proceeding in the absence of two members of the Board. The defendant's objection to the participation in the hearing by the two members who had signed the charges was overruled. The hearing continued on June 4, June 6, June 14, June 28 and July 1st.

On the several dates on which the hearings were conducted on some occasions one or two members of the Board were absent so that at the conclusion of the meeting on July 1st only two members of the Board had heard all the testimony presented up to that time.

Testimony on behalf of the Board had been completed at the July 1st hearing and on August 5, 1952, it reconvened to proceed with the taking of testimony on behalf of the defendant. At this time the attorney for the defendant moved to dismiss the charges on two grounds, first, that only two members of the Board had heard all the testimony presented, and it was, accordingly, unable to render a decision on the matter and had lost jurisdiction and secondly, that the evidence adduced at the hearings had failed to establish a prima facie case against the defendant.

Counsel for the Board then suggested that certain testimony which had not been heard by a sufficient number of members of the Board be stricken from the record and be withdrawn from the consideration of the Board and that it base its decision solely on such evidence as had been heard by a sufficient number of members of the Board to permit a majority of it to properly consider the charges. The motion to strike the testimony in accordance with the suggestion was granted and after argument the motions made on behalf of the defendant were denied. The defendant then advised the Board that he felt his legal position was so secure that he was not going to offer any proof but was willing to submit the case for determination on the record as it stood.

At a meeting of the Board on September 4, 1952, it reconsidered its action in view of the objection raised by the defendant that only members of the Board who had heard all of the testimony could participate in any decision on the charges and passed a resolution that the hearing be reopened "for the recall of those witnesses who were not heard by the entire Board, and the defendant to be properly notified by the secretary of the date when the witnesses will be recalled so that the defendant may examine those witnesses and be present." Pursuant to the terms of the aforesaid resolution the Board reconvened on September 25, 1952. Eight of the nine members of the Board were then present as well as the defendant with his counsel. The defendant's counsel objected to the continuance of the hearing and thereafter defendant and his counsel left.

The board thereupon proceeded to recall all those witnesses whose testimony had not been heard by all of its members. At the conclusion of the presentation the Board considered the evidence presented by the recalled witnesses together with the testimony previously given by two witnesses who had testified on July 1, 1952, at a time when all of the members of the Board were present. The resolution of dismissal was then passed.

The defendant first says that he was denied a fair and impartial trial and that it was a deprivation of his constitutional rights for two of the members of the Board who had signed the complaint against him to act as prosecutors and judges.

The making of a complaint does not disqualify a Board member where its making is a formality of office and no personal interest is shown. *Gross vs. N. J. State Bd. of Optometrists*, 11 N. J. Misc. 485 (Sup. Ct., 1933), but where private interest at variance with impartial performance is shown there is disqualification. *Downs vs. Mayor, etc. South Amboy*, 116 N. J. L. 511 (E. & A., 1936); *Pyatt vs. Mayor and Council of Dunellen*, 9 N. J. 548 (1952), and likewise malice or ill-will will cause disqualification. "The fundamental reason that supports disqualification of a judge is personal interest in the case or the manifestation of malice or ill-will towards the accused," *Freudenreich vs. Mayor, etc. Fairview*, 114 N. J. L. 290 (E. & A., 1935); *Reimer vs. Freeholders of Essex County*, 96 N. J. L. 371 (Sup. Ct., 1921), aff'd 97 N. J. L. 575 (E. & A., 1922). The danger that must be guarded against is a concentration of inquisitorial prosecution and judicial powers to the end that there may be impartiality of judgment. *Davis, Administrative Law* 375 (1951); *Schwartz, American Administrative Law* 104 (1950); *Mazza vs. Cavicchia*, 15 N. J. 498, 523 (1954). See the concurring opinion of Mr. Justice Brennan, while in the Appellate Division of the Superior Court, *In re Larsen*, 17 N. J. Super 564 (App. Div., 1952).

Our concern then in the instant case is as to whether or not anything can be discovered from the record showing any private interest in the outcome of the cause on the part of Mr. Pierce and Mr. Sherman or any evidence of malice or ill-will on their part toward the defendant and we find none.

The defendant relies on *N. J. State Bd. of Optometrists vs. Nemitz*, 21 N. J. Super 18 (App. Div., 1952), but it is clearly distinguishable from the instant case. In the *Nemitz* case the statute required a majority of the Board to hear the charges but only two members thereof heard all of the evidence even though the defendant had objected and asked for all of the evidence to be introduced before a majority of the Board. Dr. Nurock, who sat on the Board and heard the case had made the complaint against the defendant in his individual capacity, he had caused the investigation, procured an investigator to make it, provided the funds for an eye examination to be made by the defendant, the person whose eyes were examined was his patient and he disclosed bias and prejudice by his remarks to witnesses at the hearing. The Appellate Division held in that case that Dr. Nurock should have disqualified himself under the facts there exhibited and said where investigation, prosecution and judicial functions rest in the same Board its members must be zealous in the preservation of a right to a hearing by impartial triers of the facts and the Courts must impose careful supervision of that element of the hearing.

The defendant points to nothing in the record to demonstrate any bias, prejudice or personal interest on the part of Mr. Pierce and Mr. Sherman other than the bare facts of participation in the proceeding including some interrogation of witnesses which was negligible.

Defendant next asserts that he was denied due process because all of the members of the Board did not sit during all the proceedings.

The argument on this point is that it was improper for the Board to reopen its case and rehear the testimony of witnesses. No authorities are cited. We know of no vested right in a defendant to prevent a reopening of a case or a hearing for the taking of evidence. The Board realized it had made a mistake in not insisting that all its members or a quorum thereof hear all of the evidence and in our judgment it took the only proper course when it ordered that testimony be repeated for the benefit of those who had been absent. The defendant's fundamental rights were not infringed upon. "Administrative determinations are subject to reconsideration and revision by the agency itself, and a rehearing and the taking of new evidence to that end, so long as it retains control of the proceeding and rights have not vested. This is an inherent power \* \* \* ", In re *Plainfield-Union Water Co.*, 14 N. J. 296, 305 (1954). There was no denial of a fair hearing in the procedure adopted. Cf. *Handlon vs. Town of Belleville*, 4 N. J. 99, 106 (1950).

Admittedly the resolution of dismissal did not contain a recitation of the facts upon which the conclusion of the Board was based and the defendant contends that his dismissal is void for such failure.

The two chief reasons for requiring findings of fact are that the case shall be decided according to evidence rather than arbitrarily, and so that the parties and reviewing authorities may determine whether it has been. *N. J. State Bd. of Optometrists vs. Nemitz, supra*; *Saginaw Broadcasting Co. vs. F. C. C.*, 96 Fed. 2nd 554 (Ct. App. D. C. 1938), cert. den. 305 U. S. 613 (1938). See *N. J. Bell Telephone Co. vs. Communication Workers, etc.* 5 N. J. 354, 377 (1950); *Atlantic City Trans. Co. vs. Director, Div. of Taxation*, 12 N. J. 130, 139 (1953); Davis, *Administrative Law* 527 (1951); and *D. L. & W. R. Co. vs. City of Hoboken*, 10 N. J. 418, 425 (1952). As pointed out by Davis, *supra*, 529, there are three other practical reasons for making findings of fact, to prevent judicial usurpation of administrative functions, to help parties plan their cases for rehearing and for judicial review and to keep administrative agencies within their jurisdiction.

But none of these reasons or policies are of particular significance here where subsequent findings were made, even though after notice of appeal to the Commissioner of Education was served on the Board.

In *Ward vs. Scott*, 11 N. J. 117 (1952), where it was held that a Board of Adjustment had made inadequate findings of fact under R. S. 40:55-39 (d), we remanded the cause to the Board for reconsideration, findings and recommendation to the town council in the light of the events in the record. See also *N. J. Bell Telephone Co. vs. Communication Workers, supra*.

Here a full finding of fact was made and the defendant does not argue that these findings are in any way defective except that they were not filed as of the time of the resolution of dismissal and that the defect could not be corrected after the appeal had been instituted. While the better practice would have been for the findings of fact to have been made prior to the passage of the resolution of dismissal under the facts exhibited here, even if there had been no findings of fact when the case reached this Court, we would undoubtedly have remanded the cause to the Board to give it an opportunity to do so, and in view of the findings which were ultimately made any error in this respect has been cured.

Without reciting the evidence in detail, and it must be borne in mind that the defendant did not take the stand in his own defense, there was testimony that he failed to inspect or supervise repairs and construction work on the various school buildings, that he failed to look over plans and specifications for such work, that work was let out by contract to full time school employees who performed the work called for by the contracts during their regular working hours for the Board and were thus paid for that work in addition to their regular salary, that he only spent two or three days a week at his work and delegated it to others, that he failed to obtain bids for supplies, that supplies often did not conform to the specifications and that he failed to attend meetings of the Board although ordered to do so. There was an imposing array of witnesses and the testimony against the defendant was convincing. There were also two administrative reviews which concurred in the guilt of the defendant. There was substantial, competent and relevant evidence to support the finding of guilt.

The decision of the State Board of Education is affirmed.

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