

State of New Jersey  
Department of Education  
Trenton

NEW JERSEY  
SCHOOL LAWS

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Passed Too Late for Inclusion in 1958 Bulletin

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SCHOOL LAW DECISIONS  
1958 - 1959

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*Keep with 1938 Edition of New Jersey School Laws*

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(Passed too late to be printed in 1958 Law Bulletin)

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SCHOOL LAWS, SESSION OF 1958

(Passed too late to be printed in 1958 Law Bulletin)

AMENDMENTS

CHAPTER 141, LAWS OF 1958

AN ACT concerning education and amending section 18:7-25 of the Revised Statutes.

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

1. Section 18:7-25 of the Revised Statutes is amended to read as follows:

18:7-25. Nominating petitions shall be filed with the secretary of the board of education on or before 4 o'clock P. M. of the fortieth day before the date of the election; provided, however, nominating petitions for special elections held pursuant to section 18:7-3.1 of the Revised Statutes shall be so filed on or before 4 o'clock P. M. of the fifteenth day before said special election.

2. This act shall take effect immediately.

Approved November 17, 1958.

CHAPTER 150, LAWS OF 1958

AN ACT to amend "An act to provide for and regulate the granting of sick leave to certain persons in the public schools of this State, and supplementing Title 18 of the Revised Statutes, and to repeal 'An act to provide for and regulate the granting of sick leave to certain teachers, principals, assistant superintendents and superintendents in the public schools of this State, and supplementing chapter 13 of Title 18 of the Revised Statutes,' approved May 6, 1942 (P. L. 1942, c. 142), as the title of said act was amended by chapter 237 of the laws of 1952," approved July 22, 1954 (P. L. 1954, c. 183).

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

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

5. Nothing in this act shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or granting sick leave over and above the minimum sick leave as defined in this act or allowing days to accumulate over and above those provided for in section 1 of this act, except that no person shall be allowed to increase his total accumulation by more than 15 days in any 1 year.

2. This act shall take effect immediately.

Approved December 16, 1958.

CHAPTER 164, LAWS OF 1958

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

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

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

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

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

(b) any person becoming a teacher on or after the effective date of this act, except any person who has attained the age of 60 years prior to becoming a teacher after June 30, 1958;

(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.

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

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

6. Any person becoming a member on or 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.

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

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

service or in computing final compensation no time after September 1, 1919, during which a member was employed as a teacher at an annual salary or remuneration fixed at less than \$500.00 shall be credited, except that in the case of a veteran member credit shall be given for service rendered prior to January 1, 1955, in an employment, office or position if the annual salary or remuneration therefor was fixed at not less than \$300.00 and such service consisted of the performance of the full duties of such employment, office or position. In computing service for retirement purposes or in computing final compensation no time during which such teacher was absent on such leave shall be credited unless such absence was for a period of less than 3 months or unless the service was allowed for retirement purposes within 1 year following his return to service after completion of such leave, both by his employer and by the board of trustees, or unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State. Any such member shall be required to contribute, either in a lump sum or by installment payments, an amount calculated, in accordance with the rules and regulations of the board of trustees, to cover the period of such official leave of absence without pay, unless the service rendered to an employer other than the State or a political subdivision thereof was allowed for retirement purposes by the provisions of any law of this State.

4. Section 22 of the act of which this act is amendatory is amended to read as follows:

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 other than veterans, and from it shall be paid all retirement allowances of such 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, the accrued liability contribution for present-entrants in accordance with subsection "(b)" 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.

5. Section 33 of the act of which this act is amendatory is amended to read as follows:

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, 1958, except as modified from time to time as a result of additional information received by the board of trustees subsequent to June 30, 1957 which would affect the computations provided for in subsection d of section 13.

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 on July 1 of the ensuing fiscal year of the obligations of the State accruing during the year preceding such payment. 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.

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

35. After January 1, 1959, any member who has at least 3 years of service as a member to his credit may borrow from the retirement system, with the approval of the board of trustees, an amount equal to not more than 50% of the amount of his accumulated deductions, but not less than \$50.00; provided, that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from compensation, not in excess of 25% of the member's compensation, made at the same time compensation is paid to the member, but not after the attainment of age 60. The amount so borrowed, together with interest at the rate of 4% per annum on any unpaid balance thereof, shall be repaid to the retirement system in equal installments by deduction from the compensation of the member at the time the compensation is paid or in some other manner and in such amounts as the board

of trustees shall approve, but such installments shall be at least equal to the member's contribution to the retirement system and at least sufficient to repay the amount borrowed with interest thereon by the time the member attains age 60. Not more than 2 loans may be granted to any member in any calendar year. Notwithstanding any other law affecting the salary or compensation of any person or persons to whom this act applies or shall apply, the additional deductions required to repay the loan shall be made. Any unpaid balance of a loan at the time any benefit may become payable before the attainment of age 60 shall be deducted from the benefit otherwise payable.

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

7. Section 47 of the act of which this act is amendatory is amended to read as follows:

47. Subject to the provisions of section 63 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 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. If the member shall have designated a person as the payee, said payee may elect to receive such payments in the form of a life annuity.

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 election or optional selection permitted under this section shall be effective in case a retirant dies within 30 days after retirement and such a retirant shall be considered an active member at the time of death until the first payment on account of any benefit becomes normally due.

8. Section 48 of the act of which this act is amendatory is amended to read as follows:

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 benefits becomes payable, any unpaid balance of a loan or arrearage outstanding shall be deducted from any benefit otherwise payable.

Upon the death of a retirant, any unpaid benefits due him shall be paid in 1 lump sum 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 retirant's estate.

9. Section 56 of the act of which this act is amendatory is amended to read as follows:

56. Subject to the provisions of chapter 70 of the laws of 1955, 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 or the Deputy State Treasurer, when designated for that purpose by the State Treasurer;

(b) One trustee appointed by the Governor for a term of 3 years;

(c) Three trustees from among the members of the retirement system, elected by the membership or by delegates elected for this purpose by the membership, 1 of whom shall be elected each year for a 3-year term commencing on January 1, following such election 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.

10. This act shall take effect immediately.

Approved January 12, 1959.

CHAPTER 167, LAWS OF 1958

AN ACT concerning regional school districts and boards of education, and amending section 18:8-7, and supplementing chapter 8 of Title 18, of the Revised Statutes.

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

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

18:8-7. The county superintendent or county superintendents appointing the original board shall allocate the initial elective terms for members of the board. In regional districts having 9 members, 3 such members shall be elected for 3 years, 3 for 2 years, and 3 for 1 year. Such terms shall be allocated to the constituent districts to the extent of apportioned membership on the regional board of education starting with the allocation of the terms for 3 years by allocating 1 of such terms to each of the constituent districts in the alphabetical order of the names of such districts, and continuing then still in such order with allocation of the terms for 2 years and with allocation of the terms for 1 year. Where there are more than 9 constituent school districts, the allocation for the tenth district shall be a term for 3 years, for the eleventh district a term for 2 years, and for the twelfth district a term for 1 year, with continuation of such rotation until provision has been made for allocation of a term to all districts. When the original regional board of education shall have organized, the county superintendent or county superintendents shall notify the board of the allocation of initial elective terms for members of the regional board of education.

2. Every allocation, designation or apportionment of initial elective terms for membership of the board of education of any regional school district heretofore made by any county superintendent of schools is validated, ratified and confirmed notwithstanding that any such allocation, designation or apportionment of initial elective terms shall have been otherwise than as provided for in section 18:8-7 of the Revised Statutes.

3. This act shall take effect immediately.

Approved January 15, 1959.

CHAPTER 168, LAWS OF 1958

AN ACT relating to the qualifications for membership in certain boards of education and amending section 18:6-8 of the Revised Statutes.

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

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

18:6-8. A member of the board shall be able to read and write, shall be a citizen and resident of the territory contained in the district, and shall have been such citizen and resident for at least 2 years immediately preceding his becoming a member. In the case of a city the place of residence of the appointee in the city may be disregarded. He shall not be interested directly or indirectly in any contract with or claim against the board.

2. This act shall take effect immediately.

Approved January 19, 1959.

SCHOOL LAWS, SESSION OF 1958  
SUPPLEMENTS

CHAPTER 162, LAWS OF 1958

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

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

1. In making the apportionment of the membership of a regional board of education among the several school districts uniting to create a regional school district, as required by section 18:3-5 of the Revised Statutes, there shall be subtracted from the number of inhabitants of a constituent school district, as shown by the last Federal census officially promulgated in this State, the number of such inhabitants who according to the records of the Federal Bureau of the Census were patients in or inmates of any State or Federal hospital or prison located in such constituent school district.

2. This act shall take effect immediately.

Approved January 12, 1959.

CHAPTER 166, LAWS OF 1958

AN ACT concerning education, providing for children's bureaus, authorizing county and municipal co-operation therewith, and supplementing Title 18 of the Revised Statutes.

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

1. The board of education of any school district including any regional school district, by resolution, may provide for the establishment of a children's bureau for the district.

2. Every children's bureau so established shall be under the immediate supervision of a director to be appointed by the board of education of the district and who shall be a person qualified by training and experience to direct the work of such bureau.

3. The board of education shall provide for the operation of the bureau, for the payment of its expenses, for the staffing and assignment of personnel to the bureau including provision for the services of a social welfare case-worker or caseworkers and such other professional personnel as may be required by the bureau. Except as provided in section 8, the board may fix the compensation of the employees of the bureau including the director, assign duties and regulate the terms and conditions of all such employments.

4. It shall be the function of any children's bureau so established, to coordinate the various student supervisory and counseling programs of the school district; and to co-operate with, and seek the co-operation of, State, county and municipal authorities and public or private social welfare and recreational agencies to assist in the solution of juvenile problems generally and in providing those services recognized as basic to the team approach in solving problems of individuals in their relations to others and to their environment.

5. The bureau may, subject to the approval of the board of education, provide for or administer any or all of the following services:

(a) Take, keep and maintain a census of all children residing in the district pursuant to the provisions of section 18:14-13 of the Revised Statutes;

(b) Supervise and maintain a school attendance service to carry out the provisions of article 2 of chapter 14 of the Revised Statutes (compulsory education);

(c) Maintain a register and classification of mentally retarded and physically handicapped children pursuant to the provisions of chapters 178 and 179 of the laws of 1954;

(d) Supervise the issuance of employment certificates, age certificates and special permits pursuant to the provisions of the law limiting and regulating child labor (P. L. 1940, c. 153);

(e) Establish and maintain group and individual child guidance and counseling programs;

(f) Establish and operate speech and remedial reading clinics and such other clinics as will promote the normal educational development of the children of the district;

(g) Arrange with the respective county and municipal authorities concerned with proper juvenile development and particularly with those concerned with juvenile delinquency for mutual co-operation and assistance including service of the children's bureau as a receiving center for juvenile delinquents;

(h) Carry out, under guidance, the recommendations of mental health and diagnostic centers and clinics and of family psychiatrists and physicians;

(i) Counsel with parent and child;

(j) Co-operate in providing long or short-term supervision of any child in connection with any of the services authorized by this section;

(k) Assist in the promotion of the normal development of youth and their proper adjustment in society.

6. In connection with any of the functions or services authorized by this act, the bureau shall co-operate with and receive the co-operation of, the medical inspector, nurse, psychological or psychiatric examiner or any approved clinic or agency providing psychological and psychiatric services to the district, the teachers, guidance counsellor, attendance officer, and all other personnel of the district as may be of assistance to the bureau in the performance of its authorized functions or services under this act. In addition the bureau is authorized to co-operate with and seek the co-operation of State, county and municipal authorities and public or private social welfare and recreational agencies.

7. The board of chosen freeholders of any county in which the board of education of any district therein has established a children's bureau pursuant to this act and the governing body of the municipality or municipalities of which such district is comprised is authorized and empowered to cooperate with and assist any such children's bureau in the performance of any of its functions or services authorized by this act and any such board of chosen freeholders or governing body may authorize the assignment of any county or municipal employee, including members of the municipal police department, subject to the approval of the director of such children's bureau, to serve with such children's bureau and under the direction of the director thereof.

8. Any such county or municipal employee, including members of the municipal police department, so assigned to serve with the children's bureau of a school district shall continue as an employee or member of, and be compensated by, the respective department or division from which he was assigned, and shall retain all his pension, tenure and other rights as an employee or member thereof.

9. Any board of education, which has established a children's bureau, and the board of education of any other school district may, pursuant to resolutions duly adopted, contract for the extension of the services of such bureau to such other district, upon such terms as may be determined upon between them and in any such case the bureau shall be operated for the benefit of both such school districts, pursuant to such contract.

10. Any children's bureau heretofore established in any school district and which has been and is performing any of the functions or services authorized by this act shall have all the powers conferred upon children's bureaus by this act in the same manner as though such bureau was established pursuant to this act.

11. This act shall take effect immediately.

Approved January 15, 1959.

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SCHOOL LAWS, SESSION OF 1958

RELATED LAWS

CHAPTER 143, LAWS OF 1958

AN ACT to provide for increases in the retirement allowances of certain retired public employees.

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

1. As used in this act "retirant" means any person who was employed by the State of New Jersey, any of its instrumentalities, any of its political subdivisions or any of the instrumentalities of its political subdivisions, retired from such employment in any of the calendar years set forth in this act and, as a result of such employment, is receiving a retirement allowance from a retirement system or pension fund supported in part or in whole by the State of New Jersey, or is receiving a retirement allowance under any law, the financial support of which comes solely from the State of New Jersey.

2. The retirement allowance being received by any retirant shall be increased in accordance with the following formula:

a. The first \$480.00 of the retirement allowance, or the full retirement allowance if such allowance is less than \$480.00, shall be increased in accordance with the "ratio of increase" formula in this act if the retirant shall have had established 25 years of service credit prior to retirement, or shall have been retired for service-connected disability.

b. If the retirant shall have established less than 25 years of service credit prior to retirement and shall not have been retired for service-connected disability, the first \$480.00 of the retirement allowance, or the full retirement allowance if such allowance is less than \$480.00, shall be increased in accordance with the "ratio of increase" formula, except that this increase shall be in the same proportion to the increase provided under the "ratio of increase" formula as the number of years of service credit is to 25.

3. The "ratio of increase" which shall apply to the retirement allowance, or part thereof as specified in section 2 of this act, being received by a retirant shall be calculated in accordance with the following percentages as determined by the calendar year in which the retirement became effective.

Year of Retirement	Ratio of Increase	Year of Retirement	Ratio of Increase
1915	173%	1934	88%
1916	165%	1935	96%
1917	152%	1936	100%
1918	130%	1937	98%
1919	104%	1938	95%
1920	78%	1939	94%
1921	63%	1940	93%
1922	56%	1941	90%
1923	52%	1942	85%
1924	52%	1943	78%
1925	57%	1944	69%
1926	57%	1945	62%
1927	56%	1946	53%
1928	56%	1947	43%
1929	56%	1948	34%
1930	57%	1949	26%
1931	62%	1950	19%
1932	69%	1951	13%
1933	79%		

4. Except in the case of retirants of the Teachers' Pension and Annuity Fund and the Consolidated Police and Firemen's Pension Fund, each employer shall bear the cost of the increase in the retirement allowances payable to retirants who retired from the employ of such employer. Certification of the amounts due shall be made by the Director of the Division of Pensions to each employer other than the State, prior to December 1 of each year, commencing with December 1, 1958. Each employer shall appropriate the amounts so certified in the fiscal year next following its fiscal year in which such certification is made. Such amounts shall be paid by each employer to the Director of the Division of Pensions by March 30 of each year in the case of employers whose fiscal year extends from January 1 to December 31, and by July 15 of each year in the case of each employer whose fiscal year extends from July 1 of a given calendar year to June 30 of the following calendar year. In the case of retirants of the Consolidated Police and Firemen's Pension Fund, the employer shall pay 2/3 of the cost of the increase in retirement allowances. In making such certifications to employers in the year after 1958 the Director of the Division of Pensions shall take into account payments made by the employer, payments to retirants of such employer, prospective payments to be made to such retirants in the following year and necessary administrative costs on behalf of such retirants.

The Director of the Division of Pensions shall certify annually to the Director of the Division of Budget and Accounting the amount necessary to provide for the remaining cost of the increases in retirement allowances and necessary administrative costs.

5. The increase in retirement allowances provided for under this act shall commence with retirement allowance payments for the month of January 1959 provided, that there is appropriated the amount certified by the Director of the Division of Pensions to the Director of the Division of Budget

and Accounting as set forth in section 4 hereof. The increase in retirement allowances shall continue to be paid as long as there shall be appropriated the amounts so certified. In the event that the necessary funds are not so appropriated, the increase in retirement allowances shall cease: no further payments shall be made by other employees: refunds shall be made by the Director of the Division of Pensions to all employers of any balances unexpended on their account; and charges shall be certified by the Director of the Division of Pensions to all employers of any amounts which have been paid on behalf of the retirants of such employer for which funds have not been paid to the director by the employer. In the event that any such charges are certified, provision for payment shall be made by the employer in the budget for the ensuing fiscal year.

6. Any person who is eligible to receive the increased retirement allowance under the provisions of this act may, at any time, waive his right thereto by filing a written notice of waiver with the Director of the Division of Pensions. Such waiver may be withdrawn at any time and upon such withdrawal the increase in the retirement allowance shall commence with the retirement allowance payment for the next following month.

7. This act shall take effect immediately.

Approved November 24, 1958.

#### CHAPTER 157, LAWS OF 1958

AN ACT to amend the title of "An act concerning certain deductions from the compensation of persons holding public office, position or employment, whose compensation is paid by this State or by any board, body, agency or commission thereof," approved July 25, 1955 (P. L. 1955, c. 163), so that the same shall read "An act concerning certain deductions from the compensation of persons holding public office, position or employment, whose compensation is paid by this State or by any county, municipality or board of education of this State, or by any board, body, agency or commission thereof" and to amend the body of said act.

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

1. The title of "An act concerning certain deductions from the compensation of persons holding public office, position or employment, whose compensation is paid by this State or by any board, body, agency or commission thereof," approved July 25, 1955 (P. L. 1955, c. 163), is amended to read "An act concerning certain deductions from the compensation of persons holding public office, position or employment, whose compensation is paid by this State or by any county, municipality or board of education of this State, or by any board, body, agency or commission thereof."

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

1. Whenever any person holding public office, position or employment, whose compensation is paid by this State or by any county, municipality or board of education of this State, or by any board, body, agency or com-

mission thereof, shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation for the payment of contributions to a United Fund, Community Chest or United Appeals, such deductions shall be made by the State Treasurer in his discretion, if such compensation is payable by the State Treasurer, or by any other disbursing officer, when directed so to do by resolution of the board of chosen freeholders of the county or the governing body of the municipality or the board of education or of the board, body, agency or commission of which he is the disbursing officer, if such compensation is payable by him, and shall be transmitted to the treasurer of such fund, chest or appeals, as the case may be, but any such written authorization may be withdrawn at any time upon filing notice of such withdrawal with the State Treasurer or such disbursing officer, as the case may be.

3. This act shall take effect immediately.

Approved December 23, 1958.

SCHOOL LAWS, SESSION OF 1959  
AMENDMENTS

CHAPTER 72, LAWS OF 1959\*

AN ACT concerning school elections and amending section 18:7-34 of the Revised Statutes.

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

1. Section 18:7-34 of the Revised Statutes is amended to read as follows:

18:7-34. The polls for election shall be *and remain open between the hours of 5 and 9 P. M. and during any additional time which* the board may designate between the hours of 2 and 9 P. M., and shall remain open as much longer as may be necessary to permit those present at the designated time to cast their ballots.

2. This act shall take effect immediately.

Approved June 4, 1959.

CHAPTER 79, LAWS OF 1959

AN ACT concerning education, amending sections 18:6-71 and 18:7-94, and supplementing Title 18 of the Revised Statutes.

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

1. Section 18:6-71 of the Revised Statutes is amended to read as follows:

The proceeds of any bonds issued under this article shall be paid to the custodian of school moneys of the district to be paid out by him only on the warrants or orders of the board of education. The custodian shall in no event disburse such proceeds, except to pay the expenses of issuing and selling the bonds, and for the purpose or purposes for which such bonds were issued.

If for any reason any part of the proceeds are not applied to or necessary for such purpose or purposes, the board may transfer the balance remaining unapplied to the *capital outlay* account of the district.

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

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

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\* Italics show amendments of 1959.

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

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

3. On and after July 1, 1959, any items of expense heretofore included in the repairs and replacement account of a school district as prescribed by the accounting system of the State Board of Education, shall be included in the current expense account; and any balance remaining in the repairs and replacement account on July 1, 1959 shall forthwith be transferred to the appropriate account with the approval of the State Commissioner of Education.

4. This act shall take effect on July 1, 1959.

Approved June 8, 1959.

CHAPTER 135, LAWS OF 1959

AN ACT concerning education, and amending section 18:14-13 of the Revised Statutes.

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

1. Section 18:14-13 of the Revised Statutes is amended to read as follows:

18:14-13. The board of education of any school district may cause an exact census to be taken of all children residing in the district between the ages of 5 and 18 years, including such other information as the board may deem necessary or proper. The board of education may appoint as many suitable persons as may be necessary to act as enumerators in taking the census and may fix their compensation which compensation shall be paid as a current expense of the district.

2. This act shall take effect immediately.

Approved June 19, 1959.

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SCHOOL LAWS, SESSION OF 1959  
SUPPLEMENTS

CHAPTER 31, LAWS OF 1959.

AN ACT concerning education in relation to regional school districts, and supplementing Title 18 of the Revised Statutes.

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

1. The board of education of any regional school district may contract with the municipality in which any of its regional schools are located for such special police services as may be required for the safety of its students and such regional school district shall appropriate and raise annually in the same manner as other school moneys are appropriated and raised in the district the amount required to pay therefor.

2. This act shall take effect immediately.

Approved May 12, 1959.

CHAPTER 164, LAWS OF 1959

AN ACT to amend "An act concerning education, and supplementing Title 18 of the Revised Statutes," approved January 12, 1958 (P. L. 1958, c. 162).

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 making the apportionment of the membership of a regional board of education among the several school districts uniting to create a regional school district, as required by section 18:3-5 of the Revised Statutes, there shall be subtracted from the number of inhabitants of a constituent school district, as shown by the last Federal census officially promulgated in this State, the number of such inhabitants who according to the records of the Federal Bureau of the Census were patients in or inmates of any State or Federal hospital or prison *and all military personnel stationed at, and civilians residing within the limits of, any United States Army, Navy or Air Force installation* located in such constituent school district.

2. This act shall take effect immediately.

Approved September 29, 1959.

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## SCHOOL LAWS, SESSION OF 1959

### ACTS AND RELATED LAWS

#### CHAPTER 2, LAWS OF 1959

AN ACT to amend the "State School Aid Act of 1954," approved June 30, 1954 (P. L. 1954, c. 85).

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

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

4. Local fair share.

(a) The local fair share of the foundation school program shall be determined for each school district as a sum equal to 5 mills per dollar upon the equalized valuation of the taxing district or districts within the school district, as certified by the Director of the State Division of Taxation for the year in which the calculation is made plus 25% of the amount of shared taxes payable to each municipality within the district as certified by such director. For the purposes of this section, shared taxes shall include the public utility franchise (R. S. 54:31-1 et seq.) and gross receipts (R. S. 54:32-1 et seq.) taxes, the financial business tax (P. L. 1946, c. 174), the domestic life insurance (P. L. 1950, c. 101) and domestic casualty insurance tax (P. L. 1952, c. 227) and the bank stock tax (R. S. 54:9-1 et seq.).

(b) With respect to regional school districts and their component districts, however, the equalized valuations as certified by the director of taxation and 25% of the amount of shared taxes as described above shall be allocated among the regional district and its component districts in proportion to the number of pupils in each of them as determined for the foundation program. That part of the local fair share of the regional district measured by property valuations shall be determined *at the rate of 3 mills per dollar of such allocated valuation during the first 5 years under this act that the regional school is in operation and at the rate of 4 mills per dollar during the second 5 years under this act that the regional school is in operation, and thereafter at the full 5 mills, with respect to any regional school district heretofore or hereafter established. The school year 1954-1955 shall be disregarded in counting any 5-year period under this subsection.*

(c) In the event that the equalization table certified by the Director of the Division of Taxation shall be revised by the Division of Tax Appeals on or before January 15, the local fair share of any district affected thereby shall be recomputed accordingly and any determination or certification of State aid previously made pursuant to this act shall be amended to conform therewith.

(d) The Director of the Division of Taxation shall upon request certify to the Commissioner of Education the amount of shared taxes, as herein defined, of each taxing district.

2. This act shall take effect immediately.

Approved February 2, 1959.

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SCHOOL LAWS, SESSION OF 1959

SPECIAL LAWS

CHAPTER 10, LAWS OF 1959

AN ACT authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the sum of \$66,800,000.00 for higher education; providing the ways and means to pay the interest of said debt and also to pay and discharge the principal thereof; and providing for the submission of this act to the people at a general election.

WHEREAS, In a report of the New Jersey State Board of Education to the Governor and Legislature, made in December, 1957, the said board of education recommended proposals for capital expenditure in order to provide for higher education for all qualified youth; and

WHEREAS, The following is a recapitulation of the proposals for capital expenditure recommended by the State Board of Education:

Rutgers, The State University:

Camden Campus .....	\$2,550,000 00	
Newark Campus .....	9,000,000 00	
New Brunswick Campus .....	12,550,000 00	
Douglass College .....	1,750,000 00	
Sub-total .....	\$25,850,000 00	
Dormitory Appropriation <sup>1</sup> .....	4,000,000 00	
Total .....		\$29,850,000 00

State Teachers Colleges:

Glassboro .....	\$1,868,000 00	
Jersey City .....	3,643,000 00	
Montclair .....	3,265,500 00	
Paterson .....	2,537,000 00	
Trenton .....	3,518,000 00	
Union .....	4,118,500 00	
Total .....		18,950,000 00

Newark College of Engineering:

Buildings and equipment .....	\$4,900,000 00	
Land .....	2,100,000 00	
Total .....		7,000,000 00

Grand Total—State Appropriation ..... \$55,800,000 00<sup>2</sup>

(Total Construction—\$72,800,000.00)

<sup>1</sup> To build \$10,000,000.00 of dormitories, of which \$6,000,000.00 will be self-liquidating.

<sup>2</sup> In addition \$11,000,000.00 (self-liquidating) is proposed for dormitories for the 6 New Jersey State Teachers Colleges, making the total amount to be approved \$66,800,000.00.

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

1. The Legislature hereby finds and determines as a fact that there is a need for capital expenditures to provide for higher education of all qualified youth of the State and the furtherance of the policy of the State to insure equality of opportunity in the field of higher education.

2. Bonds of the State of New Jersey in the sum of \$66,800,000.00 are hereby authorized for capital expenditure for the State University, the State Teachers Colleges, the Newark College of Engineering and for dormitories for the said institutions of higher learning.

The said capital expenditure shall be for buildings and for construction, reconstruction, development, extension and improvement and for equipment and facilities of the said institutions of higher education and shall proceed pursuant to appropriations thereof in the manner hereinafter provided.

3. Said bonds shall be serial bonds and known as "State Higher Education Bonds" and, as to each series, the last installment thereof (subject to redemption prior to maturity) shall mature and be paid not later than 30 years from the effective date of this act.

4. Said bonds shall be issued from time to time as money is required for the purpose aforesaid, as the issuing officials herein named shall determine.

5. The Governor, State Treasurer and Comptroller of the Treasury or any 2 of such officials (hereinafter referred to as "the issuing officials"), are hereby authorized to carry out the provisions of this act relating to the issuance of said bonds, and shall determine all matters in connection therewith subject to provisions hereof. In case any of said officials shall be absent from the State or incapable of acting for any reason, his powers and duties shall be exercised and performed by such person as shall be authorized by law to act in his place as a State official.

6. Bonds issued in accordance with the provisions of this act shall be a direct obligation of the State of New Jersey and the faith and credit of the State is pledged for the payment of the interest thereon as same shall become due and the payment of the principal at maturity. The principal and interest of such bonds shall be exempt from taxation by the State or by any county, municipality or other taxing district of the State.

7. Said bonds shall be signed in the name of the State by the Governor or by his facsimile signature, under the great Seal of the State, and attested by the Secretary of State, or an assistant Secretary of State, and shall be countersigned by the facsimile signature of the Comptroller of the Treasury. Interest coupons attached to said bonds shall be signed by the facsimile signature of the Comptroller of the Treasury. Such bonds may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on the bonds or coupons shall cease to hold office at the time of such issue or at the time of the delivery of such bonds to the purchaser.

8. (a) Such bonds shall recite that they are issued for the purpose set forth in section 2 of this act and that they are issued in pursuance of this act and that this act was submitted to the people of the State at the general

election held in the month of November, 1959, and that it received the sanction of the majority of the votes cast for and against it at such election. Such recital in said bonds shall be conclusive evidence of the authority of the State to issue said bonds and of their validity. Any bonds containing such recital shall in any suit, action or proceeding involving their validity be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed and delivered in conformity herewith and with all other provisions of statutes applicable thereto, and shall be incontestable for any cause.

(b) Such bonds shall be issued in such denominations and in such form or forms, whether coupon or registered as to both principal and interest, as may be determined by the issuing officials.

(c) Whenever such bonds shall have been issued as coupon bonds, whether so issued originally or at the request of a holder thereof subsequent to the original issue, such bonds, or any of them, may be reissued by the issuing officials at the request of a holder as registered bonds, and all registered bonds, whether so issued originally or at the request of the holder subsequent to the original issue, may be reissued by the issuing officials, at the request of a holder, as coupon bonds.

9. When bonds are issued from time to time, the bonds of each issue shall constitute a separate series to be designated by the issuing officials. Each series of bonds shall bear such rate or rates of interest, not exceeding 4% per annum, as may be determined by the issuing officials, which interest shall be payable semiannually; provided, that the first and last interest periods may be longer or shorter, in order that intervening semiannual payments may be at convenient dates.

10. Said bonds shall be issued and sold at not less than par and accrued interest, under such terms, conditions, and regulations as the issuing officials may prescribe, after notice of said sale, published at least 3 times (the first notice shall be at least 7 days prior to the day of bidding) in at least 3 newspapers published in the State of New Jersey, and in a publication carrying municipal bond notices and devoted primarily to financial news, published in the city of New York or in New Jersey. The said notice of sale may contain a provision to the effect that any or all bids made in pursuance thereof may be rejected. In the event of such rejection or of failure to receive any acceptable bid, the issuing officials are authorized to sell said bonds at private sale. The issuing officials may sell all or a part of the bonds of any series as issued to any State fund or to the Federal Government or any agency thereof, at private sale, without advertisement.

11. Until permanent bonds can be prepared, the issuing officials may, in their discretion, issue in lieu of such permanent bonds temporary bonds in such form and with such privileges as to registration and exchange for permanent bonds as may be determined by the issuing officials.

12. The proceeds from the sale of the bonds, exclusive of accrued interest and premiums, and all interest on deposits received from depositories, shall be held by the State Treasurer in a separate fund and deposited in such depositories as may be selected by him to the credit of the fund, which fund shall be known as the "State Higher Education Fund." All accrued interest and premiums from the sale of bonds except as provided in section 15 hereof,

together with interest received from depositories of such funds, shall be held by the State Treasurer to the credit of said State Higher Education Fund.

13. The moneys in the said State Higher Education Fund are hereby specifically dedicated to providing for State University, State Teachers' Colleges and the Newark College of Engineering buildings, their construction, reconstruction, development, extension, improvement, equipment and facilities, and for the acquisition of land and, in the case of the Newark College of Engineering, for the acquisition of land, and in the case of the State University and the State Teachers' Colleges, the construction of dormitories; provided, however, that as to the said dormitories, they shall be self-liquidating as far as practicable. No moneys from the said State Higher Education Fund shall be expended except in accordance with appropriations, from said fund, made by law.

At any time prior to the issuance and sale of bonds under this act, the State Treasurer is hereby authorized to transfer from any available money in the treasury of this State to the credit of the State Higher Education Fund such sum as may be deemed necessary for the purposes of this act by the State House Commission, which said sum so transferred shall be returned to the treasury of this State by the Treasurer thereof from the proceeds of the sale of the first issue of bonds. Pending their application to the purposes provided in this act, moneys in the State Higher Education Fund may be invested and reinvested as other trust funds in the custody of the State Treasurer in the manner provided by law.

14. In case any coupon bonds and coupons thereunto appertaining or any registered bond shall become mutilated or destroyed, a new bond shall be executed and delivered of like tenor, in substitution for the mutilated or destroyed bonds or coupons, upon the owner furnishing to the issuing officials evidence satisfactory to them of such mutilation or destruction and also such security and indemnity as the issuing officials may require.

15. Any expense incurred by the issuing officials for advertising, engraving, printing, clerical, legal or other services necessary to carry out the duties imposed upon them by the provisions of this act shall be paid from accrued interest and premiums from the sale of bonds or if these funds be insufficient, from the proceeds of the sale of bonds, by the State Treasurer upon warrant of the Comptroller of the Treasury, in the same manner as other obligations of the State are paid.

16. Bonds of each series issued hereunder shall mature in installments commencing not later than the fifth year and ending not later than the fifteenth year from the date of issue of such series, and in such amounts as shall be determined by the issuing officials, but the issuing officials may reserve to the State by appropriate provision in the bonds of any series the power of election by resolution or resolutions of the issuing officials to call for redemption at par and accrued interest to date of redemption, and to redeem on any interest payment date beginning in a stated year, as a whole or in part in the inverse order of their numbers, bonds of that series prior to their maturity, upon notice by publication, at least once, at least 60 days prior to the date fixed for redemption, in a newspaper published in the city of Trenton, and in a publication carrying municipal bond notices and de-

voted primarily to financial news, published in New York City or in New Jersey. On and after the date of redemption so fixed, interest on bonds so called for redemption shall cease to accrue.

17. To provide funds to meet the interest and principal payment requirements for the bonds issued under this act and outstanding, there is hereby appropriated in the order following:

(a) Revenue derived from the tax imposed upon the transfer of property, real and personal, taxable under chapter 34 of Title 54 of the Revised Statutes, as amended and supplemented, or so much thereof as may be required.

(b) If in any year or at any time funds, as hereinabove appropriated necessary to meet interest and principal payments upon outstanding bonds issued under this act, be insufficient or not available, then and in that case there shall be assessed, levied and collected annually in each of the municipalities of the counties of this State a tax on real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on such bonds as it is proposed to issue under this act in the calendar year in which such tax is to be raised and for the payment of bonds falling due in the year following the year for which the tax is levied. The tax thus imposed shall be assessed, levied and collected in the same manner and at the same time as other taxes upon real and personal property are assessed, levied and collected. The governing body of each municipality shall cause to be paid to the county treasurer of the county in which such municipality is located, on or before December 15 in each year, the amount of tax herein directed to be assessed and levied, and the county treasurer shall pay the amount of said tax to the State Treasurer on or before December 20 in each year.

If on or before December 31 in any year the issuing officials shall determine that there are moneys in the General State Fund beyond the needs of the State, sufficient to meet the principal of bonds falling due and all interest payable in the ensuing calendar year, then and in that event such issuing officials shall by resolution so find and shall file the same in the office of the State Treasurer, whereupon the State Treasurer shall transfer such moneys to a separate fund to be designated by him, and shall pay the principal and interest out of said fund as the same shall become due and payable, and the other sources of payment of said principal and interest provided for in this section shall not then be available, and the receipts for said year from inheritance taxes above referred to shall thereupon be considered as part of the General State Fund, available for general purposes.

18. Should the State Treasurer by December 31 of any year deem it necessary, because of insufficiency of funds to be collected from the sources of revenues as hereinabove provided, to meet the interest and principal payments for the year after the ensuing year, then the treasurer shall certify to the Comptroller of the Treasury the amount necessary to be raised by taxation for such purposes, the same to be assessed, levied and collected for and in the ensuing calendar year. In such case the Comptroller of the Treasury shall, on or before March 1 following, calculate the amount in dollars to be assessed, levied and collected as herein set forth in each county. Such calculation shall be based upon the corrected assessed valuation of such county for the year preceding the year in which such tax is to be assessed, but such tax shall be assessed, levied and collected upon the assessed valuation of the

year in which the tax is assessed and levied. The Comptroller of the Treasury shall certify said amount to the county board of taxation and the county treasurer of each county. The said county board of taxation shall include the proper amount in the current tax levy of the several taxing districts of the county in proportion to the ratables as ascertained for the current year.

19. For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1959, be submitted to the people. In order to inform the people of the contents of this act it shall be the duty of the Secretary of State, after this section shall take effect, and at least 15 days prior to the said election, to cause this act to be published in at least 10 newspapers published in the State and shall notify the clerk of each county of this State of the passage of this act, and the said clerks respectively shall cause to be printed on each of the said ballots, the following:

If you approve the act entitled below, make a cross  $\times$ , plus +, or check  $\checkmark$  mark in the square opposite the word "Yes."

If you disapprove the act entitled below, make a cross  $\times$ , plus +, or check  $\checkmark$  mark in the square opposite the word "No."

If voting machines are used, a vote of "Yes" or "No" shall be equivalent to such markings respectively.

	Yes.	Shall the act entitled "An act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the sum of \$66,300,000.00 for higher education; providing the ways and means to pay the interest of said debt and also to pay and discharge the principal thereof; and providing for the submission of this act to the people at a general election," be approved?
	No.	

The fact and date of the approval or passage of this act, as the case may be, shall be inserted in the appropriate place after the title in said ballot. No other requirement of law of any kind or character as to notice or procedure except as herein provided need be adhered to.

The said votes so cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of such election had in the same manner as is now provided for by law in the case of the election of a Governor, and the approval or disapproval of this act so determined shall be declared in the same manner as the result of an election for a Governor, and if there shall be a majority of all the votes cast for and against it at such an election in favor of the approval of this act, then all the provisions of this act shall take effect forthwith.

20. This section and section 19 of this act shall take effect immediately and the remainder of the act shall take effect as and when provided in the preceding section.

Approved March 5, 1959.

CHAPTER 42, LAWS OF 1959

AN ACT to amend "An act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the sum of \$66,800,000.00 for higher education; providing the ways and means to pay the interest of said debt and also to pay and discharge the principal thereof; and providing for the submission of this act to the people at a general election," approved March 5, 1959 (P. L. 1959, c. 10).

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

1. Section 19 of the act of which this act is amendatory is amended to read as follows:

19. For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1959, be submitted to the people. In order to inform the people of the contents of this act it shall be the duty of the Secretary of State, after this section shall take effect, and at least 15 days prior to the said election, to cause this act to be published in at least 10 newspapers published in the State and shall notify the clerk of each county of this State of the passage of this act, and the said clerks respectively shall cause to be printed on each of the said ballots, the following:

If you approve the act entitled below, make a cross  $\times$ , plus +, or check  $\checkmark$  mark in the square opposite the word "Yes."

If you disapprove the act entitled below, make a cross  $\times$ , plus +, or check  $\checkmark$  mark in the square opposite the word "No."

If voting machines are used, a vote of "Yes" or "No" shall be equivalent to such markings respectively.

	Yes.	COLLEGE BOND ISSUE Shall the act entitled "An act authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in the sum of \$66,800,000.00 for higher education; providing the ways and means to pay the interest of said debt and also to pay and discharge the principal thereof; and providing for the submission of this act to the people at a general election." be approved?
	No.	

*The words "College Bond Issue" preceding the text of the public question shall be printed in 12-point bold-faced capital letters.*

The fact and date of the approval or passage of this act, as the case may be, shall be inserted in the appropriate place after the title in said ballot. No other requirement of law of any kind or character as to notice or procedure except as herein provided need be adhered to.

The said votes so cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of such election had in the same manner as is now provided for by law in the case of the election of a Governor, and the approval or disapproval of this act so determined shall be declared in the same manner as the result of an election for a Governor, and if there shall be a majority of all the votes cast for and against it at such an election in favor of the approval of this act, then all the provisions of this act shall take effect forthwith.

2. This act shall take effect immediately.

Approved May 28, 1959.

CHAPTER 46, LAWS OF 1959

AN ACT concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.

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

1. This act shall be known and may be cited as the "State Competitive Scholarship Act."

2. All scholarships, except work scholarships, provided by statute or through State appropriation, shall be awarded in accordance with the provisions of this act. Nothing herein contained shall affect the renewal or continuance of individual scholarships awarded prior to the effective date hereof.

3. There is hereby created the State Scholarship Commission consisting of the Commissioner of Education, who shall be its chairman, and 8 other members to be appointed by the Governor as follows:

One representative of Rutgers the State University;

One representative of the State Colleges;

Three representatives of non-tax-supported institutions of higher education in the State;

Three other residents of the State.

The terms of office of the appointed members shall be 4 years except that the terms of first members shall be fixed by the Governor in such manner as will provide for the expiration each year of the terms of  $\frac{1}{4}$  of such appointed members. Any vacancy in the commission shall be filled by the Governor by the appointment of a person who shall hold office for the balance of the unexpired terms.

4. There are hereby created State competitive scholarships which shall be maintained by the State and awarded and administered pursuant to this act, and used by the holders thereof for undergraduate study in institutions of higher education.

5. The number of State competitive scholarships to be awarded annually shall equal 5% of the total number of students who graduated from ap-

proved high schools in the State during the school year preceding the date of the examination for the award of such scholarships.

6. State competitive scholarships shall be awarded without regard to race, religion, creed, or sex.

7. No person shall be awarded a State competitive scholarship unless

(a) He has been a resident of New Jersey for a period of not less than 12 months immediately preceding the date of his application for such scholarship.

(b) He has been or will be graduated from high school within a period not greater than 1 year from the date of his application for such scholarship, except that time spent in the Armed Forces of the United States shall not be included in computing such period. Awards may be made tentatively to prospective high school graduates, dependent upon actual graduation at the end of the then current school year.

(c) He has demonstrated financial need for such scholarship as determined by standards and procedures to be established by the State Scholarship Commission.

(d) He has demonstrated high moral character, good citizenship, and dedication to American ideals.

(e) He has applied for a State competitive scholarship and has been determined, by competitive examination, to be eligible for such scholarship.

(f) He has complied with all rules and regulations adopted pursuant to this act by the State Scholarship Commission for the award, regulation, and administration of State competitive scholarships.

8. Each State competitive scholarship shall entitle the recipient thereof to \$400.00 per year, or the amount charged for tuition for a regular academic year by the institution where the scholarship is used, whichever is the smaller amount. The particular institution a student elects to attend and the particular charges made by that institution shall not be factors used in determining financial need nor, except as otherwise provided in this section, the amount of the stipend. Payments under this act shall be made by the State Treasurer on the order of the chairman of the State Scholarship Commission in accordance with rules regulating the same adopted by the commission.

9. Each State competitive scholarship is for a period of 4 academic years, but shall remain in effect only during such period as the holder thereof achieves satisfactory academic progress and is regularly enrolled as a full-time student in an institution of collegiate grade as described in section 10.

10. A State competitive scholarship may be used in any institution of collegiate grade in New Jersey which is accredited by the State Board of Education.

11. No State competitive scholarship shall be held by any person at the same time he is receiving any other scholarship, other than a work scholarship, which is paid out of funds provided by the State.

12. The State Scholarship Commission shall provide for the conduct of annual competitive examinations for State competitive scholarships. On the basis of the results achieved on the required examinations the commission

shall award scholarships to qualified applicants for whom financial need has been established.

13. Initial awards of not fewer than 10 State competitive scholarships shall be made in every year to residents of each county of the State or of such lesser number as may qualify for the award thereof. All other such scholarships shall be awarded on a State-wide basis without regard for geographical, political or other subdivisions.

14. The State Scholarship Commission may employ such persons, contract for such services, and adopt such rules and regulations as may be necessary or appropriate for effectuating the provisions of this act.

15. This act shall not be construed as granting any authority to control or influence the policies of any educational institution involved in the State scholarship program, nor to require any such institution to admit into such institution or once admitted to continue in such institution, any scholarship holder.

16. Section 18:16-33 of the Revised Statutes is repealed.

17. This act shall take effect immediately.

Approved May 25, 1959.

#### CHAPTER 68, LAWS OF 1959

AN ACT concerning civil service and amending section 11:15-4 of the Revised Statutes.

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

1. Section 11:15-4 of the Revised Statutes is amended to read as follows:

11:15-4. Within 30 days after the receipt of such notice of removal from an appointing authority, the commission may, upon its own initiative, make such investigation as it may deem advisable, and upon the appeal of the removed employee, if such appeal is received within 20 days from the date of such removal, it shall publicly inquire into and hear the person sought to be removed either sitting as a body or through 1 or more of its members.

2. This act shall take effect immediately.

Approved June 4, 1959.

#### CHAPTER 77, LAWS OF 1959

AN ACT to amend "An act to amend and to supplement 'An act concerning motor vehicles and traffic regulations, and supplementing c. 4 of Title 39 of the Revised Statutes,' approved May 13, 1942 (P. L. 1942, c. 192)" approved May 11, 1949 (P. L. 1949, c. 102).

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

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

2. Whenever any bus which is designated as a school bus by the signs required by this section is operated or parked on a highway for any purpose other than that of receiving or discharging school children, *such school bus shall display conspicuously, front and rear, "Out of Service" signs that shall meet the requirements prescribed by the State Board of Education.*

2. This act shall take effect immediately.

Approved June 8, 1959.

CHAPTER 84, LAWS OF 1959

AN ACT concerning pension funds in relation to employees of certain cities of the first class, amending section 43:13-9, and supplementing article 2 of chapter 13 of Title 43, of the Revised Statutes.

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

1. Section 43:13-9 of the Revised Statutes is amended to read as follows:

43:13-9. For the purpose of paying the pensions a fund shall be created in each city where this article takes effect, as follows:

a. There shall be deducted from every payment of salary to a municipal employee benefited by this article 3% of the amount thereof and if any employee shall hereafter enter the service of the municipality after reaching the age of 35 years, such percentage shall be increased to such an amount as shall be determined by the pension commission to correspond to the risk arising by the age of such employee.

b. The city shall raise by taxation and pay into the fund yearly an amount equal to 4% of the total salaries paid to the employees who shall benefit by this article.

c. There shall be added to such fund all fines imposed upon any such employee, all moneys given or donated to the fund, all moneys deducted from the salary of such employee because of absence or loss of time due to suspension and  $\frac{1}{2}$  of all rewards paid for any purpose to such employees.

If there shall not be sufficient money in the fund so created, the governing body of such city shall include in any tax levy a sum sufficient to meet the requirements of the fund for the time being.

All pensions granted under this article shall be exempt from any State or municipal tax, levy and sale, garnishment or attachment or any other process whatsoever, and shall be unassignable, *except for the purpose and to the extent necessary to authorize, with the member's or pensioner's consent, deductions of premiums for group hospitalization and medical-surgical insurance.*

2. In connection with the deduction of premiums for group hospitalization and medical-surgical insurance, as provided in section 43:13-9 of the Revised Statutes, the commission, as far as possible, shall arrange for the continuance of the group rate for such premiums payable for a member after the retirement of such member.

3. This act shall take effect immediately.

Approved June 9, 1959.

CHAPTER 88, LAWS OF 1959

AN ACT to amend and supplement "An act concerning civil service employees in the various counties, municipalities and school districts in the State, and supplementing subtitle 3, Title 11, of the Revised Statutes of New Jersey," approved July 18, 1939 (P. L. 1939, c. 232).

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. The appointing authority in all counties, municipalities and school districts that have, or shall in the future adopt the provisions contained in subtitle 3, Title 11, of the Revised Statutes of New Jersey, shall after consultations with the heads of departments and their principal assistants, prepare regulations regarding holidays, hours of work, attendance and annual sick and special leaves of absence with or without pay or with reduced pay for permanent employees in the classified service of such county, municipality or school district; provided, however, that every permanent employee in the classified service shall be granted at least the following annual leave for vacation purposes with pay in and for each calendar year, except as otherwise herein provided: Up to 1 year of service, 1 working day's vacation for each month of service; after 1 year and up to 10 years of service, 12 working days' vacation; *after 10 years and up to 20 years of service, 15 working days' vacation; and* after 20 years of service, 20 working days' vacation. Where in any calendar year the vacation or any part thereof is not granted by reason of pressure of such county, municipality or school district business, such vacation periods or parts thereof not granted shall accumulate and shall be granted during the next succeeding *calendar* year only. In determining all vacation leave, the years of service of such employees prior and subsequent to the adoption of this act shall be used.

2. In determining the annual leave for vacation purposes to which any employee in the classified service of such county, municipality or school district service shall be entitled pursuant to the act to which this act is a supplement, 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 such county, municipality or school district service, and for all noncontinuous permanent service prior to June 11, 1953. Part time service shall be credited proportionately.

3. This act shall take effect immediately.

Approved June 11, 1959.

CHAPTER 101, LAWS OF 1959

AN ACT relating to pensions, and amending section 43:3-1 of the Revised Statutes.

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

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

43:3-1. Any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State or any county, municipality or school district of this or any other State, shall be ineligible to hold any public position or employment other than elective in the State or in any county, municipality or school district, unless he shall have previously notified and authorized the proper authorities of said State, county, municipality or school district, from which he is receiving or entitled to receive the pension that, for the duration of the term of office of his public position or employment he elects to receive (1) his pension or (2) the salary or compensation allotted to his office or employment. Nothing in this chapter shall be construed to affect any pension status or the renewal of payments of the pension after the expiration of such term of office except that such person shall not accept both such pension or subsidy and salary or compensation for the time he held such position or employment.

Nothing in this chapter shall be construed to prevent anyone entitled or who may be entitled to receive any widow's pension, from holding public employment in the State, county, municipality or school district, and from receiving any such pension together with the salary or compensation allotted to her office or employment.

*As used in this chapter, the term "pension," when applied to a retirement allowance shall include only that portion of the retirement allowance which is derived from appropriations made by the employer or by the State.*

2. This act shall take effect immediately.

Approved June 15, 1959.

CHAPTER 102, LAWS OF 1959

AN ACT concerning pensioners in public employment in certain cases.

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

1. Notwithstanding the provisions of section 43:3-1 of the Revised Statutes, any person who is receiving or who shall be entitled to receive any pension or subsidy from this or any other State, or any county, municipality or school district of this or any other State shall be eligible to hold any municipal public office, position or employment with any city of the first class having a population in excess of 400,000 inhabitants and receive, in addition to his pension, the salary or compensation allotted to such office, position or employment.

2. This act shall take effect immediately.

Approved June 15, 1959.

CHAPTER 104, LAWS OF 1959

AN ACT concerning education, providing for special educational services for emotionally and socially maladjusted pupils and for State aid in reimbursement of school districts of the cost of furnishing such services.

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

1. The Commissioner of Education shall be responsible for the co-ordination of the work of the county departments of child study and the general administration of special educational services in the public schools of this State.

In order to carry out the provisions of this act, he shall appoint to his staff *a consultant experienced in child psychiatry, specialists in school psychology, school social work, remedial instruction and special education and such other qualified personnel, who are specialists in psychology, social work, remedial instruction and special education, as he shall deem necessary for said purpose, and he shall fix their compensation with the approval of the State Board of Education.*

*The Commissioner of Education shall appoint annually an Advisory Council with the approval of the State Board of Education which will consist of not less than 7 or more than 12 members representative of professional and lay interests. The Advisory Council shall advise in the promulgation of rules, regulations and the implementation of this act and the establishment of standards and qualifications for the professional personnel. The Council shall serve without remuneration.*

2. The Commissioner of Education shall appoint for each county department of child study *or, with the approval of the State Board of Education, for 1 or more county departments of child study*, which shall be charged with the duty of performing the services required to be performed at the county level under this act, a supervisor, whose duties shall include the co-ordination of the special education services in the county, and he may appoint, upon a full or part-time basis, such additional personnel, constituting a child study team, as he deems necessary to perform such services.

The members of each child study team shall include, but need not be limited to, a school psychologist, a school social worker, a remedial specialist and a psychiatrist, and the Commissioner of Education shall fix their compensation with the approval of the State Board of Education.

The county superintendent of schools of the county *or the county superintendents of schools, of counties served by 1 child study team, jointly*, shall, with the approval of the Commissioner of Education, designate a member of the child study team to serve as chairman *and in event that they cannot agree the chairman shall be designated by the Commissioner of Education.*

3. Each county child study team shall function in consultation with the local boards of education in the county *or the local boards of education in the counties served by it* in the fields pertaining to:

- a. diagnosis of children needing special educational services,
- b. approval of public school programs of mental health,

- c. supervision of public school mental health programs,
- d. reporting and referral of children with mental health problems, *of such severity as to indicate the necessity of medical or psychological treatment, to the appropriate agency for such purpose,*
- e. social case work and psychological evaluation,
- f. remedial instruction,
- g. co-operative action with other State and county departments and lay professional organizations, and
- h. additional responsibilities as determined by the Commissioner of Education and the approval of the State Board of Education.

4. Local boards of education may provide instructional and related special services for emotionally or socially maladjusted pupils by:

- a. establishing such services within the district,
- b. sharing services of special personnel employed by another school board,
- c. sending children to another school district,
- d. agreement among boards to provide joint services, or
- e. arrangement through the Commissioner of Education for direct services through the county department of child study.

Any program for emotionally or socially maladjusted pupils operated by a local school district, or by school districts acting jointly, shall be approved each year by the Commissioner of Education before it is placed in operation.

5. Emotionally or socially maladjusted pupils identified as needing special services shall be classified according to their ability to benefit from specified types of educational service, and such educational service shall be conducted according to rules and regulations prescribed by the Commissioner of Education, with the approval of the State Board of Education, and may include, but need not be limited to:

- a. case work with the pupil at home or school,
- b. counselling or guidance,
- c. remedial instruction,
- d. special scheduling of a school program including part-time attendance in special or regular groups,
- e. referral to other agencies or institutions for special services,
- f. special grouping in school for children whose prognosis is favorable for return to the regular program,
- g. individual instruction at home, and
- h. other instruction given individually or in small groups.

6. The Commissioner of Education may, in his discretion, with the approval of the State Board of Education, require any board of education, having the necessary facilities to provide the services required to be provided by this act, to receive pupils requiring such services from other districts.

7. Any board of education which receives pupils from a sending district under this act shall determine upon a tuition rate to be paid by the sending

board of education, which shall not exceed the cost per pupil as determined according to a formula prescribed by the Commissioner of Education, with the approval of the State Board of Education.

8. Any board of education which shall enter any pupils in the schools of a receiving district under this act may not withdraw any of such pupils for the purpose of entering them in the schools of another district unless good and sufficient reason exists for such change, and unless an application therefor is made and approved by the Commissioner of Education. Either the receiving or sending board of education, if dissatisfied with the determination of the Commissioner of Education upon any such application, may appeal to the State Board of Education, which, in its discretion, may affirm, reverse or modify the commissioner's determination.

9. A board of education operating under the provisions of this act shall furnish transportation to all emotionally or socially maladjusted children, who qualify for such transportation under R. S. 18:14-8, and may furnish transportation for any child for a lesser distance if, in its judgment, the condition of the child is such as to make such transportation necessary and advisable.

10. The Commissioner of Education may require at such time, and in the manner and on forms prescribed by him, such educational, financial and statistical reports as he may deem necessary to carry out the purpose of this act.

11. Each local school district, whether operating separately or jointly with 1 or more other school districts, shall be reimbursed by State aid for:

a. the cost of the services of approved psychiatrists, psychologists, social workers, remedial specialists and other personnel, employed by it in the operation of a program for emotionally or socially maladjusted pupils approved by the Commissioner of Education, to the extent of (1)  $\frac{1}{2}$  of such costs or of the approved tuition paid to another local school district *or of both, as the case may be*, or (2) \$2.00 per pupil in average daily enrollment in the district, whichever is the *lesser*, and

b. for 75% of the cost to the district of furnishing transportation to school, when the necessity for furnishing such transportation and the cost and method thereof, have been approved by the county superintendent of schools of the county in which the district paying such cost is situated.

The State aid provided for by this section shall be in addition to all other State aid payable to the district.

12. All amounts payable by way of State aid under this act shall be certified and shall be paid in the same manner as payments of State aid are certified and paid *under the State School Aid Act of 1954*.

13. This act shall take effect July 1, 1959.

Approved June 15, 1959.

CHAPTER 116, LAWS OF 1959

AN ACT concerning elections, and amending section 19:8-2 of the Revised Statutes.

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

1. Section 19:8-2 of the Revised Statutes is amended to read as follows:

19:8-2. The clerk of every municipality, on or before March 15, shall certify to the county board of every county wherein such municipality is located a suggested list of places in the municipality suitable for polling places. The county board shall select the polling places for the election districts in the municipalities of the county for all elections in the municipalities thereof, including all commission government elections in the county. The county boards shall not be obliged to select the polling places so suggested by the municipal clerks, but may choose others where they may deem it expedient. *Preference in locations shall be given to schools and public buildings where space shall be made available by the authorities in charge, upon request, if same can be done without detrimental interruption of school or the usual public services thereof, and for which the authority in charge shall be reimbursed, by agreement, for expenses of light, janitorial and other attending services arising from such use.*

Where the county board shall fail to agree as to the selection of the polling place or places for any election district, within 5 days of an election, the county clerk shall select and designate the polling place or places in any such election district.

The county board may select a polling place other than a schoolhouse or public building outside of the district, but such polling place shall not be located more than 1,000 feet distant from the boundary line of the district.

2. This act shall take effect immediately.

Approved June 17, 1959.

CHAPTER 121, LAWS OF 1959

AN ACT establishing a Higher Education Assistance Authority, and providing for guaranteed or insured bank loans to certain persons, for the purpose of assisting them in meeting their expenses of higher education in certain educational institutions.

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

1. This act shall be known and may be cited as the "Higher Education Assistance Authority Act."

2. As used in this act, unless the context indicates another or different meaning, the following words shall have the following meanings:

"Authority" means the Higher Education Assistance Authority created by this act,

"Bank" includes any financial institution authorized to make loans under section 9 of this act,

"Commissioner" means the Commissioner of Education,

"State Board" means the State Board of Education,

"Fund" means Higher Education Assistance Fund.

3. There is hereby created in the Department of Education the Higher Education Assistance Authority, which shall be a body corporate and politic, with corporate succession.

4. The Authority shall consist of 5 members; 1 of whom shall be the Commissioner of Education ex officio; and 4 of whom shall be residents of this State, appointed by the Governor, with the advice and consent of the Senate, for terms of 4 years, except in the case of the first members so appointed, who shall be appointed 1 for a term of 1 year, 1 for a term of 2 years, and 1 for a term of 3 years. No more than 2 of the appointed commissioners shall be members of the same political party, and each of them shall serve until his successor is appointed and has qualified. Any vacancy in the membership of the Authority, occurring otherwise than by expiration of term, shall be filled in the same manner as the original appointment was made, but for the unexpired term only.

5. The Authority shall choose a chairman and vice-chairman annually, and shall elect a secretary and a treasurer, or 1 person to act as both, who need not be members of the Authority, and may appoint such other assistants and employees as it deems necessary and fix their compensation within the limits of available appropriations.

6. The members of the Authority shall receive no compensation for their services, but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

7. The Authority shall have power to contract, to sue and be sued, to make, amend and rescind such rules as may be necessary to carry out the provisions of this act, but it shall not in any manner, directly or indirectly, pledge the credit of the State.

8. The Authority shall have such capital from time to time as shall be appropriated to it for that purpose by the Legislature of the State of New Jersey, or as shall be contributed to it from private sources, to be used for the purposes of this act, and its capital and all revenues of the Authority shall be held in trust in a "Higher Education Assistance Fund" to meet the obligations of the Authority incurred under this act, but any amount of the fund in excess of the total amount of guaranteed or insured loans outstanding at any time shall be subject to such disposition as may be provided by law, and any amounts from the fund which the Authority determines are not needed for its current operations shall be invested and reinvested by the State Treasurer in such obligations as are legal investments for savings banks of this State.

9. Any financial institution under the supervision of the Department of Banking and Insurance of this State, except a loan and building association, and any national bank organized under the acts of Congress of the United States and doing business in this State, may make loans under this act pursuant to such rules not inconsistent with this act, and by the use of such forms, as the Authority shall prescribe.

10. The Authority shall have the following powers:

(1) To assist in the placing of loans to persons, who are residents of this State, and who are attending and are in good standing in, or who plan

to attend, any qualified institution of collegiate grade, located in this State or elsewhere, which is approved by any regional accrediting association recognized by the national commission on accrediting, in order to assist them in meeting their expenses of higher education, and to guarantee such loans upon such terms and conditions as the Authority may prescribe, but no loan or loans shall be placed or guaranteed by the Authority for any such person to an amount in excess of \$1,000.00 for any school year, nor to a total amount in excess of \$5,000.00.

(2) To adopt rules not inconsistent with law governing the application for and the guarantee of loans made by the Authority and governing any other matters related to its activities.

(3) To perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of this act.

11. Any application for a loan under this act shall be submitted to the Authority for its approval, and the Authority shall approve the same only if it finds that the applicant:

(1) Has been a resident of New Jersey for a period of not less than 6 months immediately preceding the date of his application for such loan, and has demonstrated high moral character, good citizenship, and dedication to American ideals, and

(2) Intends to make application for admission to, or has been admitted to, or is in regular attendance at and is in good standing in, a qualified institution of collegiate grade approved by any regional accrediting association recognized by the national commission on accrediting, and

(3) Has demonstrated financial need for such loan as determined by the standards and procedures established by the Authority and has complied with all rules adopted by the Authority pursuant to this act in connection with the granting of such loans.

12. Upon approval by the Authority of a loan application, any bank may make the loan as approved and upon the terms and conditions required under this act, but no moneys shall be advanced or paid under any such loan until the applicant shall have satisfied the Authority, and the Authority shall have certified to the bank that the applicant has been admitted to, or is in regular attendance and in good standing at a qualified institution of collegiate grade approved by any regional accrediting association recognized by the national commission on accrediting. Any bank making a loan shall cooperate with the Authority in supervising the use of credit in accordance with its purposes.

13. Each loan made under this act shall:

(1) Be evidenced by a note or other obligation approved by the Authority,

(2) Bear interest at a rate not exceeding 5% per annum upon unpaid balances,

(3) Be payable in such manner or in such installments as shall be prescribed by the rules of the Authority, and

(4) Be secured only by the personal liability of the maker, and not by any endorsers, comaker's collateral, or other security, except such as may be permitted by the rules of the Authority.

14. The Authority may fix the amount of the entire cost to the borrower of making any loan, regardless of amount, which cost shall be included in a single charge.

15. Any loan made under this act may be extended or refinanced in the discretion of the bank without affecting the obligation of the Authority hereunder for such period and under such terms as shall be prescribed by the rules of the Authority, and any loan may be reduced at any time at the option of the borrower.

16. The Authority is authorized to insure or guarantee any loan made under this act, pursuant to the provisions of this act, whichever the bank making the same may elect.

17. Every bank, which shall hereafter make a loan under this act, shall simultaneously, with the submission for approval of its initial loan, elect, by giving written notice to the Authority of such election in such form as shall be prescribed by the Authority either to have all such loans to be made by such bank insured or to have them guaranteed pursuant to the provisions of this act.

18. In the event that a bank shall elect to have its approved loans insured by the Authority, then the Authority shall set aside out of the fund a reserve fund to the credit of such bank equal to 20% of the total face amount of all of such bank's approved loans outstanding at the time of such election. The Authority shall add to such reserve fund 20% of the amount of each approved loan thereafter made by such bank. In the event that the total of all amounts credited to said reserve fund shall at any time be in excess of the total face amount of all such bank's approved loans outstanding, then the Authority shall withdraw such excess amount from said reserve fund.

19. The reserve fund so set aside shall be used by the Authority to meet and pay any losses incurred by said bank by reason of such loans, but in no event shall any payment be made by the Authority to any bank beyond the total balance set aside as the reserve fund for such bank at the time of such payment.

20. Whenever any approved note shall be in default to any such bank for 30 days after the date of maturity thereof, or whenever any installment thereon is more than 3 months in arrears, the Authority shall, upon the demand of such bank, purchase from said bank such note by paying to said bank out of the reserve fund set aside to the credit of said bank, as herein provided, the total amount of principal and interest then due and owing to said bank on said note, but in no event shall any payment be made by the Authority in excess of the amount then remaining to the credit of said bank in the reserve fund set aside for said bank, as herein provided.

21. In the event that a bank shall elect to have its loans guaranteed by the Authority, then the Authority shall purchase upon demand of such bank, to the extent of the resources of the guaranty and insurance fund in excess of the total of all balances then held in reserve funds, any approved note which remains unpaid for 30 days after the date of maturity thereof, or on which any installment is more than 3 months in arrears, at a price equal to 90% of the unpaid principal of such note.

22. The sum total of all reserve funds set aside by the Authority in accordance with the provisions of this act, together with such amount as the Authority may set aside, out of the fund, to meet the payment by the Authority of approved notes submitted to it for purchase in accordance with the provisions of this act, shall in no event be less than 20% of the total face amount of all approved loans from time to time outstanding.

23. Every bank which has made, or which may hereafter make any approved loan or loans shall, in consideration of the guaranty or insurance, as herein provided, pay to the Authority an amount equal to such per centum of all interest received by it on all such loans as shall be agreed upon by the bank and the Authority, which shall be payable at such time or times and in such manner as the Authority may prescribe.

24. The Authority shall proceed to liquidate notes purchased by the Authority as rapidly as possible, but shall develop and adopt programs for deferred payments by makers of such notes to avoid undue hardship or sacrifice of business values.

25. Any person who, having obtained a loan under this act, solicits, applies for, or accepts another such loan, except as specifically authorized in this act, and any person who knowingly and willfully furnishes any false or misleading information for the purpose of obtaining a loan, or of enabling another to obtain a loan, under this act, shall be guilty of a misdemeanor and upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than 3 years, or both.

26. The Authority may, with respect to the exercise of its functions related to loans insured or guaranteed by it under this act, the provisions of any other law to the contrary notwithstanding:

(1) Consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, or other provisions of any note, or any instrument securing a loan which has been guaranteed or insured by the Authority;

(2) Authorize payment or compromise, subject to the approval in writing of the Attorney-General, of any claim upon or arising as a result of any such guaranty or insurance;

(3) Authorize payment, compromise, waiver or release, subject to the approval in writing of the Attorney-General, of any debt, right, title, claim, lien or demand, however acquired, including any equity or right of redemption and the waiver or release of any debt, right, title, claim, lien or demand including any equity or right of redemption shall be sufficient if executed by the commissioner on behalf of the Authority. The register or county clerk of any county and the clerk of any court is hereby authorized to cancel of record any lien, including but not limited to judgments, chattel mortgages and conditional sales agreements whenever the document evidencing such cancellation or request for cancellation is signed by the commissioner on behalf of the Authority; and the register and the clerk of any county is authorized to record any documents of the Authority signed by the commissioner.

(4) Purchase at any sale, public or private, upon such terms and for such prices as it determines to be reasonable and take title to, property, real, personal or mixed;

(5) Sell at public or private sale, exchange, assign, convey or otherwise dispose of any such property upon such terms and for such prices as it determines to be reasonable;

(6) Complete, administer, operate, obtain and authorize payment for insurance on and maintain, renovate, repair, modernize, lease or otherwise deal with any property acquired or held by it pursuant to this act;

(7) Authorize payment from the fund and any income received by the investment of said fund, subject to rules of the Authority, disbursements, costs, commissions, attorney's fees and other reasonable expenses related to and necessary for the making and protection of guaranteed or insured loans and the recovery of moneys loaned or management of property acquired in connection with such loans.

27. Any contract, promissory note, or other written obligation made by any person over 18 years of age to repay or secure payment of a loan made under this act, payment whereof is guaranteed or insured by the Authority, or which forms part of the same transaction as the making of such loan shall, notwithstanding any provision of law to the contrary, be as valid and binding as if said person were at the time of making and executing the same of the age of 21 years, and they may be enforced in any action or proceeding by or against such person in his or her own name, and shall be valid without the consent thereto of the parent or guardian of such person, and such person shall not disaffirm such instrument because of his or her age, nor shall any such person hereafter interpose the defense that he or she is, or was, at the time of making and executing the same, a minor in any action or proceeding arising out of any such loan.

28. This act shall take effect immediately.

Approved June 17, 1959.

#### CHAPTER 127, LAWS OF 1959

AN ACT concerning elections, and amending sections 19:4-1, 19:31-3 and 19:31-5 of the Revised Statutes.

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

1. Section 19:4-1 of the Revised Statutes is amended to read as follows:

19:4-1. Except as provided in sections 19:4-2 and 19:4-3 of this Title, every person possessing the qualifications required by Article II, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications hereinafter stated and being duly registered as required by this Title, shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere.

No person shall have the right of suffrage—

(1) Who is an idiot or is insane; or

(2) Who has been or shall be convicted of any of the following designated crimes, that is to say—blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with mankind or with beast, robbery, conspiracy, forgery, perjury or subornation of perjury, unless pardoned or restored by law to the right of suffrage; or

(3) Who was convicted prior to October 6, 1948, of the crime of polygamy or of larceny of above the value of \$6.00; or who was convicted after October 5, 1948, and prior to the effective date of this act, of larceny of above the value of \$20.00; or,

(4) Who shall hereafter be convicted of the crime of larceny of the value of \$200.00 or more, unless pardoned or restored by law to the right of suffrage; or

(5) Who was convicted after October 5, 1948, or shall be convicted of the crime of bigamy or of burglary or of any offense described in chapter 94 of Title 2A or section 2A:102-1 or section 2A:102-4 of the New Jersey Statutes or described in sections 24:18-4 and 24:18-47 of the Revised Statutes, unless pardoned or restored by law to the right of suffrage; or

(6) Who has been convicted of a violation of any of the provisions of this Title, for which criminal penalties were imposed, if such person was deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage; or

(7) Who shall be convicted of the violation of any of the provisions of this Title, for which criminal penalties are imposed, if such person shall be deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage.

A person who will have on the day of *the next* general election the qualifications to entitle him to vote shall have the right to be registered for and vote at *such* general election and register for and vote *at any election, intervening between such date of registration and such general election, if he shall be a citizen of the United States of the age of 21 years and shall have been a resident of the State for at least 6 months and of the county at least 60 days, when such intervening election is held*, as though such qualifications were met before registration.

2. Section 19:31-3 of the Revised Statutes is amended to read as follows:

19:31-3. a. Permanent registration forms for the registration of voters shall be prepared and supplied by the commissioner in sufficient quantities to enable all eligible voters to register. Such forms shall consist of an equal number of original forms of 1 color and duplicate forms of another color. Each set of original and duplicate permanent registration forms shall be serially numbered and each of such forms shall be suitable for locking in a loose-leaf binder, shall be approximately 10 inches by 16 inches so as to contain on the face thereof a margin of approximately 2 inches for binding, and shall contain the information hereinafter required.

b. Space shall be provided on both the original and duplicate forms at the top for the word "original" on the original forms and the word "duplicate" on the duplicate forms, to be followed immediately below by the words "permanent registration" on both forms, which shall contain the following information concerning each applicant for registration:

(1) The full name, including middle initials if any; in the case of a married woman her Christian name shall be entered prefixed by the word "Mrs.": in the case of a single woman her Christian name shall be prefixed by the word "Miss."

(2) The place of residence and street address. If the applicant resides in a hotel, apartment or tenement house or institution, such addi-

tional information shall be included as may be deemed necessary to give the exact location of the applicant's place of residence.

(3) The applicant's statement that he is 21 years of age or over, that he is a citizen of the United States and of the State of New Jersey, that he will have resided in the State of New Jersey for at least *6 months* and in the county for at least *60 days* immediately preceding the next general election, all of which shall be indicated by the word "yes."

(4) Whether he is a native-born citizen or a citizen by naturalization.

(5) The name of the municipality and house number and street in such municipality from which he last registered.

(6) The signature in person or by the mark of the applicant.

(7) Immediately above the space for the signature of the applicant shall be printed these words: "I, being duly sworn on oath (or affirmation), depose and say (or affirm), to the best of knowledge and belief, that the foregoing statements made by me are true and correct."

(8) Date of filling out the blank and the signature of the person recording such information and taking such affidavit and the authority of the person taking such affidavit.

Following the above information shall appear additional questions to be answered only in the event that the applicant is unable to sign his name; leaving space above the questions for the words "identification statement" followed immediately below by the words "applicant unable to sign name."

(9) What is your full name?

(10) What is or was your father's full name?

(11) What is or was your mother's full name?

(12) Are you married or single?

(13) Where did you actually reside immediately prior to taking up your present residence; state floor and character of premises?

(14) Immediately below shall be printed these words: "I, being duly sworn on oath (or affirmation), depose and say (or affirm), to the best of my knowledge and belief, that the foregoing statements made by me are true and correct."

(15) Date of filling out the answers, and the signature of the person recording such answers and taking such affidavit and the authority of the person taking such affidavit.

Immediately to the left of the above permanent registration and identification statement shall be printed a column approximately  $2\frac{1}{2}$  inches wide for subsequent changes in address or removals of such applicant from one district to another.

Immediately to the right of the permanent registration and identification statement shall be printed a form for recording the fact that the registered voters have voted. The face of the record of voting form shall be ruled to provide for serial number, the words "original voting record" on the original record of voting form and the words "duplicate voting record" on the duplicate record of voting forms, followed by the name, address and the municipality, ward and district of the registrant at the top of the space. The remainder of the space shall be ruled to provide a record for a period of 20 years of the number of the ballot cast by the registrant at the primary

election for the general election, the general election and other elections and also the first 3 letters of the name of the political party whose ballot such registrant cast at the primary election for the general election.

c. The original and duplicate permanent registration and voting forms shall be in substantially the following form:

Duplicate		VOTING RECORD		No. 18
Name.....				
Street Address.....				
Municipality.....				
Ward..... District.....				
Primary Election		General Election		Other Elections
Political Party No.	Ballot No.	Ballot No.	Ballot No.	Ballot No.
1941				
1942				
1943				
1944				
1945				
1946				
1947				
1948				
1949				
1950				
1951				
1952				
1953				
1954				
1955				
1956				
1957				
1958				
1959				
1960				

Form X		DUPLICATE	
CHANGE IN ADDRESS		PERMANENT REGISTRATION	
To.....	Name First name in full, Middle Initials Only. For Women state whether "Miss" or "Mrs."	Street Address.....	Street Address.....
Ward..... District.....	Residence.....	Municipality.....	Municipality.....
Date.....	Municipality.....	Ward.....	District.....
To.....	Exact Location: Apt. No., Room No., Floor No., Use only for three or more Family Houses, Apartments, Hotels, Row Houses or Institutions.	Ward.....	District.....
Ward..... District.....	Are you twenty-one years of age or more at the time of the United States and in New Jersey; will you have resided in said State at least 6 months and in the County of Essex at least 60 days on or before the next General Election?	Ward.....	District.....
Date.....	Are you a Native Born or Naturalized Citizen?	Ward.....	District.....
To.....	Municipality, house number and street from which last registered.	Ward.....	District.....
Ward..... District.....	State of New Jersey, } ss. County of Essex	Ward.....	District.....
Date.....	I, being duly sworn on oath (or affirmation), depose and say (or affirm), to the best of my knowledge and belief, that the foregoing statements made by me are true and correct. Sworn and Subscribed before me at..... this..... day of..... 19.....	Ward.....	District.....
To.....	Signature or mark of applicant.	Ward.....	District.....
Ward..... District.....	Signature of person taking affidavit.	Ward.....	District.....
Date.....	Authority of person taking affidavit.	Ward.....	District.....
To.....	<b>IDENTIFICATION STATEMENT</b>	Ward.....	District.....
Ward..... District.....	To be used only when Voter is unable to Sign His or Her Name.	Ward.....	District.....
Date.....	What is your full name?	Ward.....	District.....
To.....	What is, or was, your father's full name?	Ward.....	District.....
Ward..... District.....	What is, or was, your mother's full name?	Ward.....	District.....
Date.....	Are you Married or Single? Where did you actually reside prior to taking up your present residence; state floor and character of premises.	Ward.....	District.....
To.....	I, being duly sworn on oath (or affirmation), depose and say (or affirm), to the best of my knowledge and belief, that the foregoing statements made by me are true and correct. Sworn to before me at..... this..... day of..... 19.....	Ward.....	District.....
Ward..... District.....	Authority of person taking affidavit.	Ward.....	District.....
Date.....	Signature of person taking affidavit.	Ward.....	District.....

3. Section 19:31-5 of the Revised Statutes is amended to read as follows:

19:31-5. Each person, who at the time he applies for registration resides in the district in which he expects to vote, who will be of the age of 21 years or more at the next ensuing general election, who is a citizen of the United

States, and who, if he continues to reside in the district until the next general election, will at the time have fulfilled all the requirements as to length of residence to qualify him as a legal voter, shall, unless otherwise disqualified, be entitled to be registered in such district; and when once registered shall not be required to register again in such district as long as he resides therein, except when required to do so by the commissioner, because of the loss of or some defect in his registration record.

The registrant, when registered as provided in this Title, shall be eligible to vote at any election *to be held* subsequent to such registration, *if he shall be a citizen of the United States of the age of 21 years and shall have been a resident of the State for at least 6 months and of the county at least 60 days, when the same is held*, subject to any change in his qualifications which may later disqualify him; but if such registrant does not vote at any election during 4 consecutive years his original and duplicate permanent registration and record of voting forms shall be removed to the inactive file and he shall be required to reregister before being allowed to vote at any subsequent election.

4. This act shall take effect immediately.

Approved June 18, 1959.

#### CHAPTER 140, LAWS OF 1959

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

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

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

10. Upon receipt of any request for a civilian absentee ballot, the county clerk shall, with the co-operation of the Commissioner of Registration, *cause* the signature of the applicant on the request *to be compared* with the signature of said person appearing on the permanent registration form *in order to* determine from such examination and any other available information if the applicant is a voter qualified to cast a ballot in the election in which he desires to vote, and determine in case of a primary election in which political party primary the voter is entitled to vote. The Commissioner of Registration or the superintendent of elections in counties having a superintendent of elections may investigate any application or request for an absentee ballot.

If after such examination, the county clerk is satisfied that the applicant is entitled to a ballot, he shall mark on the application "Approved." If after such examination the county clerk determines that the applicant is not entitled to a ballot, he shall mark on the application "Disapproved" and shall so notify the applicant, stating the reason therefor.

2. This act shall take effect immediately.

Approved June 30, 1959.

CHAPTER 150, LAWS OF 1959

AN ACT to amend the title and body of "An act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes."

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

1. The title of "An act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes," is amended to read "An act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in certain accredited institutions of collegiate grade, and repealing section 18:16-33 of the Revised Statutes."

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

2. All *undergraduate* scholarships, except work scholarships and *scholarships awarded in the course of any rehabilitation program*, provided by statute or through State appropriation, shall be awarded in accordance with the provisions of this act. Nothing herein contained shall affect the renewal or continuance of individual scholarships awarded prior to the effective date hereof.

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

3. There is hereby created the State Scholarship Commission *which is hereby allocated to the State Department of Education and which shall consist* of the Commissioner of Education, who shall be its chairman, and 8 other members to be appointed by the Governor as follows:

One representative of Rutgers the State University;

One representative of the State Colleges;

Three representatives of nontax-supported institutions of higher education in the State;

Three other residents of the State.

The terms of office of the appointed members shall be 4 years except that the terms of first members shall be fixed by the Governor in such manner as will provide for the expiration each year of the terms of  $\frac{1}{4}$  of such appointed members. Any vacancy in the commission shall be filled by the Governor by the appointment of a person who shall hold office for the balance of the unexpired terms.

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

10. A State competitive scholarship may be used in any institution of collegiate grade in New Jersey *which offers a college curriculum leading to*

*or accreditable toward an undergraduate degree and which is accredited by the State Board of Education. Of the total number of scholarships available for initial award in any year not more than 15% of that number may be used in institutions of collegiate grade outside the State which are approved for this purpose by the State Department of Education.*

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

14. The State Scholarship Commission may employ such persons, contract for such services, *make such additional expenditures*, and adopt such rules and regulations as may be necessary or appropriate for effectuating the provisions of this act. *It may expend for the administration of this act such parts, as may be necessary, of any sums heretofore appropriated, or heretofore or hereafter appropriated or reappropriated for the fiscal year 1959-1960, for the purpose of providing a State-wide scholarship program.*

6. This act shall take effect immediately.

Approved July 27, 1959.

CHAPTER 153, LAWS OF 1959

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

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

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

2. Whenever used in this act, the following terms shall, unless the context indicates otherwise, be construed to have the following meaning:

"Absentee ballot" means any military service ballot or civilian absentee ballot as herein defined.

"Absentee voter" means any person qualified to vote a military service ballot or a civilian absentee ballot under the provisions of this act.

"Civilian absentee ballot" means a ballot for use by a civilian absentee voter as prescribed by this act.

"Civilian absentee voter" means any qualified and registered voter of the State who expects to be absent from the State on the day of any election and any qualified and registered voter who will be within the State on the day of any election but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of his religion, *or because of resident attendance at a school, college or university*, will be unable to cast his ballot at the polling place in his election district on the day of the election.

"Election," "general election," "primary election for the general election," "municipal election," and "special election" shall mean, respectively, such elections as defined in the Title to which this act is a supplement (R. S. 19:1-1).

“Military service” means active service by any person, as a member of any branch or department of the United States Army, Navy, Air Force, Coast Guard or Marine Corps, or as a reservist absent from his place of residence and undergoing training under Army, Navy, Air Force, Coast Guard or Marine Corps direction, at a place other than that of such person’s residence.

“Military service voter” means any person in the military service, or any patient in any veterans’ hospital, located in any place other than the place of his residence who has been in the military service in any war in which the United States has been engaged and having been discharged or released from the military service and who prior to entering the military service or prior to being admitted as a patient in such hospital, was a resident of this State and who, at the time of the holding of any election in this State, while this act is in effect, is a resident of the United States, is of the age of 21 years or more, is not disqualified by reason of conviction of crime from voting in this State.

“Military service ballot” means a ballot for use by a military service voter as prescribed by this act.

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

3. The following persons shall be entitled to vote by absentee ballot in any election to be held in this State, in the manner hereinafter provided:

A military service voter who may be absent on the day on which such election is held from the election district in which he resides, whether such person is within or without this State, or within or without the United States, provided he has resided in this State at least 6 months and in the county in which he claims the right to vote at least 60 days counting the time he has been in the military service or a patient in a veterans’ hospital in said periods of residence;

A civilian absentee voter who expects to be or may be absent outside the State or the United States on the day on which an election is held or who may be within the State on the day of any election but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of his religion, *or because of resident attendance at a school, college or university*, will be unable to cast his ballot at the polling place in his election district on the day of the election, provided he is a registered voter, and is not otherwise disqualified by law from voting in such election.

This act shall be liberally construed to effectuate these purposes.

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

7. The officer to whom the application for an absentee ballot may be made pursuant to section 6 of this act shall publish or cause to be published the following notices in substantially the following forms:

NOTICE TO PERSONS IN MILITARY SERVICE OR PATIENTS IN VETERANS' HOSPITALS AND TO THEIR RELATIVES AND FRIENDS

If you are in the military service or are a patient in a veterans' hospital and desire to vote, or if you are a relative or friend of a person who is in the military service or is a patient in a veterans' hospital who, you believe, will desire to vote in the \_\_\_\_\_ election (municipal, primary, general or other)

to be held on \_\_\_\_\_, kindly write to the (date of election)

undersigned at once making application for a military service ballot to be voted in said election to be forwarded to you, if you are in the military service or are a patient in a veterans' hospital, stating your name, age, serial number, home address and the address at which you are stationed or can be found, or if you desire the military service ballot for a relative or friend then make an application under oath for military service ballot to be forwarded to him, stating in your application that he is over the age of 21 years and stating his name, serial number, home address and the address at which he is stationed or can be found.

Forms of application can be obtained from the undersigned.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature and title of county clerk, municipal clerk or other official as the case may be)

\_\_\_\_\_  
(Address of county clerk, municipal clerk or other official)

NOTICE TO PERSONS DESIRING ABSENTEE BALLOTS

If you are a qualified and registered voter of the State who expects to be absent outside the State on \_\_\_\_\_, or a qualified (date of election)

and registered voter who will be within the State on \_\_\_\_\_ (date of election)

but because of illness or physical disability, or because of the observance of a religious holiday pursuant to the tenets of your religion, or because of *resident attendance at a school, college or university*, will be unable to cast your ballot at the polling place in your district on said date, and you desire

to vote in the \_\_\_\_\_ election to be (municipal, primary, general or other)

held on \_\_\_\_\_ kindly write or apply in person to (date of election)

the undersigned at once requesting that a civilian absentee ballot be for-

warded to you. Such request must state your home address, and the address to which said ballot should be sent, and must be signed with your signature, and state the reason why you will not be able to vote at your usual polling place. No civilian absentee ballot will be furnished or forwarded to any applicant unless request therefor is received not less than 8 days prior to the election, and contains the foregoing information.

Dated .....

.....  
(Signature and title of county clerk, municipal clerk or other official as the case may be)

.....  
(Address of county clerk, municipal clerk or other official)

Such notices shall be separately published prior to the fortieth day immediately preceding the holding of any election.

Notices relating to any State-wide or county-wide election shall be published by the county clerk in at least 2 newspapers published in the county. All other officials charged with the duty of publishing such notices shall publish the same in at least 1 newspaper published in each municipality or district in which the election is to be held or if no newspaper be published in said municipality, then in a newspaper published in the county and circulating in such municipality, municipalities or district.

4. Section 17 of the act of which this act is amendatory is amended to read as follows:

17. Upon the said margin of said flap on the envelopes to be sent to military service voters there shall be printed a certificate in the following form:

I hereby certify that

1. I am a citizen of the United States;
2. The date of my birth was .....
3. On the date of the (Description of election in which ballot is used to be printed here.) election I will have resided in New Jersey for .....  
(years) ..... and in ..... county for .....  
or months) ..... (years, months or days)
4. My home address is at .....  
(street and number, if any, or rural route)  
in .....  
(city, borough, town, township or village)
5. My military service address or veterans' hospital address is .....

6. My serial number is .....

.....  
(write your usual signature above)

.....  
(print your name clearly above)

Sworn and subscribed to before me this ..... day  
of ....., A. D. .... at .....  
in the State or Country of .....

.....  
(signature and rank of commanding officer)

Said certificate shall be sworn to before the military service voter's commanding officer or the superintendent of the veterans' hospital in which the military service voter is a patient.

Upon said margin of said flap on the inner envelopes to be sent to civilian absentee voters there shall be printed a certificate in the following form:

*I am unable to leave my place of confinement at .....  
(home address, ..... because of permanent  
hospital address or other place of confinement)  
and total disability previously certified.*

I, ....., do solemnly swear that I am a registered voter of the State of New Jersey, and that I have resided in the county of ..... continuously since .....  
(month, date and year)

My address in said county is .....  
(street and number, if any, or rural route)  
where I have resided since .....  
(month, date and year)

I will be a resident of the State of New Jersey at the above address on .....  
(date of election)

FILL IN ONLY IF YOU HAVE MOVED OR INTEND TO MOVE YOUR RESIDENCE AFTER

.....  
(county clerk insert date of fortieth day before election)

AND BEFORE THE ELECTION

I moved or will move to the above address from my previous home address at ..... in  
(street and number, if any, or rural route)

the \_\_\_\_\_ county of \_\_\_\_\_  
(city, borough, town, township or village)

State of \_\_\_\_\_ on \_\_\_\_\_  
(give date)

Place a cross (X) in the box preceding the applicable statement below.  
My reason for voting this absentee ballot is:

I will be absent from the State on the date of the election.

I am unable to leave my place of confinement at \_\_\_\_\_  
(home address,

\_\_\_\_\_ because of  
hospital address or other place of confinement)

\_\_\_\_\_ and will, therefore, be unable to  
(name of sickness or physical disability)

cast my ballot at the polling place in my election district on the date of the  
election.

I will be unable to attend at my polling place on the date of the elec-  
tion because of the observance of a religious holiday, pursuant to the tenets  
of my religion.

I will be unable to attend at my polling place on the date of the elec-  
tion because I will be in resident attendance at \_\_\_\_\_  
(name of school,

\_\_\_\_\_ located in \_\_\_\_\_,  
college or university) (name of city or town)

New Jersey.

I marked the enclosed ballot in secret.

\_\_\_\_\_  
(signature of absentee voter)

\_\_\_\_\_  
(print your name clearly above)

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.  
Country of \_\_\_\_\_ }

\_\_\_\_\_ being duly sworn, deposes and says that  
the statements on the foregoing declaration are true.

\_\_\_\_\_  
(signature of absentee voter)

Sworn to and subscribed before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_\_ and I hereby certify that the affiant exhibited  
the enclosed ballot to me unmarked, and that he then in my presence and in  
the presence of no other person and in such manner that I could not see  
his vote, marked such ballot and enclosed and sealed the same in this en-

velope without my seeing or knowing his vote, and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition.

-----  
(signature of officer authorized by law, of the place where  
the oath is administered, to administer oaths)

-----  
(title of officer)

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

18. In the case of any civilian absentee voter who claims the right to vote by absentee ballot by reason of disability, the voter shall include within the outer envelope a certificate of a duly licensed physician or a duly accredited Christian Science practitioner certifying that the voter is confined by reason of sickness or physical disability and will be unable to cast his ballot at the polling place in the absentee voter's election district on the date of the election. In the event that a civilian absentee voter is permanently and totally disabled and the certificate of the physician or Christian Science practitioner accompanying the absentee ballot states that the voter will be unable to cast his ballot in person at his polling place in any future election because of permanent and total disability, the commissioner of registration shall mark the permanent registration form of the voter "Permanently and Totally Disabled" and shall retain the physician's or practitioner's certificate on file. On subsequent transmittal of an absentee ballot, if the applicant states in the certificate prescribed in section 17 of the act of which this act is amendatory that he is unable to leave his place of confinement because of "permanent and total disability previously certified," no physician's or Christian Science practitioner's certificate need be included. Appropriate instructions in this regard shall be included in the printed directions for the preparation and transmitting of absentee ballots.

6. This act shall take effect immediately.

Approved September 1, 1959.

#### CHAPTER 154, LAWS OF 1959

AN ACT to provide means for meeting transportation problems by obtaining certain surplus revenues of the New Jersey Turnpike Authority, which are to be released in exchange for a guaranty by the State of New Jersey of certain bonds of said authority, in an aggregate principal amount not to exceed \$430,000,000.00; authorizing a liability of the State in the amount of such guaranty; providing the ways and means to pay interest and make sinking fund and other principal payments to discharge such guaranty if called upon to do so; and providing for the submission of this law to the people at a general election.

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

1. In this act, unless the context indicates another or different meaning or intent:

(a) "Annual bond obligation," when used with reference to any year, means the amount of money required to discharge when due all interest and principal payments, and to make when due all sinking fund payments, becoming payable during such year, with respect to guaranteed bonds;

(b) "Authority" means the New Jersey Turnpike Authority established by the New Jersey Turnpike Authority Act of 1948;

(c) "Debt service" means the amount of money required to discharge when due all interest and principal payments and to make when due all sinking fund payments with respect to all outstanding bonds of the authority whenever issued and whether or not guaranteed bonds;

(d) "Guaranteed bond" means any bond of the authority which is guaranteed pursuant to this act;

(e) "Guaranty officials" means any 2 of the officials of the State designated in section 5 of this act;

(f) "Sinking fund payment" means any payment into a fund created by a resolution of the authority for the redemption or retirement of guaranteed bonds, which is required by said resolution to be made by the authority prior to the maturity of such guaranteed bonds; and

(g) "Transportation fund" means the fund created by section 2 of this act.

For all purposes of this act, all interest and principal payments and sinking fund payments with respect to guaranteed bonds shall be deemed to be due on the respective dates specified therefor in such bonds or in the resolutions of the authority with respect to such bonds whether or not the authority is unconditionally obligated to make such payments on said dates.

2. There is hereby created a separate fund to be held by the State Treasurer, which shall be known as the "transportation fund." Upon the making of the modification or modifications in the agreements between the authority and its bondholders hereinafter mentioned, the right to the funds thereby released shall be and become the property of the State of New Jersey and said funds shall be payable into the transportation fund as hereinafter stated. The moneys in said fund shall be drawn only for appropriations therefrom made by law.

3. All moneys to be raised pursuant to this law and to be paid into the transportation fund as hereinafter provided shall be applied solely to the object of meeting transportation problems which object shall be deemed to include payment of costs of aiding, extending and developing existing and additional facilities and services for the transportation of persons and goods by any means or vehicle of transportation whatever, or provision for any financial aspect thereof, including compensation or adjustments to municipalities of this State to insure no loss in revenue as a result of any tax revision program hereafter adopted by law in connection with transportation problems and, in priority to other applications of such moneys, payment when due of any liability or obligation to any such municipality hereafter incurred by the State in connection therewith, or payments by the State in lieu of taxes, or payments of any liability or obligation heretofore or hereafter incurred by the State in connection with transportation facilities or services, including but not by way of limitation, interchanges, joining facilities, signal systems, terminals, bridges, tunnels, railroads, stations, rapid transit lines,

grade crossing elimination projects, equipment, buses and bus lines and highways. Such object shall be carried out by such means and methods as shall be determined by law.

4. In exchange for the release to the State of New Jersey of funds as provided in this act, a liability of the State of New Jersey is hereby authorized for the guaranty of punctual payment of principal of and interest on and sinking fund payments for the bonds, not exceeding \$430,000,000.00 in aggregate principal amount, of the authority which have heretofore been issued by the authority for its corporate purposes and are now outstanding, or which may hereafter be issued by the authority for the purpose of refunding, or being exchanged for, any of such outstanding bonds. No bonds shall be guaranteed under this act, except bonds which mature within 35 years from the time of the approval of this act at an election as provided herein.

5. The Governor, the State Treasurer, and the State Highway Commissioner or any 2 of such officials are hereby authorized to carry out the provisions of this act relating to the guaranty of bonds of the authority and shall determine all matters in connection with said guaranty subject to the provisions hereof. In case any of said officials shall be absent from the State or incapable of acting for any reason, his powers and duties shall be exercised and performed by such person as shall be authorized by law to act in his place as such State official.

6. The guaranty officials are authorized to execute and file a certificate effectuating a guaranty of bonds as authorized by this act upon the completion of the following steps, terms and conditions:

(A) The authority shall present to the guaranty officials proof satisfactory to them that:

(1) The authority has duly adopted a resolution or resolutions providing for modification of its agreements with its bondholders on such terms as will release to the State of New Jersey for payment to the State Treasurer of revenues of the authority in excess of the annual amounts required by the authority for operating expenses, debt service, payments into reserve or sinking funds and other purposes, all within the limitations of the authority's agreements with its bondholders (as so modified), and

(2) there has been duly obtained the consent or other approval of all bondholders of the authority whose consent to or other approval of such resolution or resolutions of the authority is required by the authority's agreements with its bondholders to make such resolution or resolutions effective, and

(3) simultaneously with the filing of the certificate effectuating such guaranty pursuant to this act, there will be paid by the authority to the State Treasurer all sums of money (if any) at that time to be paid to the State pursuant to said resolution or resolutions of the authority.

(B) The authority shall present to the guaranty officials a certificate setting forth a record of the amounts and other appropriate description of the particular bonds to be guaranteed.

(C) If the particular bonds to be guaranteed are additional bonds authorized or issued for the purpose of refunding any bonds previously guaranteed pursuant to this act, the authority shall present to the guaranty

officials proof satisfactory to them that proceeds of such additional bonds equal to the principal amount thereof have been or will be applied to retirement of an equal principal amount of said bonds previously guaranteed. Additional bonds issued solely for the purpose of refunding outstanding guaranteed bonds shall not be taken into account in computing the aggregate principal amount of bonds guaranteed under this act.

(D) The authority shall also present to the guaranty officials such other certificates, opinions, documents, and proof as said officials may reasonably require in connection with any of the foregoing matters.

7. If at any time after the presentation to them by the authority of copies of the resolution or resolutions referred to in clause (1) of paragraph (A) of section 6 of this act, the guaranty officials shall have found and determined that the terms and conditions of such resolution or resolutions are fair and reasonable, are in the public interest, will achieve the purpose intended by this act, and conform to the conditions, requirements and limitations provided by law, the guaranty officials, whenever thereafter from time to time authorized as provided in said section 6 to execute and file a certificate effectuating a guaranty of bonds as authorized by this act, may execute such certificate and file it in the office of the Secretary of State, together with the resolutions, proofs, certificates, opinions and other documents presented to them, and said finding and determination. The certificate shall approve and consent to the adoption of the said resolution or resolutions of the authority, shall set forth a record of the amounts and other appropriate description of the bonds to be guaranteed under this act, and shall state the amount (if any) to be paid by the authority to the State Treasurer simultaneously with the filing of such certificate.

8. Upon the execution and filing of any such certificate by the guaranty officials and upon the payment to the State Treasurer of the amount (if any) specified therein the receipt whereof shall be acknowledged by the State Treasurer at the foot of the certificate, the punctual payment of the principal of, sinking fund payments for, and interest on the bonds described in the record set forth in said certificate shall be, and the same hereby is, unconditionally guaranteed by the State of New Jersey. Said guaranty may, and at the request of the holder shall, be expressed or endorsed upon such bonds by the endorsement of the State Treasurer or any other person in the Department of the Treasury appointed by him for that purpose, in substantially the following form:

“The punctual payment of the principal of, sinking fund payments for, and interest on the within bond on the respective dates specified therefor in said bond or the resolutions of the New Jersey Turnpike Authority with respect thereto is unconditionally guaranteed by the State of New Jersey, pursuant to the authority of chapter ..... of the Pamphlet Laws of 1959.”

9. Guaranty made under this act of any bond of the authority shall make the State unconditionally liable for the punctual payment of the principal of, sinking fund payments for, and interest on the bond so guaranteed. In the event that the authority shall fail to pay, when due, the principal of, sinking fund payments for, or interest on any bond so guaranteed, the State Treasurer shall pay the same out of the funds provided pursuant to this act on the

respective dates specified therefor in such bond or in the resolutions of the authority with respect to such bond, whether or not the authority is unconditionally obligated to make such payments on said dates.

10. From and after the making and filing of a certificate and record of the guaranty officials as provided in section 7 of this act and the making of a guaranty of bonds as provided in section 8 of this act, all revenues of the authority from whatever source in excess of the aggregate of the annual amounts required by the authority for operating expenses, debt service, payments into reserve or sinking funds and other purposes, all within the limitations of the authority's agreements with its bondholders modified as referred to in section 6 of this act, shall, not less often than annually, be paid to the State Treasurer to be deposited by him in the transportation fund.

11. Pending their application to the purposes provided in this act, moneys in the transportation fund may be invested and reinvested as other trust funds in the custody of the State Treasurer in the manner provided by law. Moneys paid to the State Treasurer for deposit in the transportation fund pursuant to this act may be deposited in such depositories as the State Treasurer may select to the credit of such fund.

12. The resolution or resolutions of the authority mentioned in clause (1) of paragraph (A) of section 6 of this act may contain such further terms and provisions providing for amendment or modification of the authority's agreements with its bondholders, or its outstanding bonds, or authorizing the issuance of additional bonds of the authority for the purpose of refunding or being exchanged for outstanding bonds of the authority, as may be adopted by the authority and approved by the guaranty officials.

13. This act shall not limit the right of the authority to issue subject to its agreements with its bondholders additional bonds which are not guaranteed bonds, except that, so long as any guaranteed bonds shall be outstanding, no such additional bonds shall be issued without the prior approval of the guaranty officials. The resolutions of the authority authorizing such additional bonds may contain such provisions including provisions for reserves for the payment or retirement of such bonds or for other purposes as may be adopted by the authority and approved by the guaranty officials.

14. To provide ways and means, exclusive of loans, to perform and discharge any guaranty made under this act and provide funds to pay the principal of, sinking fund payments for, and interest on bonds of the authority so guaranteed and not otherwise paid:

(a) there is hereby appropriated from the receipts of license fees, taxes and revenues derived from pari-mutuel betting at race meetings pursuant to chapter 17 of P. L. 1940, as amended and supplemented, so much as may be required for such purpose, and the State Treasurer is hereby authorized and directed to retain from such receipts and set aside in a separate fund such amounts as will at all times maintain in said separate fund a sum which, together with the amount of moneys of the authority stated in the latest certificate of the State Treasurer previously made and filed pursuant to section 15 of this act if the same be itself insufficient for the purpose, equals the annual bond obligation for the year beginning next after the filing of such certificate; and

(b) if in any year or at any time, the funds hereinbefore appropriated to meet and satisfy the interest, principal and sinking fund payments with respect to outstanding guaranteed bonds shall be insufficient or shall not be available, then and in that case, there shall be assessed, levied and collected in each year in each of the municipalities of the counties of this State a tax on real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to satisfy the annual bond obligation. In such case, the Director of the Division of Taxation shall then calculate on or before March 1, following, what portion of the balance required, as certified by the State Treasurer pursuant to section 15 of this act, in dollars, is to be assessed, levied and collected in each county as herein set forth. Such calculation shall be based upon the corrected and equalized aggregate assessed valuation of taxable real property and upon the corrected assessed valuation of taxable personal property in each county for the year preceding that in which such tax is to be assessed, but such tax shall be assessed, levied and collected upon the assessed valuation of the year in which the tax is assessed and levied, in the same manner as other like taxes on such property. The director shall certify the amount so computed to the county board of taxation and the county treasurer of each county. The said county board of taxation shall include the amount so certified in the current tax levy of the several taxing districts of the county in the same proportions as county taxes are allocated for the year in which the same is to be assessed, levied and collected.

15. The authority, on or before December 31 in each year, shall file with the State Treasurer a statement showing (1) the amount of the annual bond obligation for the next ensuing year, and (2) the amount of the moneys of the authority then available and irrevocably pledged to meet such annual bond obligation. The State Treasurer, on or before December 31 in each year, shall determine whether the moneys of the authority so available and irrevocably pledged are sufficient to meet the annual bond obligation for the next ensuing year, and he shall, by certificate filed in his office and with the Director of the Division of Taxation, certify to said director either (a) that no amount of money need be provided in the next ensuing year by the State to satisfy its guaranty or (b) in the event that he shall find that there are not sufficient moneys so available and pledged for such purpose, the amount to be raised by taxation under section 14 (b) of this act for such purpose which shall be the balance sufficient, when added to such moneys of the authority and to such moneys as are set aside pursuant to section 14 (a) of this act, to satisfy such annual bond obligation.

16. If the certificate filed by the State Treasurer as provided in section 15 of this act shall disclose that there are moneys of the authority available and irrevocably pledged sufficient to satisfy the annual bond obligation for the next ensuing year, then and in that event, the receipts for said ensuing year from the source designated in section 14 (a) of this act may thereupon be considered as part of the General State Fund, available for general purposes.

17. For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1959, be submitted to the people. In order to inform the people of the contents of this act it shall be the duty of the Secretary of State, after this section shall take effect, and at least 15 days prior to the said election, to

cause this act to be published in at least 10 newspapers published in the State and to notify the clerk of each county of this State of the passage of this act, and the said clerks respectively shall cause to be printed on each of the ballots for said election the following:

If you approve the act entitled below, make a cross X, plus +, or check V, mark in the square opposite the word "Yes."

If you disapprove the act entitled below, make a cross X, plus +, or check V, mark in the square opposite the word "No."

If voting machines are used, a vote of "Yes" or "No" shall be equivalent to such markings respectively.

	Yes.	Shall the act entitled "An act to provide means for meeting transportation problems by obtaining certain surplus revenues of the New Jersey Turnpike Authority, which are to be released in exchange for a guaranty by the State of New Jersey of certain bonds of said authority, in an aggregate principal amount not to exceed \$430,000,000.00; authorizing a liability of the State in the amount of such guaranty; providing the ways and means to pay interest and make sinking fund and other principal payments to discharge such guaranty if called upon to do so; and providing for the submission of this law to the people at a general election." be approved?
	No.	

The fact and date of the approval or passage of this act, as the case may be, shall be inserted in the appropriate place after the title in said ballot. No other requirement of law of any kind or character as to notice or procedure except as herein provided need be adhered to.

The said votes so cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of such election had in the same manner as is now provided for by law in the case of the election of a Governor, and the approval or disapproval of this act so determined shall be declared in the same manner as the result of an election for a Governor, and if there shall be a majority of all the votes cast for and against it at such election in favor of the approval of this act, then all the provisions of this act shall take effect forthwith.

18. This section and section 17 of this act shall take effect immediately and the remainder of the act shall take effect as and when provided in the preceding section.

Approved September 2, 1959.

CHAPTER 155, LAWS OF 1959

AN ACT concerning free public libraries, supplementing chapter 54 of Title 40 of the Revised Statutes, and repealing sections 40:54-30 to 40:54-34, inclusive, of the Revised Statutes.

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

1. Any 2 or more municipalities may unite in the support, maintenance and control of a joint free public library for the use and benefit of the residents of such municipalities.

2. The governing bodies of such municipalities shall propose such an undertaking by a joint library agreement, which shall provide for the apportionment of annual and special appropriations therefor among such municipalities, for the initial annual appropriation for such library, for the abandonment or the continuance of such agreement in the event that it is not approved by all such municipalities as provided for in this act, and for such other matters as they shall determine. Such apportionment of appropriations may be based on the assessed valuations of the respective municipalities, their populations, or such factor or factors as the governing bodies shall agree.

3. After the introduction of an ordinance approving such joint library agreement, which may be incorporated by reference therein, such agreement shall be and remain on file for public inspection in the municipal clerk's office from the time of introduction of such ordinance and such ordinance shall so state. A copy of such ordinance and of the joint library agreement shall be filed with the Commissioner of the Department of Education and the Director of the Division of Local Government. Subsequent amendments and supplements to such ordinance and agreement shall be filed in like manner.

4. After the adoption of such ordinance, each governing body shall notify each of the other governing bodies proposing to unite in the joint library of such adoption. After the adoption of such ordinances by all such governing bodies, the question of uniting in such undertaking shall be submitted to the legal voters of each such municipality at the next general election unless said election is less than 40 days after the adoption of such ordinances, in which event it shall be submitted at the next succeeding general election.

5. Such question shall be placed upon the official ballots in each of the participating municipalities in substantially the following form:

“Shall \_\_\_\_\_ (insert the name of one municipality) \_\_\_\_\_ unite with \_\_\_\_\_ (insert the name or names of the other municipality or municipalities) \_\_\_\_\_ in the support, maintenance and control of a joint free public library pursuant to chapter \_\_\_\_\_ (insert the chapter number of this act) \_\_\_\_\_ of the laws of 1959?”

6. These municipalities in which at said election the question is approved by a majority of the legal votes cast in each, both for and against such question, shall, as of January 1 next following said election unite in the support, maintenance and control of a joint free public library in accordance with such joint library agreement. Said municipalities shall not thereafter be required to participate in or support any county library system.

7. The joint library agreement may be amended by agreement among the parties thereto but such amendments shall not become effective until approved in each of the participating municipalities by ordinance, which ordinances may incorporate such amendments by reference.

8. The board of trustees of such joint library shall consist of (a) the mayor or other chief executive officer of each participating municipality; (b) the superintendent of schools of the local school district of each such municipality, or, if there be no such official, 1 of principals in the local school system, selected by the mayor or other chief executive officer, or, if there be neither of such officials, the president of the board of education; and (c) 3 citizens to be appointed by the mayor or other chief executive officer of each such municipality, at least 2 of whom shall be residents of the municipality. The initial appointments of such citizen members shall be for terms of 3, 4 and 5 years, respectively, as they may be selected by the mayor or other chief executive officer. Thereafter, such citizen appointments shall be for terms of 5 years and until their successors are appointed and qualify. The original citizen appointments in any municipality having a free public library at the time for the formation of the joint library shall be made from among the appointed citizen members of the board of trustees of such library. Vacancies occurring on the board of trustees shall be filled for the unexpired term only.

9. Upon the formation of a joint free public library, the terms of office of the members of the board of trustees of any free public library of any participating municipality shall terminate. The assets and obligations of any such board of trustees shall devolve upon such municipality unless otherwise provided in the agreement.

10. The board of trustees of the joint library shall be a body corporate under the name of "The trustees of the joint free public library of \_\_\_\_\_ (insert the names of the participating municipalities, or other appropriate designation) \_\_\_\_\_."

11. The board of trustees shall be vested with authority to carry out the purposes of the joint library, in the manner provided for free public libraries governed pursuant to chapter 54 of Title 40 of the Revised Statutes. The powers and duties of boards of trustees of free public libraries governed by said chapter, not inconsistent herewith, are hereby conferred and imposed upon the board of trustees of such joint library and its trustees and officers.

12. The board of trustees of the joint library shall designate the chief financial officer of 1 of the participating municipalities as the disbursing officer for such joint library.

13. Employees of any free public library of any participating municipality at the time of the formation of the joint library shall, upon the formation thereof, become employees of the joint library without diminution in salary.

14. The board of trustees of the joint library shall, not later than December 1 of each year, certify to the respective municipalities the sum required for the operation of the joint library for the ensuing year and the share of such sum to be borne by each of the municipalities in accordance

with the method of apportionment provided in the joint library agreement. If the governing body of any of the municipalities objects to the amount or apportionment so certified, it shall forthwith call a joint meeting of the governing bodies and the board of trustees for the purpose of adjusting and settling any differences. If the governing bodies of such municipalities cannot agree, the matter shall be referred to the Director of the Division of Local Government for determination.

15. Each municipality shall appropriate its proportionate share of the sum so certified or agreed upon or determined in its annual budget, shall raise the same by taxation, and shall pay over said share to the disbursing officer of the joint library at the times annual appropriations for other departments of the municipality are paid over. Operations under the budget and related matters shall be subject to and in accordance with the rules of the local government board.

16. If the board of trustees shall determine that it is advisable to raise money for the acquisition of lands or a building or buildings or for the improvement of lands or for erecting, enlarging, repairing, altering, furnishing, decorating or equipping a building or buildings or for other capital improvement for the purpose of a joint free public library, it shall certify to the respective municipalities the sum or sums, in addition to such moneys as it may have on hand applicable to such purposes, estimated to be necessary for such purposes, and the share of such sum or sums to be borne by each municipality in accordance with the method of apportionment provided in the joint library agreement. If the governing body of any of the municipalities objects to any of said purposes or to the amount or apportionment of said sum or sums, it shall forthwith call a joint meeting of the governing bodies and board of trustees for the purpose of adjusting or settling any differences. If the governing bodies of such municipalities cannot agree, the matter shall be referred to the Director of the Division of Local Government for determination.

17. Each municipality, to provide for such capital improvement, shall either:

(a) appropriate its proportionate share of the sum or sums for the purposes certified or agreed upon or determined in the same manner as other appropriations are made by it pursuant to the Local Budget Law (R. S. 40:2-1 et seq.); or

(b) by ordinance appropriate such sum or sums for such purposes, pursuant to said ordinance borrow the sum or sums so appropriated and secure the repayment of the sum or sums so borrowed by the authorization and issuance of bonds or notes of the municipality pursuant to and in the manner and within the limitations prescribed by the Local Bond Law (R. S. 40:1-1 et seq.).

18. The board of trustees shall be empowered and authorized, with the consent of the governing bodies of the municipalities, to undertake the purpose or purposes for which such appropriation for capital improvement was made and to expend moneys therefor to the amount of such appropriation, in addition to other moneys available therefor.

19. The title to any real estate acquired pursuant to any such appropriation shall be taken in the names of the municipalities as tenants in common, but the use and control thereof shall be in the board of trustees so long as such real estate is used for joint free public library purposes.

20. If the governing body of any municipality shall determine by ordinance to propose to discontinue its participation in the support, maintenance and control of the joint free public library, it shall give notice thereof to the governing body of each of the other participating municipalities and to the board of trustees. The said governing bodies and board of trustees shall hold a joint meeting as soon as practicable for the purpose of arriving at an agreement as to the method of such discontinuance, the use of the library facilities thereafter, the adjustment, apportionment, accounting for, settlement, allowance and satisfaction of the rights and liabilities in or with respect to any property, obligations or other matters or things connected with said library, and such other matters and things in connection therewith as such governing bodies shall determine. If said governing bodies shall be unable to agree, the matter shall be referred to the Director of the Division of Local Government for determination.

21. When such discontinuance has been agreed upon or determined and if the governing body of the municipality proposing such discontinuance shall determine to proceed therewith,

(a) such governing body shall introduce an ordinance authorizing and directing the submission to the legal voters the question whether said municipality shall discontinue participation in the joint library pursuant to said agreement or determination, which agreement or determination may be incorporated by reference in said ordinance provided said agreement or determination shall be and remain on file in the office of the municipal clerk for public inspection;

(b) if said ordinance shall be adopted, a copy thereof and of said agreement or determination shall be filed with the Director of the Division of Local Government and the Commissioner of the Department of Education; and

(c) the question of such discontinuance shall be submitted to the legal voters of such municipality at the next general election to be held therein not less than 40 days after the adoption of said ordinance, and said agreement or determination shall remain on file in the office of the municipal clerk for public inspection pending such election.

22. Such question shall be placed upon the official ballots for such election in substantially the following form:

“Shall \_\_\_\_\_ (name of municipality submitting the question) \_\_\_\_\_ discontinue joint participation with \_\_\_\_\_ (name of the other participating municipality or municipalities) \_\_\_\_\_ in the support, maintenance and control of a joint free public library pursuant to chapter \_\_\_\_\_ (insert chapter number of this act) \_\_\_\_\_ of the laws of 1958?”

23. If at said election the question is approved in such municipality by a majority of the legal votes cast both for and against such question, the joint participation of said municipality in the support, maintenance and control of said joint free public library shall be discontinued in accordance

with the agreement or determination. If more than 2 municipalities have united to participate in such joint free public library, the participation by the remaining municipalities shall continue, unless otherwise provided for in the discontinuance agreement or determination.

24. Sections 40:54-30 to 40:54-34, inclusive, of the Revised Statutes are repealed.

25. This act shall take effect immediately.

Approved September 4, 1959.

#### CHAPTER 160, LAWS OF 1959

AN ACT to amend the title of "An act concerning the purchase by counties, municipalities and school districts of war savings bonds and other obligations of the United States of America or certain bonds of Federal Intermediate Credit Banks or Federal Home Loan Banks or bonds or other obligations of such counties, municipalities or school districts," approved July 29, 1953 (P. L. 1953, c. 328), as said title was amended by chapter 452 of the laws of 1953, so that the same shall read "An act concerning the purchase by counties, municipalities and school districts of war savings bonds and other obligations of the United States of America or certain bonds of Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal Land Banks, Federal National Mortgage Associates or of United States Banks for Co-operatives or bonds or other obligations of such counties, municipalities or school districts," and to validate the purchase and retention by counties, municipalities and school districts of obligations of the United States of America having a maturity greater than 12 months from the date of purchase.

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

1. The title of "An act concerning the purchase by counties, municipalities and school districts of war savings bonds and other obligations of the United States of America or certain bonds of Federal Intermediate Credit Banks or Federal Home Loan Banks or bonds or other obligations of such counties, municipalities or school districts," approved July 29, 1953 (P. L. 1953, c. 328), as said title was amended by chapter 452 of the laws of 1953," is amended to read "An act concerning the purchase by counties, municipalities and school districts of war savings bonds and other obligations of the United States of America or certain bonds of Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal Land Banks, Federal National Mortgage Associates or of United States Banks for Co-operatives or bonds or other obligations of such counties, municipalities or school districts."

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

1. It shall be lawful for the board of chosen freeholders of any county, the governing body of any municipality or the board of education of any

school district to use moneys, which may be in hand, for the purchase of the following types of securities:

(a) *War savings bonds or other obligations of the United States of America,*

(b) *Bonds of any Federal Intermediate Credit Bank, Federal Home Loan Bank, Federal Land Bank, Federal National Mortgage Associates or of any United States Bank for Co-operatives which have a maturity date not greater than 12 months from the date of purchase, or*

(c) *Bonds or other obligations of the county, municipality or school district.*

Said bonds or other obligations, if suitable for registry, may be registered in the name of the county, municipality or school district and the authorization to purchase these bonds or other obligations shall be by resolution adopted by a majority vote of all of the members of any such board of chosen freeholders, governing body, or board of education, as the case may be.

3. Whenever the board of chosen freeholders of any county, the governing body of any municipality, or the board of education of any school district has heretofore purchased obligations of the United States of America pursuant to chapter 323 of the laws of 1953 as amended, the purchase of said obligations shall be valid, and they may be retained by the county, municipality or school district until the maturity thereof, notwithstanding that the maturity date of said obligations is greater than 12 months from the date of purchase; provided the funds represented by such obligations are not needed by the county, municipality or school district for current operations.

4. This act shall take effect immediately.

Approved September 16, 1959.

SCHOOL LAW DECISIONS

1958-1959

I

SALARY OF TEACHER CANNOT BE REDUCED BY SUMMER SALARY  
PAYMENTS OF PREVIOUS YEAR. SUMMER SALARY PAYMENTS  
CONSTITUTE UNPAID BALANCE FROM PREVIOUS YEAR.

KATHLEEN BRUCE,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN,  
HUDSON COUNTY,

*Respondent.*

For the Petitioner, Brand and Sciorsci.

For the Respondent, Joseph V. Cullum.

DECISION OF THE COMMISSIONER OF EDUCATION

This case has been submitted to the Commissioner on stipulated facts which are as follows:

The petitioner has been in the employ of the respondent, the Board of Education of the Township of North Bergen, for many years and is protected in her employment by the provisions of the tenure statute.

The salary for the petitioner for the school year 1955-1956 was \$5100, payable in twelve monthly installments of \$425 each.

On or about September 1, 1956, the petitioner was notified that her annual salary commencing September 1, 1956 would be \$5700, payable in ten monthly installments. The petitioner received monthly payments in the amount of \$570 for the months of September, October, November and December. For the months of January, February and March, she was tendered salary checks in the gross amount \$860, but she refused to accept these checks, claiming that they constituted a reduction in salary.

The respondent claims that the salary received by the petitioner during the months of July and August, 1956, was a part of the salary of \$5700 payable to the petitioner for the school year 1956-1957, and that the reduction of \$850 during the months of January, February and March was made to compensate for the amount she received during the months of July and August.

The petitioner claims that the lower amount of the monthly checks for January, February and March constituted a reduction in her salary without her having written charges preferred against her in violation of the provisions of the statutes pertaining thereto, and prays that the Commissioner issue an order to compel the respondent to pay her \$850, which she claims is legally payable to her for January, February and March 1957.

The respondent further argues that the petitioner had been receiving her salary for many years on an annual basis and that salary payments for the months of July and August were advance payments for the succeeding school year, and, therefore, the petitioner had received \$850 of the \$5700 granted to her for the year 1956-1957.

The issue to be decided by the Commissioner is whether the salary of the petitioner, as determined by the Board of Education of the Township of North Bergen for the school year 1956-1957, was \$5700 for the period July 1, 1956, to June 30, 1957, or for the period September 1, 1956 to June 30, 1957. The Commissioner, after reviewing all the facts, resolutions and other materials submitted by the petitioner and respondent, requested further information from the records of the Board of Education, including a list of all the salary checks paid to the petitioner since her employment on a twelve-months' basis. This record clearly shows that since the year 1940 the salary received by the petitioner during the months of July and August had been at the rate of the previous year's salary. Increments were granted to the petitioner as of September 1 of each year. The salary of the petitioner for the school year 1955-1956 was \$5100 payable in twelve monthly installments at the rate of \$425 per month beginning September 1, 1955, and ending in August 1956.

The Commissioner finds and determines that the salary of the petitioner for the school year commencing September 1, 1956, to June 30, 1957, was \$5700, and that she was entitled to \$1710 for the months of January, February and March, 1957, of which she received only \$860, leaving a balance of \$850 due the petitioner for that period. For the above reasons, the petition is hereby granted, and the Board of Education of the Township of North Bergen is hereby directed to pay to the petitioner the amount of \$850, representing a balance of the amount due her from the respondent for the months of January, February and March, 1957.

July 16, 1958.

COMMISSIONER OF EDUCATION.

II

BOARD OF EDUCATION MAY RETIRE TEACHER ON  
EVIDENCE OF DISABILITY.

HAZEL HARENBERG,

*Petitioner,*

*vs.*

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

*Respondent.*

For the Petitioner, Mr. Anthony F. Bianco.

For the Respondent, Mr. Jacob Fox.

DECISION OF THE COMMISSIONER OF EDUCATION

The respondent requested the petitioner to apply for disability retirement upon the advice of its medical examiner that she was incapacitated for the

further performance of teaching duties, with which request the petitioner refused to comply. The respondent board by resolution dated February 29, 1956, applied to the Board of Trustees of the Teachers' Pension and Annuity Fund for disability retirement for the petitioner, pursuant to section 18:13-112.41 of the Revised Statutes, the pertinent part of which reads as follows:

"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. . . ."

On July 1, 1956, the Board of Trustees of the Teachers' Pension and Annuity Fund retired the petitioner, effective March 1, 1956.

The petitioner asked the Commissioner to request the respondent to show cause why the petitioner should not be retired to her former teaching status.

A hearing was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Essex County, Newark, New Jersey. The Commissioner has also been supplied with several reports of the medical examiner employed by the respondent and by those consulted by the petitioner concerning the petitioner's condition.

After reviewing the testimony and medical reports, it is the opinion of the Commissioner that such evidence fully justified the Board of Education of the City of Newark in requesting the Board of Trustees of the Teachers' Pension and Annuity Fund to grant disability retirement to the petitioner. The medical examiner for the Teachers' Pension and Annuity Fund, after reviewing the case, recommended such retirement effective March 1, 1956.

On June 10, 1957, the following letter was forwarded to counsel for the Board of Education of the City of Newark by the Secretary of the Teachers' Pension and Annuity Fund:

"Mr. Jacob Fox, Counsel  
"Board of Education  
"31 Green Street  
"Newark, New Jersey.  
"Dear Mr. Fox:

"In response to your inquiry of May 13, 1957, I respectfully advise that Miss Harenberg was examined on March 31, 1957 by Dr. John L. Kelly, Psychiatrist and Neurologist for the Board of Trustees. The results of this examination indicated that Miss Harenberg should be continued on disability retirement.

"To date Miss Harenberg has not been cashing her monthly retirement allowance checks.

"Very truly yours,  
"John J. Allen,  
"Secretary.

"JJA/JMH."

The Commissioner finds and determines that there has been a compliance with the provisions of section 18:13-112.41, *supra*, that there is insufficient evidence in any of the medical reports submitted to warrant further review of the action of the Board of Education of the City of Newark, or of the action of the Board of Trustees of the Teachers' Pension and Annuity Fund. The other issues raised by the petitioner have been rendered moot by the action of the Board of Trustees of the Teachers' Pension and Annuity Fund in retiring the petitioner for disability.

For these reasons, the petition must be dismissed.

July 16, 1958.

COMMISSIONER OF EDUCATION

DECISION OF THE STATE BOARD OF EDUCATION

Appellant here seeks reversal of a judgment of the Commissioner of Education (rendered on July 16, 1958) which dismissed her petition of appeal (filed in February, 1956) from the action of the Board of Education of Newark in removing her from her teaching status pursuant to R. S. 18:5-50.5. The specific ground for respondent's action was that appellant had shown evidence of deviation from normal mental health and examinations by physicians, made at respondent's request, indicated "mental abnormality." The petition of appeal before the Commissioner sought restoration of appellant to her teaching status.

The proofs before the Commissioner consisted principally of a written stipulation of facts, supplemented to a degree by the testimony of appellant before the Commissioner.

Appellant had been employed as an elementary school teacher in the Newark public schools since September, 1921. During that period she was absent on furlough from December 1, 1941 to December 1, 1942 and on sick leave from December 1, 1942 to the beginning of the 1944 and 1945 school year. These absences were due to an illness which produced epileptic convulsions on several occasions in the schools where she was employed. She was permitted to return in September, 1944 on her written representation that she was fully recovered and on her agreement that she would resign if she had a recurrence of her attacks. From that time to 1954 there were instances of behavior by appellant which deviated from the normal, particularly in appellant's relations with her fellow teachers and superiors. On September 30, 1954, appellant had a meeting with her supervisor as a result of which the school authorities requested that she discontinue teaching and had appellant examined by certain competent physicians. There is no need to recount the reports in detail here. Suffice it to say that they "indicated" "mental abnormality." She was paid and accepted sick leave pay at the rate of full salary from October 13, 1954 to February 11, 1955 and at the same rate, less substitute's pay, from February 11, 1955 to April 29, 1955, after which there were no further sick leave days to her credit.

Between October 13, 1954 and December 3, 1955, appellant produced no medical evidence that she was competent to teach and should be returned to that status. Under date of October 12, 1954, appellant had forwarded to the respondent, through its Assistant Superintendent of Schools, a written report

of Dr. Arthur S. McQuillan, a general practitioner, which simply stated that appellant had been his patient for some time past and that "she is in a good state of health." On December 3, 1955, appellant's counsel and counsel for the local Board met to discuss appellant's claim that she should be returned to active employment. At this conference appellant's counsel produced a report dated January 8, 1955 from Dr. Rafael Russomanno as to medical examinations which he had made on December 21, 1954 and January 7, 1955. Dr. Russomanno was a general practitioner and not a specialist in psychiatry. In making the report, Dr. Russomanno did not have available to him respondent's medical file relating to appellant, her family medical history, nor the report of the examinations made by the physicians who had examined appellant at the request of the respondent. This report concluded that appellant was "in physical good health, neurologically and psychiatrically sound and can return to her duties as a school teacher." Dr. Russomanno had not been "approved" by the local Board as required by the statute in instances of an employee selecting a physician. It is also noted that the report was not submitted until 11 months after it was made.

On December 15, 1955, appellant's counsel forwarded to counsel for respondent a report by Dr. Vincent J. Riggs as to an examination made of appellant on December 7, 1955. Dr. Riggs is a Doctor of Medicine and specializes in psychiatry. His examination was not made with respondent's knowledge nor had he been approved by respondent under the provisions of R. S. 18:5-50.5. Dr. Riggs did not have available to him at the time of his examination respondent's medical file of appellant, her family medical history, nor the reports of the doctors who had examined her at respondent's request. It concluded that appellant was "free of psychosis and well suited to continue at the teaching profession which she loves."

Appellant contends that the reports of Dr. Russomanno and Dr. Riggs, together with a certain electroencephalogram (made for the purpose of determining whether appellant's driver's license, which had previously been suspended, should be restored), constitute "satisfactory proof of recovery" under the provisions of R. S. 18:5-50.5.

On October 15, 1954, at respondent's request, appellant was given a complete physical examination in respondent's Bureau of Health, Education and Service. As part of it she completed a questionnaire in which she was asked whether there was any family history of mental disturbances and she answered in the negative. This reply was not accurate. Respondent's Director, Dr. Gerard, ordered a psychiatric examination to be performed by Dr. Bruce B. Robinson, a competent psychiatrist employed by respondent. Without detailing Dr. Robinson's report here, it is sufficient to say that it supported respondent's position that appellant should not have been restored to her teaching status. However, Dr. Robinson recommended that an examination be performed by another psychiatrist. Accordingly, an examination was conducted by Dr. John G. Novak on November 29, 1954. His thorough report concluded that: "There is a very definite psychiatric illness that I would classify as a Paranoid condition."

On February 16, 1956, appellant's petition of appeal was filed with the Commissioner. On February 28, 1956, respondent adopted a resolution whereby it applied to the Board of Trustees of the Teacher's Pension and Annuity Fund for appellant's retirement for ordinary disability under the

provisions of R. S. 18:13-112.41. On July 12, 1956, the Board of Trustees of the Pension Fund approved the disability retirement as of March 1, 1956.

It was stipulated below that the validity of the retirement was not before the Commissioner for adjudication. The issue below was succinctly stated in the stipulation as follows (paragraph 16) :

“In the within proceedings respondent relies on the contention, which appellant opposes, that appellant was ‘ineligible for further service’ under the provisions of R. S. 18:5-50.5 beginning with October 13, 1954, because of mental abnormality and that no ‘satisfactory proof of recovery’ within the provisions of that statute has been adduced to date.”

Appellant here complains that, as evidenced by the opinion of the Commissioner below, the latter actually passed upon the validity of the retirement, in contravention of the stipulation, and that the Commissioner did not pass upon the issue raised, namely the provisions of the “mental abnormality” statute (R. S. 18:5-50.5) or the pertinent proofs below with respect thereto.

Before this Board both counsel still adhere to the proposition that the validity of the retirement is not in issue. The fact is that there is pending an appeal by appellant attacking the validity of the retirement. That question should be decided upon that appeal. On the other hand the instant appeal came before the Commissioner below while the retirement stood unreversed. He could not have granted appellant’s prayer in her petition of appeal that she “be restored to her teaching status” while the “retirement” was effective.

In any event, this Board affirms the Commissioner in refusing to restore petitioner to her teaching status. We consider that appellant, by the mere submission of the written reports of Dr. McQuillan, Dr. Russomanno and Dr. Riggs, and the encephalogram, did not sustain her burden of furnishing “satisfactory proof of recovery” which would warrant a declaration that she was eligible for further service as a teacher. On the other hand, we feel that an examination of the reports of Drs. Robinson and Novak, together with the other pertinent history of appellant’s service and family history, amply justified the removal of appellant from her teaching position and far outweighs the asserted efficacy of the reports submitted upon her behalf as evidence of “satisfactory proof of recovery.”

Appellant here complains that she was not granted what she considers a “hearing” below. The pertinent statute, R. S. 18:5-50.5, does not provide for a hearing. It is not for this Board to determine the legislative wisdom as to whether a hearing should be granted in the instance of physical examinations of a teacher which “indicate” “mental abnormality.” We cannot ignore, however, the practical difficulties which would arise were a hearing to be required before suspension when such examinations indicate either “mental abnormality” or “communicable disease,” the evils to be apprehended under the philosophy of this section. Nor are we unmindful of the pertinency, in the educational field, of those authorities which recognize the reality that many decisions are to be made by “persons of technical proficiency upon the basis of their own observations” without occasion for “hearings or for the testimonial presentation of evidence.” See Gellhorn and Byse, *Administration Law, Cases and Comments*, pages 660-668 (1954).

Appellant also attacks the constitutionality of the “mental abnormality” section (R. S. 18:5-50.5) in the respect that it fails to provide for a hearing.

This Board is not competent to pass upon the constitutionality of the statute. We must accept a legislative act as constitutional until such time as it has been declared to be unconstitutional by a qualified judicial body. *Schwartz vs. Essex County Board of Taxation*, 129 N. J. L. 129, 28 Atl. 2d 482, Supreme Court (1942).

Holding therefore, as we do, that appellant did not furnish "satisfactory proof of recovery" within the meaning of R. S. 18:5-50.5, we affirm the order of the Commissioner denying appellant's petition of appeal.

January 14, 1959.

III

IN CHALLENGE OF BOARD MEMBER'S RESIDENCE  
QUALIFICATIONS, PLAINTIFF HAS BURDEN  
OF PROOF

CHARLES KENNIS,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF SOUTH HACKENSACK,  
BERGEN COUNTY, AND  
ANDREW TRAUSE,

*Respondents.*

For the Petitioner, George W. Weleck.

For the Respondent, Chandless, Weller & Kramer (Ralph W. Chandless,  
of Counsel).

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case, Charles Kennis, claims that Andrew Trause, who was declared to have been elected to the Board of Education of the Township of South Hackensack at the annual school election held on February 11, 1958, is not eligible for membership on that Board by reason of failure to meet the three-year residence requirement of Section 18:7-11 of the Revised Statutes.

The petitioner prays that an order be issued by the Commissioner for the holding of a hearing to determine the eligibility of Andrew Trause to continue as a member of the Board of Education of the Township of South Hackensack, and further prays that Andrew Trause be compelled to prove that he was legally eligible to be a candidate in the election.

In answer, the respondent Board of Education contends that it was legally required to seat Andrew Trause in the absence of a determination of competent authority that said Andrew Trause was not legally entitled to the office. The respondent also contends that the burden is on the petitioner to prove that Andrew Trause was not eligible for membership on the Board.

A hearing was held before the Assistant Commissioner in charge of Controversies and Disputes in the office of the County Superintendent of Schools, Hackensack, New Jersey, on June 5, 1958. The testimony taken at the hearing reveals as follows:

1. Before marriage, Andrew Trause was unquestionably a bona fide resident of East Rutherford;
2. He was married on September 23, 1950, after which he and his wife moved into a furnished apartment at 9 John Street, South Hackensack;
3. Late in 1950 or early in 1951 he rented an apartment at 409 Williams Avenue, in Hackensack.
4. Also late in 1950 or early in 1951 he made arrangements with his mother-in-law for "available room" in her home at 70 Moonachie Road, South Hackensack;
5. He had plans drawn for a house, which plans were completed in October, 1953;
6. He acquired title to lots 5, 6 and 7 in Block 8 on Jackson Avenue, later identified as 12 Jackson Avenue, South Hackensack, in August of 1954;
7. Lots 6, 7 and 8 of Block 8, Jackson Avenue, South Hackensack, are diagonally contiguous to the rear of 70 Moonachie Road, South Hackensack (now 553 Moonachie Road) and were purchased by Andrew Trause and his wife from his mother-in-law;
8. Andrew Trause, with the help of his brothers-in-law, built a house on this property, beginning work in September of 1954, or shortly thereafter, and completing to a degree suitable for occupancy in May, 1955.
9. After leaving the furnished apartment at 9 John Street, South Hackensack, he received mail and had living accommodations at both the South Hackensack and Hackensack addresses, and according to his testimony, spent most of his time "so far as living accommodations went" at the South Hackensack address.
10. He never registered to vote in Hackensack.
11. He occupied the newly constructed house on Jackson Avenue, South Hackensack in May of 1955.

Counsel for the petitioner submitted as an exhibit a "Permit for the Removal of Personal Property" issued to A. Trause by the Tax Collector of Hackensack and dated May 13, 1955; he also called witnesses to show that Andrew Trause had used services of the Public Service Electric and Gas Company at the Hackensack address through May of 1955, and had paid rent for the Hackensack apartment through May of 1955. Andrew Trause admitted these facts.

Counsel for the respondent submitted as an exhibit a building permit for a building at 12 Jackson Avenue, South Hackensack, dated September 9, 1954. Andrew Trause testified that this is the building permit for his house. Also submitted were several bills from various firms for building material. The address sections of these bills show either the Moonachie or the Jackson Avenue address in South Hackensack, and are dated from October, 1954, to April of 1955.

The point to be determined in this case is whether Andrew Trause is ineligible for a seat on the Board by reason of failure to meet the residence requirement of Section 18:7-11 of the Revised Statutes, as charged by the petitioner.

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

The Commissioner agrees with the respondent in the matter of the burden of proof in this case. The weight of authority indicates that, except in certain extraordinary circumstances, the burden is upon the plaintiff to make out his case. "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence or non-existence of facts which he asserts or denies to exist, must prove that those facts do or do not exist." *A Digest of the Law of Evidence, Stephen, Dissell Publishing Company, Hartford, Connecticut*, at page 460.

Section 18:7-22 of the Revised Statutes of New Jersey prescribes the form of the nominating petition for membership on an elected board of education:

"The petition nominating a candidate for member of the board of education shall be addressed to the district clerk and shall set forth:

- a. That the signers of the petition are qualified voters of the district;
- b. That they indorse the candidate named in the petition;
- c. That they request that the name of the candidate be printed upon the official ballot to be used at the ensuing election;
- d. The residence and post-office address of each person so indorsed and
- e. A certificate that the person so indorsed is legally qualified to be elected a member;

"Accompanying the nominating petition and to be filed therewith, there shall be a certificate made by the person indorsed in the petition, stating:

- a. That he is qualified to be elected a member;
- b. That he consents to stand as a candidate for election; and
- c. That, if elected, he agrees to accept and qualify as a member."

The Commissioner must assume that the provisions of Section 18:7-22 of the Revised Statutes have been fulfilled because Andrew Trause's name was printed on the ballot. This is certainly an allegation that the candidate was qualified by residence, among other things, to be elected a member of the board. In the case of *Baier vs. Amsler*, 1938 School Law Decisions, 18, the Commissioner relied upon *Debaghian vs. Kaffafin*, 71 N. J. L. 115, to establish that ". . . residence is presumed to be where he alleges it to be, unless the contrary appear."

While it is generally conceded that a person can have more than one residence, residence or domicile, as used in School Law, has been determined to be a place of fixed or permanent abode. Domicile, according to legal definition, is a question of residence and intent. Commissioners of Education have held this view consistently (*Baier vs. Amsler, supra, Edsall vs. Graves*, 1938 S. L. D. 21) and have relied, as has the respondent in this case, on *Cadwalder vs. Howell*, 18 N. J. L. 128, and other cases in the same tenure.

Counsel for the petitioner has pointed out that Andrew Trause did not register to vote in South Hackensack until June, 1955, but failure to vote

has also been held to be not conclusive proof of lack of residence. *Edsall vs. Graves, supra*. If any weight were to be given to the failure to vote in South Hackensack, it would also be logical to disprove residence in Hackensack by the same argument, and it is apparent that Andrew Trause did not vote there either. In fact, testimony indicates he did not vote anywhere between 1951 and 1955.

It is the sworn testimony of Andrew Trause that he had actually resided in South Hackensack and had fully intended to make that municipality his permanent residence for considerably more than the three years preceding his membership, as required by N. J. S. A. 18:7-11, *supra*.

The Commissioner finds that the allegations and the testimony of Andrew Trause have not been successfully challenged. The petition is therefore dismissed.

October 3, 1958.

IV

SECRETARY OF BOARD OF EDUCATION MUST SERVE FULL  
THREE-YEAR PROBATIONARY PERIOD TO  
ACQUIRE TENURE OF OFFICE

JAMES F. ROCHESTER,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE CITY OF RAHWAY,  
UNION COUNTY

*Respondent.*

For the Petitioner, Mr. Martin B. O'Connor.

For the Respondent, Mr. David I. Stepacoff.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case, James F. Rochester, was appointed secretary-business manager of the Rahway Board of Education for a term of four years, and therefore was purportedly given immediate tenure, by resolutions passed by the board of education on October 2 and October 16, 1957. After executing a contract pursuant to the resolution, he began his duties on October 21, 1957.

On December 2, 1957, a petition was filed by Edward J. Carlin and Harold Garber, members of the board of education, naming the Rahway Board of Education respondent and asking the Commissioner to issue an order declaring the resolutions of October 2 and 16, appointing the petitioner secretary-business manager, null and void, and the appointment of the petitioner illegal and without force and effect. Rochester thereafter filed a petition to intervene in the proceeding, permission for which was granted by the Commissioner.

On February 1, 1958, the respondent, the Board of Education of the City of Rahway, reorganized in accordance with the provisions of R. S. 18:6-12. On February 5, 1958, the respondent board of education adopted a

resolution declaring the appointment of the petitioner to be illegal and void, and discharging him as secretary-business manager.

On motion of counsel for petitioners, Edward J. Carlin and Harold Garber, and the newly organized Board of Education of the City of Rahway, the Commissioner issued the following order:

“This matter, having been presented for hearing on motion of David I. Stepacoff, Esq., attorney for the petitioners and for respondent Board of Education of the City of Rahway (1958 body), and the Commissioner having heard the arguments of David I. Stepacoff, Esq., Orlando H. Dey, Esq., as attorney for the Board of Education (1957 body), and Martin B. O'Connor, Esq., and upon all the proceedings heretofore had herein, is on this twenty-sixth day of May, 1957.

“ORDERED

1. That the original petitioners herein, namely, Edward J. Carlin and Harold Garber, be dropped as petitioners and as individual parties to this proceeding;
2. That the intervener, James F. Rochester, is hereby granted leave to proceed in this matter as the sole petitioner herein and the real party in interest;
3. That the Board of Education of the City of Rahway (1958 body) be constituted as the respondent and the real party in interest in the place of the original respondent Board of Education (1957 body), and that the latter be dropped as a party to these proceedings;
4. That further proceedings herein be confined to hearing and determination of the sole issue of whether or not, or to what extent, the appointment of James F. Rochester as business manager and secretary of the respondent board, pursuant to the resolutions of its predecessor adopted October 2, 1957 and October 16, 1957, was valid.”

Subsequently, the petitioner filed a petition asking the Commissioner to reinstate him to his original position as secretary-business manager of the respondent board of education and requesting that an order be issued directing said board to pay all compensation or salary due him from the date of his dismissal.

The issues which must be decided in this case are:

1. May a board of education appoint a secretary or business manager for a fixed term longer than that of the board.
2. May a board of education grant tenure to a secretary or business manager immediately upon appointment.

The pertinent statutes in this case are:

“18:6-27.

“The board shall appoint a person to be its secretary, and may appoint a superintendent of schools, a business manager, and other officers, agents, and employees as may be needed, and may fix their compensation and terms of employment, but no such appointee, officer, agent, or employee, other than the secretary, shall be a member of the board.

“All persons holding any secretarial or clerical position under any board of education, or under any officer thereof, in the school system in

this state, shall enjoy tenure of office or position during good behavior and efficiency, after the expiration of a period of employment of three consecutive calendar years in that district, unless a shorter period be fixed by the employing board, body or person; or after employment for three consecutive academic years together with employment at the beginning of the next succeeding academic year; provided, however, that the time any such full time employee has served in the district in which he or she is employed at the time this act shall become operative shall be counted in determining such period of employment. An academic year shall be interpreted to mean the period between the time school opens in the district after the general summer vacation and the next succeeding summer vacation. No such employee shall be dismissed or subjected to reduction in salary except for inefficiency, incapacity, unbecoming conduct or other just cause, and after a written charge of the cause or the causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the board of education, and after the charge shall have been examined into and found to be true in fact by such board of education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing.”

“18:6-45

“Whenever a business manager shall be appointed it shall be by a majority vote of all the members of the board. He shall receive such salary as the board shall determine. . . .

“A business manager may, subject to the provisions of section 18:5-51 of this title, be removed from office by a majority vote of all the members of the board.

“A business manager shall have a seat in the board, and the right to speak on all matters relating to his department, but shall not have the right to vote.”

“18:5-51

“No secretary, district clerk, assistant secretary, business manager of any board of education in any municipality devoting his full time to the duties of his office, after three years’ service, shall be discharged, dismissed, or suspended from office, nor shall his compensation be decreased, except upon sworn complaint for cause and upon a hearing had before the board. . . .”

The petitioner contends that the rule of statutory construction “that when construing any section of a statute all sections of that statute must be taken into consideration so that full effect shall be given to all of them,” applies in this case. He claims that the board of education had ample authority to adopt the resolutions of October 2 and October 16 and, furthermore, the board of education was without authority to dismiss the petitioner without cause on February 5, 1958. He relies upon the case of *Carr vs. Board of Education of the City of Bayonne*, 1938 S. L. D. 276.

The respondent contends that the board of education lacked the power to grant the petitioner a four-year term, and cites *Składzien vs. Board of Education of the City of Bayonne*, 12 N. J. Misc. 602 (Sup. Ct. 1934), affirmed

115 N. J. L. 203 (E. & A. 1935), in which the rule was stated as follows, at p. 605:

“Generally, unless the term is fixed by statute, presently in force, or by ordinance or rule under legislative sanction, by direct delegation of that right of municipal control to the appointing power, the term of an appointee to office cannot be longer than co-terminous with that of the appointing power. Obviously, it may be shorter.”

The respondent also argues that our courts have established the principle that a local board of education is a non-continuous body and he relies upon the following cases: *Evans vs. Board of Education of Gloucester City*, 13 N. J. Misc. (Sup. Ct. 1935), affirmed 116 N. J. L. 448 (E. & A. 1936); *Talty vs. Board of Education of the City of Hoboken*, 11 N. J. Super. 122 (1950), affirmed 16 N. J. Super. 396, reviewed 10 N. J. 69 (Sup. Ct. 1952); *Board of Education of Cedar Grove vs. State Board of Education*, 115 N. J. L. 67 (Sup. Ct. 1935); *Brown vs. Board of Education of the Borough of Oakland*, 1938 School Law Decisions p. 51 (1921); *Davis vs. Board of Education of the Town of Boonton*, 1938 School Law Decisions, p. 288 (1925).

The respondent further argues that the Legislature has in no way acted to give boards of education statutory power to fix terms of office for a secretary or business manager for longer than the life of the appointing board, as has been done in the case of superintendents of schools by R. S. 18:6-37, which provides:

“When a superintendent of schools is appointed, it shall be by a majority vote of all the members of the board for a term not to exceed five years.”

The respondent refers to the firmly established principle of statutory construction that the express mention of one thing operates as an exclusion of another that is not expressed. *Moses vs. Moses*, 140 N. J. Eq. 575 (E. & A. 1947); 32 C. J. S. 333.

The petitioner argues that since R. S. 18:6-27 *supra*, confers upon boards of education the power to fix compensation and terms of employment, the respondent board was permitted to stipulate that the employee should serve for a period of four years and that he should not be discharged during the period of his employment without just cause; that consideration should be given to the object or purpose which the legislation sought to accomplish by enacting this statute, that is, boards of education should be able to provide in public service persons of experience, ability, and qualifications to perform competently the duties required of them; that it was the legislative intent to vest in the board power to make whatever terms and conditions of employment were reasonable and in the public interest; that if a board of education could not control the employment for longer than the life of the board, there would be removed the inducement of security normally required by skilled personnel, and that it could bring about a chaotic situation where a secretary or business manager appointed by one board could be subsequently discharged without cause by a succeeding board of education.

The respondent argues that it was the legislative intent in R. S. 18:6-27 *supra*, to invest in local boards of education discretionary power as to the time limit for the probationary period to acquire tenure for secretarial or clerical employees, but this power in the statute does not extend to major

offices. Therefore, it was the legislative intent to require a minimum of three years of service as a probationary period for a secretary or business manager to attain tenure. R. S. 18:5-51.

The respondent also contends that, since no specific term is fixed by statute or by ordinance or rule under legislative sanction, the secretary's term cannot be longer than co-terminous with that of the appointing power, *Skladzien vs. Board of Education of the City of Bayone, supra*, and, furthermore, that the board of education in appointing the petitioner and granting him tenure immediately, without fixing any period of service, acted contrary to the underlying principle set forth in the following cases: *McBride vs. Bloy*, 13 N. J. Misc. 136 (Sup. Ct. 1934); *Viemeister vs. Board of Education of the Borough of Prospect Park*, 5 N. J. Super. 215 (1949). It, therefore, follows that, since the board of education lacked authority to appoint petitioner for a term beyond the life of the board, the board organizing on February 1, 1958, had the authority to dismiss the petitioner. *City of Hoboken vs. Gear*, 27 N. J. L. 265 (Sup. Ct. 1859); *Greene vs. Board of Chosen Freeholders of Hudson County*, 44 N. J. L. 388 (Sup. Ct. 1882); *Skladzien vs. Board of Education of the City of Bayonne, supra*.

The Commissioner is aware of the arguments submitted by the petitioner regarding the important responsibility the board of education has in selecting a capable and competent secretary or business manager and the desirability of security in his employment. The Supreme Court said in *Cullum vs. Board of Education of the Township of North Bergen*, 15 N. J. 285: "The members of the respondent board of education hold positions of public trust and must at all times faithfully discharge their functions with the public interest as their polestar. See *Driscoll vs. Burlington-Bristol Bridge Co.*, 9 N. J. 433, 474 (1952), certiorari denied 344 U. S. 838, 73 S. Ct. 25, 97 L. Ed. 652 (1952) rehearing denied 344 U. S. 888, 73 S. Ct. 181, 97 L. Ed. 687 (1952). Amongst their most vital and responsible duties is the proper selection of personnel, particularly the school superintendent." However, the Commissioner must decide this case, as others, on the basis of the applicable statutes and their interpretations by judicial precedent.

After carefully reviewing all the arguments and authorities presented by both the petitioner and the respondent, the Commissioner is unable to find any authority whereby a board of education may appoint a secretary or business manager for a term longer than the life of the board of education, thus binding its successors. Neither can the Commissioner find any authority whereby a board may shorten the probationary period prescribed by statute for a secretary or business manager to attain tenure. The decisions cited by respondent require a negative finding on both of these points, and petitioner has submitted no pertinent authority to the contrary.

For the above reasons, the petition is hereby dismissed.

October 16, 1958.

Affirmed by the State Board of Education without written opinion May 7, 1959.

V

CONTRACT AWARDED TO LOWEST BIDDER WHERE BID CAN BE  
CLEARLY DETERMINED ALTHOUGH BID PROPOSAL  
FORM IS INCOMPLETE.

APPOLLO ASSOCIATED, INC.,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF LAKEWOOD,  
OCEAN COUNTY,

*Respondent.*

For the Petitioner, Haines & Schuman (Harold A. Schuman, of Counsel).  
For the Respondent, Mark Addison.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner in this case asks the Commissioner to set aside the award of a contract for certain tile work to Andrew S. Johnson and to direct the respondent to award the contract to the petitioner, or, as the alternative, to direct the respondent to reject all bids and to readvertise for bids.

A conference with counsel for the petitioner and for the respondent was held in the office of the Assistant Commissioner of Education in Charge of Controversies and Disputes on August 20, 1958; pursuant thereto, the following were stipulated as applicable facts:

- “1. Pursuant to a notice to bidders dated May 1, 1958, and published in the May 3, 1958 issue of the *Lakewood Daily Times*, wherein the Board of Education of the Township of Lakewood announced that it would receive bids for certain tile work in the girls' powder room of the Lakewood Junior High School, the Appollo Associated, Inc., on May 23, 1958, submitted a sealed proposal to perform the said tile work in accordance with the drawings and specifications provided therefor.
- “2. Appollo Associated, Inc., proposed to perform the said work for the sum of \$3993.00 and set forth the said amount in the form of proposal provided by the Board of Education of the Township of Lakewood, together with bid security in the amount of \$399.30, as set forth in Exhibit D in respondent's answer.
- “3. A certified check in the amount of \$399.30 was enclosed with the proposal of Appollo Associated, Inc., as required by the specifications and Notice to Bidders.
- “4. Andrew S. Johnson submitted a bid proposal upon which there appeared only the amount of \$373.00, which was recited as bid security. A certified check in the same amount accompanied the proposal. The said proposal of Andrew S. Johnson failed to set forth a bid in any amount.
- “5. Pursuant to the said Notice to Bidders, sealed proposals were opened on May 26, 1958, at 8:00 P. M. at the Office of the Board of Edu-

cation, at which time the bid proposal of Appollo Associated, Inc., was opened and publicly read.

- “6. Thereafter, the sealed proposal of Andrew S. Johnson was opened and publicly read by Charles E. Miller, Secretary of the Board of Education. The said Secretary thereupon audibly commented that the said Andrew S. Johnson had failed to set forth the amount of a bid in his proposal. Upon that announcement being made by the Secretary, Mildred Leonard, an employee of the Board of Education, advised that she would telephone the said Andrew S. Johnson to inquire as to the amount which he intended to bid. The said Mildred Leonard then left the room and returned some time later and stated that the Board might consider the sum of \$3,730.00 as the amount bid by Andrew S. Johnson.
- “7. A contract to perform the said work was awarded to the said Andrew S. Johnson.”

The petitioner contends that, since the proposal of Andrew Johnson did not specifically state the total amount of his bid, but indicated only the amount of \$373.00 as bid security, the board of education was not apprized of a firm bid and, therefore, should have awarded the contract to the petitioner as the lowest responsible bidder.

The respondent board of education defends its action on the grounds that Andrew Johnson complied with the requirements in the Notice to Bidders by completing the bid proposal form furnished by the board and by submitting a certified check in the amount of ten percent of his bid.

The pertinent statutes in this case are N. J. S. 18:7-64 and 18:7-65 which state that:

“18:7-64

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

“Textbooks and kindergarten supplies may be purchased without advertisement.

“No contract for the building of a new schoolhouse or for the enlargement of an existing schoolhouse shall be entered into without first advertising for proposals therefor.

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

“18:7-65

“No bid for building or repairing schoolhouses or for supplies shall be accepted which does not conform to the specifications furnished therefor, and all contracts shall be awarded to the lowest responsible bidder.”

The legal notice to bidders reads as follows:

“LEGAL NOTICE  
Notice to Bidders, Board of Education  
Lakewood, New Jersey.

“Sealed Proposals Will Be received by the Board of Education at the offices of the Board of Education located at 100 Linden Street, on May 26, 1958, at 8:00 P. M. Eastern Daylight Saving Time, when bids will be opened and publicly read for the furnishing of roof work, tile work and plumbing Girls’ Powder Room, Junior High School.

“A list of specifications can be secured at the Board Office any school day between the hours of 9:00 A. M. and 4:30 P. M.

“A certified check for ten per centum (10%) of the amount of the bid will be required to guarantee the satisfactory completion of the bid.

“The Board of Education reserves the right to reject any or all bids.  
“DATE: May 1, 1958.

CHAS. E. MILLER,  
Secretary, Board of Education  
(May 3, 1958)  
Lakewood Daily Times.”

It has been firmly established in this State that, in the absence of a question as to the financial responsibility of a bidder, the low bidder is entitled to an award of the contract as a matter of right. *Sallitto vs. Cedar Grove*, 133 N. J. L. 41; *Frank P. Farrell, Inc. vs. Board of Education of Newark*, 137 N. J. L. 408. Since no question has been raised in this case concerning the responsibility of either bidder, it follows that the Commissioner must determine only which bid was the lower.

The bid proposal form which the board of education supplied to bidders did not in fact provide a space for a bidder to indicate the total amount of his bid. Paragraph 4 of the proposal form reads as follows:

“4. Bid security in the sum of \_\_\_\_\_ \$ \_\_\_\_\_  
in the form of \_\_\_\_\_ (Certified Check of Bid Bond)  
is submitted herewith in accordance with the requirements of the specifications.”

After the words “sum of,” the petitioner inserted “\$3,993.00” and inside the parentheses he inserted “\$399.30.” After the words “sum of” Andrew Johnson inserted nothing, but did insert “\$373.00” inside the parentheses. As shown in the stipulation, each bidder submitted a check as bid security in the amounts indicated in paragraph 4 of the bid proposal.

The petitioner argues that the failure of Andrew Johnson to indicate, as he did, the total amount of the bid, in spite of the fact that no place was provided in the form, shows that no bid was made; he further claims that the telephone call made to Andrew Johnson by the secretary substantiates this argument. Petitioner also points out that Andrew Johnson’s check of \$373.00 might well have been for more than ten percent of his intended bid; this is obviously true, but it is equally obvious that if Andrew Johnson’s check were for more than ten percent of his intended bid, his bid still would have been lower than the petitioner’s.

Since the notice to bidders and the specifications both called for bid security in the amount of ten percent of the bid, and the bid form provided no space for the amount of the bid but only for the amount of the bid security, the amount of each bid was ascertainable as ten times the amount of the bid security submitted by the bidder. While the specifications and bid form were irregular in this respect, the substance of the transaction was sufficiently definite to comply with the legal requirements of competitive bidding procedures.

The Commissioner definitely does not condone the unorthodox practice of the telephone call to a bidder to determine a bid after sealed bids have been opened, and if Andrew Johnson's check had been for more than the petitioner's, the telephone call would have created a situation wherein the position of the board of education would have been indefensible. The object of advertising for bids and requiring sealed bids is primarily the protection of the public, but it is also the protection of bidders, without which there would be small incentive to submit bids. However, the irregularity of the secretary's conduct in this regard did not prejudice the rights of other bidders.

After reviewing the Notice to Bidders and the bid proposal form supplied by the board of education and completed by the bidders, the Commissioner finds and determines that Andrew Johnson substantially complied with the requirements of the board and was therefore the lowest responsible bidder. Accordingly, the petition is dismissed.

October 21, 1958.

VI

INCREMENTS PROVIDED BY SALARY GUIDE OF  
BOARD OF EDUCATION NOT MANDATORY

ANN KOPERA,

*Petitioner.*

*vs.*

BOARD OF EDUCATION OF THE TOWN OF WEST ORANGE,  
ESSEX COUNTY,

*Respondent.*

For the Petitioner, Mr. Herman Blank  
For the Respondent, Mr. Edward Terner.

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioner, who has been a teacher in the public schools of the Town of West Orange since 1949, claims that the action of the Board of Education of West Orange in not granting her an increase in salary for the school year 1956-1957 was erroneous and should be reversed.

The facts in this case, as gleaned from testimony and exhibits, appear to be as follows:

1. Ann Kopera received an increase in salary every year after her first year at West Orange until the 1956-1957 school year;

2. Her salary for the school year 1956-1957 was greater than the minimum required in her instance by Chapter 249 of the Laws of 1954;
3. At its April meeting, the Board of Education, on the basis of an adverse evaluation by the principal and by the home economics superior of her school, did not grant an increase to Miss Kopera for the school year 1956-1957;
4. Pursuant to a request by Miss Kopera, the Board reconsidered her case at its June meeting and confirmed its previous action.

The exhibits submitted to the Commissioner for his assistance in arriving at a determination include a mimeographed sheet marked "West Orange Public Schools Salary Guides for February 1956." This sheet is a combined historical review of the salary practices of former boards and statement of the operation and administration of the salary guides; the actual salary guides for specific classifications of teachers are not indicated. This sheet bears a statement that guides were adopted by the Board on February 14, 1956, that the guides may be changed, amended, or revised or abrogated by the Board at any time, that it is the intention of the Board to make adjustments to place present employees on the guides as rapidly as circumstances will permit, and that progress on the guides will be automatic unless the services rendered are evaluated as unsatisfactory under the rules and regulations of the Board of Education. Although there is much testimony and argument as to the propriety of the evaluation of Miss Kopera's work during the year 1955-1956, it was at least established that she was given an unsatisfactory final rating that year.

There is also a great amount of testimony and argument as to whether or not the board actually adopted the salary guides and the policies outlined in the "Guides" exhibit, which has been previously described, as part of the board rules, by-laws or board policy. The Commissioner cannot determine from the testimony whether the board did or did not adopt the guides and the rules for their application for the purpose of this case, it is not necessary for the Commissioner so to determine. If the board did adopt them, then it cannot logically be held that it violated them.

A salary guide, if adopted by a district board of education, and if higher than the minimum salary requirements of N. J. L. 18:13-13, et seq., is only an announced goal or objective of the board. If a board adopts rules with respect to the application of a salary guide, then it must apply them without bias or prejudice. Section 18:13-5 of the New Jersey Statutes provides that:

"A board of education may make rules and regulations not inconsistent with the provisions of this title governing the engagement and employment of teachers and principals, the terms and tenure of the employment, the promotion and dismissal of teachers and principals, and the salaries and the time and mode of payment thereof.

"A board may from time to time change, amend, or repeal such rules and regulations.

"The employment of any teacher by the board, and the rights and duties of the teacher with respect to his employment, shall be dependent upon and governed by the rules and regulations in force with reference thereto."

A board of education is certainly within its statutory authority if it establishes satisfactory performance as a criterion for advancement in salary. Indeed, a board is given specific authority to deny a statutory increment under the minimum salary laws “. . . for inefficiency or other good cause. . .” N. J. S. 18:13-13.7.

The petitioner has made no claim of any violation of any statute, any rule of the State Board of Education, or any rule adopted by the Board of Education of the Town of West Orange; neither has she claimed any bias or prejudice on the part of that board in denying her an increase in salary. The Commissioner, therefore, finds that the Board of Education of the Town of West Orange did not exceed its authority in denying the petitioner an increase in salary for the school year 1956-1957.

The petition is dismissed.

COMMISSIONER OF EDUCATION.

October 21, 1958.

Affirmed by State Board of Education May 7, 1959 without written opinion.

Pending before Superior Court.

## VII

BERNARD GOLDBLATT

### IN RE RECOUNT OF BALLOTS CAST AT THE SPECIAL SCHOOL ELECTION IN THE TOWNSHIP OF EAST HANOVER, MORRIS COUNTY

#### DECISION OF THE COMMISSIONER OF EDUCATION

A special election was held in the School District of the Township of East Hanover, Morris County, on October 14, 1958, to vote on the following proposal:

RESOLVED that the Board of Education of the Township of East Hanover, Morris County, is hereby authorized:

- “(a) To construct an addition to the Central School situate in the school district on the northerly side of Ridgedale Avenue, purchase the school furniture and other equipment necessary for such addition and make the alterations of the existing building necessary for its use with such addition, and to expend therefor not exceeding \$450,000; and
- “(b) To issue bonds of the school district for said purpose in the principal amount of \$450,000, thus using up all of the \$153,646.31 borrowing margin of said Township of East Hanover previously available for other improvements and raising its net debt to \$296,353.69 beyond such borrowing margin.”

The announced results of the special election were 374 votes cast—187 for and 185 against the proposal, with 2 ballots void.

The petitioner and seventeen other residents of the district petitioned the Commissioner for a recount of the ballots on the grounds that:

“Two ballots, definitely indicating the voters’ intent to vote negatively, were rejected by the judge of the election because they were defaced. If these two ballots were counted, the vote would then result in a tie at 187-187.”

A recount of the ballots was conducted by the Assistant Commissioner in Charge of Controversies and Disputes on November 13, 1958, in the office of the County Superintendent of Schools of Morris County. The results of the recount were as follows:

374 votes were counted, 187 votes were cast for the proposal and 185 against the proposal. Two ballots were referred for further consideration for the following reasons: 1 ballot was marked with a check (✓) mark in the square to the left of the word “No” and in the space below the square to the left of the word “No” the following phrase was written: “To present plans.” The second ballot was marked with a check (✓) mark to the left of the word “No” with the following words written in the space below the square to the left of the word “No” — “Please put corrected amount of increase of taxes.”

In the opinion of the Commissioner these two ballots cannot be counted because the words written on them make the ballots extremely irregular, other than secret ballots, and they are clearly calculated to be identified or distinguished. The Commissioner’s decision not to count these two ballots is 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 the proposal submitted to the voters at the special school election held in the School District of the Township of East Hanover, Morris County, on October 14, 1958, was adopted by a vote of 187 for and 185 against.

November 20, 1958.

## VIII

### IN THE MATTER OF THE APPLICATION OF THE BOARD OF EDUCATION OF THE BOROUGH OF GLASSBORO TO TERMINATE THE SENDING-RECEIVING RELATIONSHIP WITH THE BOARD OF EDUCATION OF THE TOWNSHIP OF HARRISON, GLOUCESTER COUNTY.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The Glassboro Board of Education requested approval of the Commissioner of Education to terminate the sending-receiving relationships with the Board of Education of the Township of Harrison, effective September, 1960. A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes at 175 West State Street, Trenton, on October 17, 1958.

The facts in this case are as follows: The Glassboro Board of Education in 1951 called a meeting of all sending districts, including the Board of Education of the Township of Harrison, for the purpose of discussing the secondary school problem. On several occasions, the Glassboro Board of Education has officially notified the sending districts that it would be unable to continue to provide secondary school facilities, as a result of the growth of enrollment in that district. The Glassboro High School is overcrowded at the present time and the school district will be unable to provide adequate and satisfactory secondary school facilities for the predicted enrollment of the Borough of Glassboro and the predicted enrollment of the Township of Harrison.

At the conclusion of the hearing, it was agreed between both boards of education and the Assistant Commissioner that the Township of Harrison would be unable to provide other facilities for its secondary school pupils as of September, 1960, but that by September, 1961, the Township of Harrison should be able to provide other facilities.

On October 22, 1958, the Board of Education of the Borough of Glassboro adopted the following resolution:

“RESOLVED, that the Glassboro Board of Education set the final exclusion of Harrison Township pupils from the Glassboro High School as of September 1, 1961, and so notify the Harrison Township Board of Education, the Commissioner of Education and the Gloucester County Superintendent of Schools.”

After reviewing all the facts and exhibits presented in this case, the Commissioner finds and determines that the Glassboro Board of Education will not be able to provide secondary school facilities for the pupils of the Township of Harrison after September 1, 1961. The Commissioner hereby approves the termination of the sending-receiving relationship beginning September 1, 1961, between the Board of Education of the Township of Harrison and the Board of Education of the Borough of Glassboro, on the condition that mutually satisfactory arrangements be made between the two boards of education for the withdrawal of students who have already entered the Glassboro High School prior to September 1, 1961.

December 12, 1958.

IX

MOOT QUESTION OF RELIGIOUS CENSUS IN PUBLIC SCHOOLS  
DISCONTINUED.

AMERICAN JEWISH CONGRESS, NEW JERSEY REGION AND  
JESSE MOSKOWITZ,

*Petitioners,*

*vs.*

THE BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, NEW JERSEY,

*Respondent.*

DECISION OF THE COMMISSIONER OF EDUCATION

The petitioners in this case pray for an Order by the Commissioner enjoining the responsible officials of Public School 17 in Jersey City, and of all other public schools in New Jersey, from offering any form of cooperation or assistance in any plan to take a census or other record of religious affiliation of public school students in the State.

Since the petition was filed, the Commissioner received a communication from the Board of Education of the city of Jersey City, dated December 2, 1958, advising that the request of a religious group for permission to take a census of the pupils of that religion enrolled in the public schools of Jersey City has been withdrawn; and that the Jersey City Board of Education will not take any religious census of its pupils. Counsel for the respondent has therefore requested that these proceedings be discontinued.

Since the respondent Board of Education is the only one concerning which a complaint is pending with the Commissioner at the present time because of the taking of a religious census of public school pupils, and since this respondent has discontinued the practice, it becomes unnecessary for the Commissioner to pass upon the issues raised by the petition herein. The controversy has been settled and the questions raised have become moot.

The petition is therefore dismissed, without prejudice, however, to its being renewed if a controversy between the same parties involving the same issue should again arise.

Dated: December 24, 1958.

X

IN THE MATTER OF THE TERMINATION OF THE SENDING-RECEIVING  
RELATIONSHIP BETWEEN THE BOARD OF EDUCATION OF THE  
BOROUGH OF PITMAN AND THE BOARD OF EDUCATION OF THE  
TOWNSHIP OF MANTUA, GLOUCESTER COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

The Board of Education of the Borough of Pitman requested approval of the Commissioner of Education for the termination of the sending-receiving relationship with the School District of the Township of Mantua. A hearing was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes on October 17, 1958, in Trenton.

The pertinent statute is section 18:14-7 of the Revised Statutes, which reads in part as follows:

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

The facts in this case are as follows:

The Board of Education of the Borough of Pitman has on several occasions since April 28, 1954, notified the Board of Education of the Township of Mantua, both by formal resolution and through informal discussions, of the growth of the school population in the area and that Pitman High School would not be in a position to continue to provide secondary educational facilities for the pupils from the sending districts. In August, 1956, the Board of Education of the Borough of Pitman adopted a resolution officially notifying the Board of Education of the Township of Mantua that it would no longer receive students from Mantua after September, 1958. Following this notification, representatives of the State Department of Education and the County Superintendent of Schools of Gloucester County had correspondence and conferences with both the Board of Education of the Borough of Pitman and the Board of Education of the Township of Mantua, seeking a solution to the problem.

The enrollment at the present time in the Pitman High School exceeds the capacity of the building, and the predicted enrollment will overcrowd the building to the extent that the Board of Education would be unable to provide a thorough and efficient system of secondary education.

The Board of Education of the Township of Mantua agreed at the hearing that the facilities at Pitman High School are not adequate to provide for the future enrollments, and that the only real question was the agreement on a final termination date. It was further agreed that the Board of Education of the Township of Mantua should be given a reasonable time to provide other secondary facilities for the pupils of the district.

On October 21, 1958, the Board of Education of the Borough of Pitman adopted the following resolution:

“NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Borough of Pitman, in the County of Gloucester, that the termination date of the said sending-receiving relationship between said Township of Mantua and said Borough of Pitman, be, and the same is hereby, finally fixed and determined to be as June, 1961, upon completion of the school year 1960-1961.”

The Commissioner, after reviewing all facts and exhibits presented at the hearing, finds and determines that the present school facilities at Pitman High School are inadequate to provide a thorough and efficient system of secondary education for the predicted enrollment from the districts now attending the high school. For this reason, the request for the termination of the sending-receiving relationship between the school districts of the

Borough of Pitman and the Township of Mantua must be approved, effective September, 1961.

Pupils who enter Pitman High School from the Township of Mantua prior to September, 1961, will be withdrawn by mutual agreement between the two boards of education.

January 6, 1959.

## XI

### IN THE MATTER OF THE TERMINATION OF THE SENDING-RECEIVING RELATIONSHIP BETWEEN THE BOARD OF EDUCATION OF THE BOROUGH OF PITMAN AND THE BOARD OF EDUCATION OF THE BOROUGH OF WENONAH, GLOUCESTER COUNTY.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The Board of Education of the Borough of Pitman requested approval of the Commissioner of Education for the termination of the sending-receiving relationship with the school district of the Borough of Wenonah. A hearing was held by the Assistant Commissioner in Charge of Controversies and Disputes on October 17, 1958, in Trenton.

The pertinent statute is section 18:14-7 of the Revised Statutes, which reads in part as follows:

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

The facts in this case are as follows:

The Board of Education of the Borough of Pitman has on several occasions since April 28, 1954, notified the Board of Education of the Borough of Wenonah, both by formal resolution and through informal discussions, of the growth of the school population in the area and that Pitman High School would not be in a position to continue to provide secondary educational facilities for the pupils from the sending districts. In August, 1956, the Board of Education of the Borough of Pitman adopted a resolution officially notifying the Board of Education of the Borough of Wenonah that it would no longer receive students from Wenonah after September, 1958. Following this notification, representatives of the State Department of Education and the County Superintendent of Schools of Gloucester County had correspondence and conferences with both the Board of Education of the Borough of Pitman and the Board of Education of the Borough of Wenonah, seeking a solution to the problem.

The enrollment at the present time in the Pitman High School exceeds the capacity of the building, and the predicted enrollment will overcrowd the building to the extent that the board of education would be unable to provide a thorough and efficient system of secondary education.

The Board of Education of the Borough of Wenonah agreed at the hearing that the facilities at Pitman High School are not adequate to provide for the future enrollments, and that the only real question was the agreement on a final termination date. It was further agreed that the Board of Education of the Borough of Wenonah should be given a reasonable time to provide other secondary facilities for the pupils of the district.

On October 21, 1958, the Board of Education of the Borough of Pitman adopted the following resolution:

“ . . . NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Borough of Pitman, in the County of Gloucester, that the termination date of the said sending-receiving relationship between said Township of Wenonah and said Board of Education, be, and the same is hereby, finally fixed and determined to be as June, 1961, upon completion of the school year 1960-1961.”

The Commissioner, after reviewing all facts and exhibits presented at the hearing, finds and determines that the present facilities at Pitman High School are inadequate to provide a thorough and efficient system of secondary education for the predicted enrollment from the district now attending this high school. For this reason, the request for the termination of the sending-receiving relationship between the school districts of Pitman and Wenonah must be approved, effective September, 1961.

The Board of Education of the Borough of Wenonah is hereby directed to consult with the County Superintendent of Schools and members of the State Department of Education for the purpose of arranging an educational program for the high school pupils of the School District of Wenonah beginning September, 1961. Pupils enrolled in the Pitman High School prior to September, 1961, may be withdrawn by mutual agreement between the two boards of education.

January 6, 1959.

COMMISSIONER OF EDUCATION.

## XII

### MINUTES OF BOARD OF EDUCATION AS PUBLIC RECORDS ARE OPEN TO INSPECTION

THE PLAINFIELD COURIER-NEWS COMPANY, A CORPORATION OF THE  
STATE OF JERSEY, PHILIP H. WEISBECKER AND EDWARD GREEN,  
CITIZENS AND TAXPAYERS OF THE BOROUGH OF SOUTH  
PLAINFIELD, MIDDLESEX COUNTY,

*Petitioners,*

*vs.*

BOARD OF EDUCATION OF THE BOROUGH OF SOUTH PLAINFIELD,

*Respondent.*

### DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioners, Sachar, Sachar & Bernstein (Edward Sachar, of Counsel).

For the Respondent, Edward J. Santoro.

The Plainfield Courier-News Company, a corporation of the State of New Jersey, publishes a daily newspaper, the Plainfield Courier-News, which circulates in the Borough of South Plainfield. Philip H. Weisbecker and Edward Green are taxpayers, citizens and residents of the Borough of South Plainfield, and are also employees of the Plainfield Courier-News.

Philip H. Weisbecker and Edward Green on May 26, 1958, were permitted to examine the minutes of the meetings of the respondent Board of Education, but were prohibited from copying same, taking any notes, or making any memorandum regarding salaries paid to teachers recorded in said minutes.

The Commissioner is asked to issue an order granting the petitioners the right to inspect the minutes of the respondent Board of Education and to make notes from said minutes.

The case is presented on stipulated facts, which are as follows:

“It is stipulated and agreed between the attorneys for the respective parties that the Board of Education of the Borough of South Plainfield does not deny the right of the Plainfield Courier-News or any taxpayer of the Borough of South Plainfield to inspect the minutes of the Board of Education of the Borough of South Plainfield, but denies the right of the Plainfield Courier-News, Philip H. Weisbecker and Edward Green, reporters for the Plainfield Courier-News, who are residents, taxpayers and citizens of the Borough of South Plainfield and employees of the Plainfield Courier-News, or any other taxpayer to make a memorandum or notes of said minutes.

“It is agreed that the purpose of Philip H. Weisbecker and Edward Green in making the memorandum of the contents of the minutes was for the purpose of furnishing the same to the Plainfield Courier-News for the purpose of publication.”

It has been admitted by both the petitioners and the respondent that the minutes of the Board of Education are public record.

The issue to be decided by the Commissioner in this case is whether or not the Plainfield Courier-News, Philip H. Weisbecker and Edward Green have the right to inspect, copy, or to make notes or memorandum from any minutes of the public meetings of the Board of Education.

The pertinent statutes are sections 18:5-47 and 18:7-58 of the Revised Statutes, which provide as follows:

“18:5-47. The meetings of every Board of Education in the state shall be public and shall commence not later than eight o'clock in the evening.

“18:7-58. No principal or teacher shall be appointed, transferred or dismissed, or the amount of his salary fixed; no school term shall be determined, no course of study shall be adopted or altered, and no textbooks selected, except by a majority vote of the whole number of members of the board.”

Counsel for the petitioners argue that the salaries of teachers must become a part of the minutes of the Board of Education and that the courts have upheld the right of the public to examine public records, and cite the following cases in support of their contention:

*Fagan vs. State Board of Assessors* (1910 Sup. Ct.), 80 N. J. L. 516:

“As a citizen and taxpayer, he, referring to the applicant, has that abiding interest in the administration of his government and of every department of it that affects him or his fellows that mark the difference between a citizen and a subject. It is to the failure of the citizen to assert these rights that one must look for these evils that are incident to our government rather than to a super-abundant zeal in this respect. It would be unfortunate in the extremes for the court of a republic to erect technical barriers by which these duties of citizenship are discouraged or denied; and no more effectual barrier could be set up in the rule that records required by public law for the performance of their public duties by public servants are possessed of a privacy into which the mere citizen, however patriotic his purpose, may not inquire.” *Taxpayers Association of Cape May, New Jersey, Inc., vs. City of Cape May*, 2 N. J. Superior 27 (App. Div. 1949); *Higgins vs. Lockwood*, 74 N. J. L. 158 (Sup. Ct. 1906).

The petitioners further argue that citizens of the community are entitled to know all the facts regarding actions of the Board of Education, including the salaries paid to teachers, in order to vote intelligently upon school matters; furthermore, that the petitioners have neither interfered with the normal conduct of business of the Board of Education of the Borough of South Plainfield nor disregarded the safety of its records.

The respondent contends that the issue in this case does not come within the jurisdiction of the Commissioner of Education, since there has been no precedent case on this issue before the Commissioner or State Board of Education. The Commissioner does not agree with the contention of the respondent, and is of the opinion that the question is a controversy under the School Law and falls within the purview of R. S. 18:3-14.

Counsel for the respondent admits that the right of a taxpayer to inspect public records is clear and that the minutes of the Board of Education are public records; however, the right of such inspection is subject to limitation. Lawful, proper and legitimate purposes not adverse to the public interest is inherent in the right to inspect public records. He argues that where it was found that a petitioner's motive was “partisan hostility or personal ill-will” and “that he was activated rather by the zeal of the partisan than by a desire solely for the public weal,” an application for a Writ of Mandamus to permit inspection and copying of certain records was denied. He cites the following cases in support of his contention: *In re Freeman*, 75 N. J. L. at 332 and 333 (Supreme Court, 1907), *Barber vs. West Jersey*, 53 N. J. Eq. 158 (E. & A., 1895).

The respondent further argues that the avowed purpose of both Philip Weisbecker and Edward Green, in seeking to copy or make memoranda from the minutes of the Board of Education, was to furnish information to their employer for publication in the newspaper, that neither the Commissioner nor any other court should be called upon to assist newspapers in gathering news, and that any such right should be obtained only by legislation.

The respondent argues that circumstances in this case are similar to those in *Taxpayers Association vs. City of Cape May*, *supra*, where the court said:

“Although we believe that in furtherance of good government the right of the interested citizens and taxpayers to inspect public records

should be broadly recognized, we need not here attempt to define its precise scope and limits. We are satisfied that under the special circumstances presented the interest of the taxpayers and citizens is sufficient to sustain their application. . . .”

The respondent claims that the records of the official acts of the Board of Education are recorded in a suitable book for this purpose which has always been available at reasonable times for inspection by any citizen and taxpayer of the Borough of South Plainfield. However, the Board of Education is of the opinion that publication of the teachers' salaries is not in the best interest of the school and community, since such publication would tend to create unrest and discontent among its teachers and employees, thus lowering the efficiency of the school system.

The Commissioner is fully aware of the contention of the respondent that the publication of the names and salaries of teachers is not in the best interest of the public or the schools of the district. The Commissioner believes that any citizen who has a legitimate interest in the compensation of public employees may obtain such information by consulting the records of the Board of Education; furthermore, the public interest can be served by the newspaper by limiting publication to the number of teachers at each salary level, thus avoiding the exposure of teachers' personal information to the merely curious. However, the Commissioner, after reviewing carefully all the arguments, briefs and law references presented in this case, must conclude with reference to the main issue of this petition that the minutes of the Board of Education are public records and, as such, are subject not only to review and inspection but also to being copied or noted by citizens and taxpayers of the community at reasonable times for legitimate purposes. The right to inspect generally includes in appropriate cases the right to copy. *Evening Journal Assn. vs. McPhail*, 45 N. J. Super. 184, 189, 190. *In re Becker*, 200 App. Div. 178, 192 N. Y. S. 574. Therefore the prayer of the petition must be granted.

January 15, 1959.

### XIII

DOROTHY R. LAWRENCE,

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION  
IN THE BOROUGH OF PITMAN, GLOUCESTER COUNTY.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the results of the annual meeting of the legal voters held on February 10, 1959, for membership on the Board of Education of the Borough of Pitman, Gloucester County.

	<i>At Poll</i>	<i>Absentee</i>	<i>Total</i>
Sterling D. Huggens .....	474	0	474
Dorothy R. Lawrence .....	379	2	381
George J. Guenther .....	378	4	382
Donald P. Heath .....	396	1	397

Mrs. Dorothy R. Lawrence petitioned the Commissioner of Education for a recount on the grounds that a number of ballots had been rejected and that there was only one vote difference in the total count for her and George J. Guenther.

A recount was conducted by the Assistant Commissioner in Charge of Controversies and Disputes on February 23, 1959, in the office of the County Superintendent of Schools of Gloucester County.

At the conclusion of the recount, 3 ballots could not be counted for the following reasons:

One ballot contained crosses (X) in the squares to the right of all four candidates.

Two ballots did not have any cross, plus or check mark in the squares to the left of the names of the candidates.

Six ballots were referred to the Commissioner for further consideration for the following reasons:

EXHIBIT A—4 ballots marked with a cross in the square to the left of the names of 3 candidates with an erasure in the square to the left of the fourth candidate.

EXHIBIT B—2 ballots marked with a cross in the square to the left of the three candidates with scratches in the square to the left of the fourth candidate.

The Commissioner has 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 or erasures appear on the ballot, unless the other markings are extremely irregular with intention to make it other than a secret ballot." In re East Rutherford Annual School Election, 1938 S. L. D. at page 186.

While the General Election Law is not binding at any annual school election, the Commissioner of Education in counting and voiding ballots in school election controversies has looked to the General Election Law for guidance. The referred ballots have been examined in light of the foregoing.

EXHIBIT A—These ballots are properly marked for the candidates voted for, but crosses have been erased in the squares to the left of the names of other candidates.

It is the opinion of the Commissioner that these erasures were not used as a device to distinguish the ballot with the intention of making it other than a secret ballot. Having reached this conclusion, the ballot must be counted.

EXHIBIT B—These ballots were properly marked for the candidates voted for, but scratches appear in the squares to the left of the other candidates.

It is the opinion of the Commissioner that these scratches were not made as a device to distinguish the ballot, with the intention of making it other than a secret ballot. Having reached this conclusion, the ballot must be counted.

These determinations are in line with the previous decisions of the Commissioner of Education and section 19:16-4 of the Revised Statutes 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, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot. . . .”

The results of the recount are as follows:

	<i>Recount</i>	<i>Exhibit A</i>	<i>Exhibit B</i>	<i>Absentee</i>	<i>Total</i>
Sterling D. Huggens .....	467	4	1		472
Dorothy R. Lawrence .....	375	3	1	2	381
George J. Guenther .....	377	1	2	4	384
Donald P. Heath .....	391	4	2	1	398

The Commissioner finds and determines that Sterling D. Huggens, Donald P. Heath and George J. Gruenther were elected to membership on the Board of Education of the Borough of Pitman, Gloucester County, for a term of three years.

March 6, 1959.

#### XIV

##### VIVIAN C. VOSS

##### IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF JEFFERSON, MORRIS COUNTY.

For Jefferson Township Civic Group, Mr. Fred James.

For Jefferson Township Taxpayers' Association, Mr. Frank C. Scerbo.

##### DECISION OF THE COMMISSIONER OF EDUCATION

The announced results of the annual meeting of the legal voters held in the Township of Jefferson, Morris County, on February 10, 1959, are as follows:

<i>Three-Year Term</i>	<i>Vote for Three</i>
Augusta Worman Denike .....	519
Vivian Voss .....	518
Thomas J. Irwin .....	552
Arthur Stanlick .....	526
Erwin L. Hites .....	515
Frances Slayton .....	71
G. G. Ziler .....	485

The petitioner, Vivian C. Voss requested a recount of the ballots on the ground that the number of ballots cast was greater than the total number of

signatures recorded in the poll list book, and that a number of ballots that were accepted were improperly marked and should have been rejected and, furthermore, that two applications for absentee ballots were not made in accordance with the absentee voting law cited in the School Elections Manual, namely "in case of any school election, the application or request shall be made to the secretary of the Board of Education of the school district" and that the procedures as prescribed in the legal notice to persons desiring absentee ballots; namely, the application for a ballot be made to the "under-signed person"—in this case the secretary of the Board of Education and at the designated address, was not adhered to.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Morris County on February 24, 1959.

Petitioner's allegation that the number of ballots cast was greater than the total number of signatures recorded in the poll list is explained by reason of the fact that twenty ballots were forwarded to the County Clerk for absentee voting purposes, thus making the first ballot issued to a voter at the polls to begin with number 21. This corresponds with the numbers as recorded in the poll list.

In regard to the allegation that absentee ballots had been improperly mailed a letter from the Election Clerk in the County Clerk's Office stated that she had called the secretary of the Jefferson Township Board of Education by telephone and secured his approval to mail the absentee ballots. This procedure is not in accordance with the provisions of 19:57-1 to 19:57-40. However, the number of absentee ballots will not in this case affect the results of the election and for that reason the Commissioner will not invalidate the will of the people.

Section 18:7-31 of the Revised Statutes which provided as follows:

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

It is the opinion of the Commissioner that this ballot cannot be counted. The results of the recount are as follows:

	<i>At Poll</i>	<i>Absentee</i>	<i>Total</i>
Augusta Worman Denike .....	525	3	528
Vivian Voss .....	519		519
Thomas J. Irwin .....	557	3	560
Arthur Stanlick .....	525		525
Ervin L. Hites .....	516		516
Frances Slayton .....	70		70
G. G. Ziler .....	491	3	494

The Commissioner finds and determines that Thomas J. Irwin, August Worman Denike and Arthur Stanlick were elected to membership on the Board of Education of the School District of the Township of Jefferson, Morris County, for terms of three years.

March 6, 1959.

XV

ERLE B. RENWICK, JR.

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION  
IN THE TOWNSHIP OF DENVILLE, MORRIS COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

The announced results of the annual meeting of the legal voters held in the Township of Denville, Morris County, on February 10, 1959, are as follows:

*Three-Year Term*

Robert E. Plumb .....	289
Erle B. Renwick, Jr. ....	285
Charles N. Morgan, Jr. ....	208
William F. Barnich .....	311
Alexander Muntz .....	105
John N. Wright .....	1
Herman Condit .....	1

The petitioner, Erle B. Renwick, Jr., requested a recount of the ballots on the ground that because of irregularities on some 10 or 12 ballots these ballots were rejected and that a recount of the whole number of ballots cast at the election could change the result thereof.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Morris County, on February 24, 1959.

At the conclusion of the recount, 1 ballot was voided by agreement because it contained votes for three candidates, with instruction at the top of the ballot to vote for two.

Five additional ballots were referred to the Commissioner for determination, as follows:

EXHIBIT A—2 ballots: 1 marked with a cross (X) before the names of 2 candidates and marks before the names of 3 candidates with such marks apparently crossed out by the voters, with apparent intention to erase.

1 marked with a cross (X) before the names of 2 candidates and a similar attempt to erase a third mark before the name of another candidate.

EXHIBIT B—2 ballots: each with a cross (X) before the name of Alexander Muntz and the name Alexander Muntz written in the personal choice space with a cross (X) in the space before the name.

EXHIBIT C—1 ballot: 1 ballot voided by the local election officials because of a Yes and No vote on one of the appropriation items but containing a vote properly marked for William F. Barnich.

Section 18:7-31 of the Revised Statutes provides that the following instructions shall appear on the ballot:

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

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

The Commissioner has held that, in the absence of any provision of the School Law regarding other marks or erasures on ballots, a ballot should be counted, if properly marked in the squares provided, even if other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the apparent intention of making it identifiable or other than a secret ballot. The referred ballots have been examined by the Commissioner in the light of this consistent position.

EXHIBIT A—In the opinion of the Commissioner the erasures were not placed on the ballot for the purpose of making it other than a secret ballot. Having reached this conclusion, the ballot must be counted.

EXHIBIT B—It is the opinion of the Commissioner that the vote for Alexander Muntz must be counted and that the writing of the name Alexander Muntz in the personal choice invalidated the ballot.

EXHIBIT C—This ballot must be counted for the candidates although it could not be counted for the appropriations.

See *In re Annual School Election in the Township of Tabernacle, Burlington County*, 1938 S. L. D. 190; *In re Annual School Election in the Township of Clementon*, 1938 S. L. D. 180; see also 19:16-4 of the Revised Statutes.

Following is a tabulation of the uncontested and referred ballots:

		<i>Exhibit A</i>	<i>Exhibit B</i>	<i>Exhibit C</i>	<i>Total</i>
Robert E. Plumb .....	291	1			292
Erle B. Renwick, Jr. ....	285	1			286
Charles N. Morgan, Jr. ....	207	1			208
William F. Barnich .....	310	1		1	312
Alexander Muntz .....	105		2		107

The Commissioner finds and determines that Robert E. Plumb and William F. Barnich were elected to membership on the Board of Education of the School District of the Township of Denville, Morris County, for terms of three years.

March 6, 1959.

XVI

GABRIEL QUINONES

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION  
IN THE TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the results of the annual meeting of the legal voters held on February 10, 1959, for the election of members of the Board of Education of the Township of West Milford, in the County of Passaic:

	<i>At Poll</i>	<i>Absentee</i>	<i>Total</i>
Chester E. Kirchner .....	461	1	462
Carl Becker .....	398	1	399
Fred E. Payne .....	364	1	365
Benjamin J. Vandermark .....	243		243
Gabriel W. Quinones .....	362	2	364
Enes Remia .....	233	1	234

Gabriel W. Quinones petitioned the Commissioner for a recount on the grounds that 7 ballots had been discarded and that there was a difference of only 1 vote between his total vote and that of the next candidate. A recount of the ballots was conducted by the Assistant Commissioner in Charge of Controversies and Disputes on February 25, 1959, in the office of the County Superintendent of Schools of Passaic County.

At the close of the recount 10 ballots could not be counted for the following reasons:

- 6 ballots did not have a cross (×), plus (+) or check (√) mark in the place or square to the left of the candidates' names, but had crosses to the right of the candidates' names.
- 1 ballot had no cross (×), plus (+) or check mark (√) in the square to the left of the name of any candidate, but had the word "Yes" written to the right of the names of these candidates.
- 1 ballot had no cross (×), plus (+) or check (√) mark in the square to the left of the names of candidates, but had the word "No" written in all squares to the left of the names of candidates.
- 1 ballot had no cross (×), plus (+) or check mark (√) in the squares to the left of the names of candidates, but had check marks outside the squares to the left of the names of candidates.
- 1 ballot had no cross (×), plus (+) or check mark (√) in the squares to the left of the names of candidates, but had a line in the square to the left of the names of two candidates.

The Commissioner has held in a number of cases that a ballot cannot be counted unless a cross (×), plus (+) or check (√) mark appears in the square to the left of the name because this is explicitly required by statute. Section 18:7-31 of the Revised Statutes reads as follows:

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

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

See *In Re Annual School Election in the Township of Clementon, 1938* S. L. D. at 181; also section 19:16-3c of the Revised Statutes; also *Annual School Election in the Township of Tabernacle, Burlington County, 1938* S. L. D. at 190. Four ballots were referred to the Commissioner for further consideration, as follows:

EXHIBIT A—2 ballots marked with crosses in squares to left of the names of candidates, with erasures in one square.

EXHIBIT B—1 ballot marked with check mark in square to left of name of candidates and names written to the left of the candidates.

EXHIBIT C—1 ballot with irregular check marks in squares to the left of the names of candidates.

The Commissioner has held that in the absence of any provision in the School Law regarding other marks on the ballots or erasures, ballots should be counted if properly marked in the squares, even though other marks or erasures appear on the ballot, unless the other markings are extremely irregular with the intention to make it other than a secret ballot. While the General Election Law is not binding at any annual school election, the Commissioner of Education in counting and voiding ballots in school election controversies has looked to the General Election Law for guidance.

The referred ballots have been examined in the light of the foregoing:

EXHIBIT A—These ballots are properly marked for the candidates voted for, but crosses or plus marks have been erased in the squares before other candidates. It is the opinion of the Commissioner that these erasures were not used as a device to distinguish the ballots with the intention of making them other than secret ballots. Having reached this conclusion, the ballots must be counted.

EXHIBIT B—This ballot has irregular check marks. It appears to the Commissioner that the irregular marks are not for the purpose of making the ballot other than secret and that the intention of the voter is perfectly clear and, therefore, the ballot must be counted.

Section 19:16-4 of the Revised Statutes reads in part:

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

EXHIBIT C—This ballot is properly marked with check marks in the squares to left of the names of candidates. On the right side of the ballot the name of each candidate is written. This marking would, in the opinion of the Commissioner, make the ballot other than a secret ballot and, therefore, it cannot be counted.

The results of the recount are as follows:

	<i>Recount of Uncontested Ballots</i>	<i>Exhibit A</i>	<i>Exhibit B</i>	<i>Absentee</i>	<i>Total</i>
Chester E. Kirchner .....	460	1	1	1	463
Carl H. Becker .....	397		1	1	399
Benjamin J. Vandermark ...	244	1			245
Gabriel W. Quinones .....	365	1		2	368
Fred E. Payne .....	365			1	366
Enes Remia .....	235			1	236

The Commissioner finds and determines that Chester Kirchner, Carl H. Becker and Gabriel Quinones were elected to membership on the Board of Education of the Township of West Milford, County of Passaic, for a term of three years.

March 6, 1959.

## XVII

### IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN WARREN TOWNSHIP, SOMERSET COUNTY, FOR MEMBERSHIP ON THE WATCHUNG HILLS REGIONAL BOARD OF EDUCATION.

For Mr. Howard P. Krausche, Mr. Alphonse R. Makowski.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual district school meeting of the legal voters of the Township of Warren, as a constituent district of the Watchung Hills Regional High School, held on February 3, 1959:

George J. Abel, Jr. ....	287 votes
Howard P. Krausche .....	289 votes

George J. Abel, Jr., a candidate for election to the Board of Education of the Watchung Hills Regional High School District to represent the Township of Warren for the full three-year term, petitioned the Commissioner for a recount of the ballots cast in Warren Township, because of the fact that there was only a two vote difference in a total of 576 votes cast.

A recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Somerset County on March 26, 1959.

Following are the results of the recount of the ballots cast at the four polling places in Warren Township:

	<i>Dist. 1</i>	<i>Dist. 2</i>	<i>Dist. 3</i>	<i>Dist. 4.</i>	<i>Total</i>
Howard P. Krausche .....	94	65	73	58	290
George J. Abel, Jr. ....	65	63	115	43	286

It was observed during the recount that in District 4 two absentee ballots had been placed in the ballot box by the secretary of the board of education. This action is in violation of sections 19:57-11 and 19:57-31 of the Revised Statutes, which read as follows:

“19:57-11. Each county clerk shall forward a military service ballot or a civilian absentee ballot, as the case may be, for use under this act by first-class mail to each military service voter who applies therefor or on whose behalf application is made therefor, and to each civilian absentee voter whose request therefor has been approved, and to whom a ballot has not been delivered by said clerk in person, addressed to the absentee voter at the forwarding address given in the application or request, and all ballots to be forwarded to persons at an address located without the limits of the forty-eight states and the District of Columbia shall be forwarded by air mail.

“Such ballots shall be so forwarded as soon as practicable after the twenty-fifth day preceding the day upon which any election is to be held.”

“19:57-31. On the day of each election each county board of elections shall open in the presence of the commissioner of registration or his assistant or assistants the inner envelopes in which the absentee ballots, returned to it, to be voted in such election, are contained, except those containing the ballots which the board or the County Court of the county has rejected, and shall remove from said inner envelopes the absentee ballots and shall then proceed to count and canvass the votes cast on such absentee ballots, but no absentee ballot shall be counted in any primary election for the general election if the ballot of the political party marked for voting thereon differs from the designation of the political party in the primary election of which such ballot is intended to be voted as marked on said envelope by the county board of elections. Immediately after the canvass is completed, the respective county boards of election shall certify the result of such canvass to the county clerk or the municipal or district clerk or other appropriate officer, as the case may be, showing the result of the canvass by ward and district, and the votes so counted and canvassed shall be counted in determining the result of said election.”

Since the difference between the total number of votes cast for the two candidates is more than two votes, the Commissioner will not invalidate this election. However, the Watchung Hills Regional Board of Education is directed to instruct the Secretary of the Watchung Hills Regional Board of Education to comply with the provisions of the law, R. S. 19:57-11 and 19:57-31, *supra*, in all future school elections.

The Commissioner finds and determines that Howard P. Krausche was elected to membership from Warren Township on the Watchung Hills Regional Board of Education for a term of three years.

COMMISSIONER OF EDUCATION.

April 21, 1959.

XVIII

TEACHER PROPERLY HELD UNFIT TO TEACH FOR REFUSAL  
TO ANSWER FULLY AND CANDIDLY QUESTIONS RELATING  
TO COMMUNIST PARTY AFFILIATION

ROBERT LOWENSTEIN,

*Appellant,*

*vs.*

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

*Respondent.*

DECISION OF THE COMMISSIONER OF EDUCATION

For the Appellant, Mr. John O. Bigelow.

For the Appellant, Gross, Goldberger & Stavis (Mr. Morton Stavis, of Counsel).

For the Respondent, Mr. Jacob Fox.

This is an appeal by a teacher from an order of the Board of Education of Newark, dated June 24, 1953, which dismissed him from its employ as of May 20, 1955. The appeal prays that the Commissioner direct the reinstatement of appellant to his former position as teacher with the Newark Board of Education, with back pay from the date of his dismissal.

This case originally came before the Commissioner on an appeal from a dismissal ordered by the Board of Education on June 23, 1955, which was based solely on the proposition that in a Congressional inquiry into Communism and subversion generally, the appellant had invoked the privilege against self-incrimination in refusing to answer certain questions as to his affiliations and associations, and that such conduct was just cause for his dismissal under R. S. 18:13-17. On that appeal the Commissioner reversed the decision of the Newark Board of Education and remanded the case to the Board for further proceedings not inconsistent with the opinion of the United States Supreme Court in *Slochower vs. Board of Education*, 350 U. S. 551 (1956). On a further appeal to the New Jersey Supreme Court, the decision of the Commissioner was affirmed "in all respects." *Laba vs. Newark Board of Education*, 23 N. J. 364, 394 (1957).

For the guidance of the administrative authorities on the remand, the Supreme Court's opinion included the following propositions:

1. "(A school board) may inquire of public employees as to matters which relate to their continued fitness to serve as public employees including past and present membership in the Communist Party and associated organizations and may discharge employees who fail to disclose pertinent information which the supervising authorities may require." (23 N. J. at pp. 379-380).

2. "The State Commissioner properly found that the Board rested its decision on the invalid proposition that the teachers' invocation of the Fifth Amendment before the Congressional Committee constituted 'per se conduct unbecoming a teacher and just cause for his dismissal under R. S. 18:13-17.' We are satisfied that in the light of the holding in

*Slochow*, the proceedings were properly remanded for further inquiry (without reinstatement of the teachers in the interim) and the Board has no just or reasonable basis for complaining about this action." (23 N. J. at p. 381)

3. "In the light of our controlling legislation it is clear that in this State any person who is now a member of the Communist Party or who is now subject to its ideologies and disciplines is unfit to teach in our public schools and should be dismissed under R. S. 18:13-17. See R. S. 18:13-9.1; R. S. 18:13-9.2; *Thorp vs. Board of Trustees of Schools for Industrial Ed., supra*. The matter may no longer be viewed simply as one of academic freedom of thought and expression for it has actually become one of self-preservation; we are convinced that Communism is an alien concept which is dedicated to the overthrow of our form of government, by force if necessary, and seeks to deprive us of the very basic constitutional liberties which we all hold so dear; recent world happenings furnish further evidence of the futility of its solemn promises and the barbarism of its deliberate actions. We have no doubt that in examining into their continued fitness to teach the Newark school authorities may interrogate the appellant school teachers with respect to their present and past association with the Communist Party and affiliated organizations and are entitled to frank and full disclosures. Orderly procedure dictates that the preliminary inquiry on the subject be made fairly and conscientiously by the local school superintendent (R. S. 18:4-7; R. S. 18:4-10; R. S. 18:6-38); his interrogation may also include questions about the teachers' conduct before the House sub-committee although this inquiry should not be used as a means of undoing the acknowledged constitutional protection of the Fifth Amendment but should be fairly limited and directed towards ascertaining whether the refusals to answer were patently contumacious or frivolous rather than in good faith." (23 N. J. at p. 388).

\* \* \* \*

"If after the inquiry it appears that the teachers are now members of the Communist Party or are now subject to its ideologies and disciplines (*Thorp vs. Bd. of Trustees of Schools for Industrial Ed., supra*) or that they have wilfully refused to answer pertinent questions fairly submitted by their administrative superiors (*Board of Public Education School Dist. vs. Belian, supra*) or that they have contumaciously or frivolously refused to answer before the House sub-committee (*In re Levy, supra; In re Grae, supra*) then there would seem to be ample basis for Board action within the broad and valid statutory standard embodied in R. S. 18:13-17." (23 N. J. at p. 389).

4. "In the instant matter the teachers' conduct before the Congressional sub-committee reasonably calls for a fitness inquiry during which the teachers have a duty of cooperation and an affirmative burden in the establishment of their fitness. If they choose to remain silent under the protection of N. J. S. 2A-81-5 they must do so with full realization that their administrative superiors may justifiably conclude that they are no longer fit to teach." (23 N. J. at p. 392).

On remand to the local board, the latter referred the matter to the Newark superintendent of schools "for further inquiry consonant with the decision

of the Supreme Court. The superintendent in an ensuing interview in his office on May 16, 1957 stated to the appellant that the forthcoming questions "are based on information that I have in my possession from various sources, which in my opinion are sufficiently pertinent to the issue to justify my asking them." In the interview the appellant made it known that he would not answer questions directed at a time prior to the summer of 1953, although he stated his willingness to testify that he had not been a Communist since 1954. The appellant then refused to answer a number of questions, including the following:

"Have you been a member of the Communist Party within the past five years?"

"Did you at any time have any ties or relationship with the membership chairman of the Communist Party in Essex County?"

The same question "with respect to the last five years?"

"Were you ever a member?"

"Did you ever attend fraction meetings or committee meetings of sub-committee meetings of the Communist Party either in New York or in New Jersey?"

"It has been reported to me too that Dr. Dodd claims that you were the individual from New Jersey who came to any meeting held in New York by the top committee of the Communist group in the American Federation of Teachers. Is that claim true?"

"Were you ever a member of the Ralph Fox Branch of the Communist Party either in Newark or in Essex County?"

"Were you ever served with or active in recruiting teachers in the American Federation of Teachers for Communist membership?"

"If at any time prior to the summer of 1953 you were a member of the Communist Party, when did you cease being a member and what did you do to disassociate yourself?"

"Did you during the summer of 1953 or at approximately that time disassociate yourself from membership in the Communist Party?"

At the conclusion of the interview the superintendent further stated that his whole purpose was to obtain information that would be helpful "in terms of the progressive steps" on the issue of fitness as of "May 1955 and as of now," and he gave appellant a final opportunity, which was not accepted, to change any of his answers having to do with the period prior to the summer of 1953.

The superintendent on October 22, 1957, filed supplementary charges with the Board, relating to appellant's continued fitness to teach, and these were based upon his refusal to answer the questions which he did not answer at the superintendent's interview. The board held a hearing on these charges in December 1957, at which the appellant refused to add anything to the responses he had given in the superintendent's interview. The Board decided that the appellant wrongfully refused to answer these questions; that the reasons given by the appellant did not justify the refusals; that in failing to answer the questions the appellant obstructed a fair and conscientious inquiry as to his current loyalty; and that such conduct revealed appellant's lack of fitness to teach. The Board accordingly ordered appellant's dismissal as of May 20, 1955, the effective date of the original dismissal.

In arriving at its decision, the Board made no findings with respect to current affiliations or subservience to the ideologies and disciplines of the Communist Party. Accordingly, the present appeal turns solely on the issue of whether or not appellant's refusal to answer the questions set forth in the Board's findings was conduct unbecoming a teacher and sufficient evidence of lack of fitness for the teaching profession so as to justify his dismissal.

In the Supreme Court's opinion on the first appeal herein, it was stated that "where the original record before the Board is wholly adequate the State Commissioner may, after hearing, determine the matter without additional testimony;" (23 N. J. at p. 382); that "in reaching his determination he must, of course, give due weight to the nature of the findings below, although his primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated (23 N. J. at p. 382); and that "the School Laws contemplate that where the general issue of fitness is presented the original determination should be made locally with ample safeguards on review before the State school authorities and the courts." (23 N. J. at p. 384.)

It is the Commissioner's opinion that the record before the local board is adequate to enable the Commissioner to determine this matter without any additional testimony; and that when due weight is given to the findings of the local board, the decision of that tribunal should be sustained, except that the effective date of the dismissal should be May 16, 1957.

R. S. 18:13-17 authorizes the dismissal of a teacher for "inefficiency, incapacity, conduct unbecoming a teacher or other just cause." The facts hereinbefore recited, and fully supported by the record, demonstrate that the appellant has refused to disclose pertinent information fairly required of him by the supervising authorities, and that under R. S. 18:13-17 he has thus provided "just cause" for the board's dismissal action.

With respect to the pertinency of the questions, our Supreme Court specifically stated on the first appeal herein that "past and present membership in the Communist Party and associated organizations" is a matter relating to continued fitness to serve as a public employee, and thus is pertinent in an investigation as to such fitness. No limitation was placed by the Court so as to the extent to which past conduct or associations could be inquired into, the only limitation being the usual one of relevancy; and the Commissioner believes that membership in the Communist party at any past time is a fact which may have a bearing upon the present fitness of a teacher, depending upon all other circumstances such as the time and manner in which he ceased to be a Communist Party member, the reasons for such action, the candor with which the teacher will admit and testify to his past errors in this regard, and similar factors.

This view finds strong support in the decision of the United States Supreme Court in *Garner vs. Board of Public Works*, 341 U. S. 716 (1951), which upheld an ordinance of the city of Los Angeles requiring every public employee to execute an affidavit "stating whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or was such a member, stating the dates when he became, and the periods during which he was, such a member." The Supreme Court said (p. 720):

"We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that

may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment.”

Likewise very much in point is *Beilan vs. Board of Education, School Dist. of Phila.*, 357 U. S. 399 (1958), where the United States Supreme Court sustained the discharge of a public school teacher on the ground of “incompetency,” evidenced by the teacher’s refusal of his superintendent’s request to confirm or refute information as to the teacher’s loyalty and his activities in certain allegedly subversive organizations. In that case the teacher was asked in 1952 whether or not he had been the Press Director of the Professional Section of the Communist Political Association in 1944. In upholding the propriety of this question, the Supreme Court said (pp. 405-407) :

“The question asked of petitioner by his Superintendent was relevant to the issue of petitioner’s fitness and suitability to serve as a teacher. Petitioner is not in a position to challenge his dismissal merely because of the remoteness in time of the 1944 activities. It was apparent from the circumstances of the two interviews that the Superintendent had other questions to ask. Petitioner’s refusal to answer was not based on the remoteness of his 1944 activities. He made it clear that he would not answer any question of the same type as the one asked. Petitioner blocked from the beginning any inquiry into his Communist activities, however relevant to his present loyalty. The Board based its dismissal upon petitioner’s refusal to answer any inquiry about his relevant activities—not upon those activities themselves. It took care to charge petitioner with incompetency, and not with disloyalty. It found him insubordinate and lacking in frankness and candor—it made no finding as to his loyalty.

“We find no requirement in the Federal Constitution that a teacher’s classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors. \* \* \* ‘It has always been the recognized duty of the teacher to conduct himself in such way as to command the respect and good will of the community, though one result of the choice of a teacher’s vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations.’”

Counsel for appellant argues that the Communist Party was “outlawed” by the Communist Control Act of 1954 (50 U. S. C. § 841), and that prior thereto it was “lawful” to be a member of the Communist Party in New Jersey; and from this he concludes that questions as to party affiliation prior to 1954 are irrelevant. The conclusion does not follow from the premises, even generally recognized as a subversive organization having among its aims the overthrow of the American form of government by force or violence or other unlawful means. See *American Communications Association vs. Douds*, 339 U. S. 382 (1950); *Thorp vs. Board of Trustees of Schools for Industrial Ed.*, 6 N. J. 489, 510, 511 (1951); *Garner vs. Board of Public Works, supra*; *Communist Party of the United States vs. Subversive Activities Control Board*, 223 Fed. 2d 531 (C. A. D. C. 1955), reversed on other grounds, 351 U. S. 115; *Internal Security Act of 1950*, 50 U. S. C. § 781 et seq. If in 1950, for example, appellant was a Communist Party member, he clearly

would have been disqualified as a public school teacher at that time (*Thorp vs. Board of Trustees, supra*), and the burden would now be upon him to prove that he has changed. *Laba vs. Newark Board of Education, supra*; *Communist Party of the United States vs. Subversive Activities Control Board, supra*.

Moreover, our Supreme Court has ruled that “any person who is now a member of the Communist Party or who is now subject to its ideologies and disciplines is unfit to teach in our public schools and should be dismissed under R. S. 18:13–17.” (23 N. J. at 388). In other words, testimony by a teacher that he is not now or has not recently been a member of the Communist Party does not necessarily prove that he is no longer subject to its ideologies and disciplines; this can only be determined by an appropriate inquiry on that point. For this reason, appellant here had no right to avoid the Superintendent’s questions on this subject merely by testifying that he had not been a member of the Communist Party for the past four years.

The Court has also placed great emphasis on “frank and full disclosures” which are important in two ways: (1) they enable the inquiring board to evaluate all the circumstances in the case, and (2) in and of themselves they tend to reveal the character of the witness in respect to such qualities as candor, honesty, reliability and judgment. These qualities are as essential to competence for the teaching profession as are academic achievements; and by the same token, secretiveness and lack of candor stamp the individual as not qualified to occupy a post of public trust and civic responsibility. *Board of Public Education vs. Bielan*, 125 Atl. 2d 327, 331, 386 Pa. (1956), *aff’d*, 357 U. S. 399. Dr. Lowenstein did not make the frank and full disclosures required of him in the present case.

The Commissioner notes the observation of our Supreme Court that in the instant matter the conduct of Dr. Lowenstein before the Congressional Committee reasonably calls for a fitness inquiry in which the teacher has a “duty of cooperation and an affirmative burden” in the establishment of fitness, and that if he chooses to remain silent under the circumstances, he must do so with the full realization that his administrative superiors may justifiably conclude that he is no longer fit to teach. (23 N. J. at p. 392.) The appellant has not met that burden by his conduct on the remand before the local board.

The final question is whether the dismissal should be sustained as of May 20, 1955, when appellant was first suspended from his employment, rather than as of May 16, 1957—the date of the refusal by the appellant to answer pertinent questions in the inquiry conducted by the superintendent upon the remand.

It has already been established that the respondent board was within its legal rights in dismissing the appellant from his employment because of his refusal in 1957 to answer questions properly put to him by his administrative superiors. The proceedings by the superintendent and the board of education on the remand were not addressed to his conduct before the House Subcommittee, but rather to his past activities and associations as these might bear upon subjection to the ideologies or disciplines of the Communist Party. It was in an inquiry on the latter subject that the appellant exhibited his lack of candor which led the respondent board to conclude that he was unfit to remain a teacher in its schools. Our Supreme Court has already held that the

petitioner's conduct before the House Sub-committee was not *per se* just cause for a dismissal, and no further evidence has been presented to prove that his conduct before the House Sub-committee was unbecoming that of a teacher. However, the Supreme Court further stated: "We have no doubt that in examining into their continued fitness to teach the Newark school authorities may interrogate the appellant school teachers with respect to their present and past association with the Communist Party and affiliated organizations and are entitled to frank and full disclosures. Orderly procedure dictates that the preliminary inquiry on the subject be made fairly and conscientiously by the local school superintendent." It is the opinion of the Commissioner that the dismissal should not revert to a time prior to the acts justifying same, that the appellant, therefore, should be dismissed effective May 16, 1957, and, furthermore, that the appellant should be paid by the respondent board of education the salary which became due him between May 20, 1955, and May 16, 1957.

In conclusion, the Commissioner determines that the board did not act arbitrarily in reaching its final decision to terminate the appellant's employment. The appellant's failure to answer fully and candidly questions regarding his past affiliations with the Communist Party, asked by the superintendent of schools, warrants the action taken by the respondent board of education, except for the date of dismissal.

The decision of the respondent board is accordingly modified by making the dismissal effective as of May 16, 1957; and as so modified, the board's decision is affirmed.

COMMISSIONER OF EDUCATION

June 1, 1959.

Appealed to State Board of Education June, 1959, and is pending.  
Appealed to Superior Court, September 1, 1959, and is pending.

XIX

PETITION FOR SPECIAL MEETING OF LEGAL VOTERS  
NOT MANDATORY UPON BOARD OF EDUCATION

IN THE MATTER OF EDWARD GERARD MCGOWAN, MINOR,  
REGINA MCGOWAN, GUARDIAN,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE BOROUGH OF RIVER EDGE,  
BERGEN COUNTY,

*Respondent.*

DECISION OF THE COMMISSIONER OF EDUCATION

For the Petitioner, Michael J. Bivona.

For the Respondent, David P. Kuehne.

The petitioner in this case asks that the Commissioner declare invalid the action of the respondent Board of Education in establishing September 30 in each year as the date by which children must have attained the age of five

years in order to qualify for initial school entrance, that the child, Edward McGowan, be enrolled in school under the prior regulation of the Board, and that the respondent Board be directed to call a special meeting of the legal voters on the question of school entrance age as requested by petition.

On May 20, 1957, the River Edge Board of Education adopted a resolution as follows:

“WHEREAS, there exists an evident need for a uniform school entrance age policy throughout Bergen County, and

“WHEREAS, the Department of Superintendents approved unanimously the following proposal, which opinion is also endorsed by the Executive Committee of the Bergen County Federation of Boards of Education,

- “1. That no child be admitted to Kindergarten unless he is five years old before October 1st in the year he proposes to enter school,
- “2. That no child may be admitted to the First Grade unless he is six years old before October 1st in the year he proposes to enter school,
- “3. That chronological age be the sole determining factor for admittance to Kindergarten and First Grade,
- “4. That the entrance age policy pertaining to Kindergarten take effect as of September 1st, 1958, and the entrance age policy pertaining to First Grade take effect September 1st, 1959.

“NOTE: Since it is now obligatory that local districts must admit pupils 5 years of age who are transferring from outside public or private schools, the placement of these transfer cases shall be left to the local district.”

The controlling date for school admission prior to this action had been October 31st.

On July 21, 1958, the Board received a petition signed by 1066 members of the community, requesting a special meeting of the legal voters under the authority of R. S. 18:7-61, on the question of initial school entrance age. This request was denied at an adjourned meeting held August 4, 1958. Subsequently, petitioner attempted to enroll her son, born October 24, 1953, in school and was refused.

The petitioner contends that the action of the Board of Education was arbitrary and unreasonable in that no proper study of the question was made, that no notice of its proposed adoption was given, that no opportunity to be heard was afforded her, and that the above-mentioned petition was arbitrarily rejected with no reason given. Respondent denies that its actions were in any way arbitrary, unreasonable, or capricious, and further contends that its actions were within its discretionary powers and were made in the best interests of the school district, in its judgment.

A hearing was held by the Assistant Commissioner in Charge of Controversies and Disputes on October 30, 1958. Testimony revealed the following:

At the Board of Education meeting on February 18, 1957, the Superintendent of Schools presented a recommendation that the school entrance age cut-off date be made September 30. The subject was subsequently discussed at at least one regular and two committee meetings of the Board and the resolution was adopted on May 20, 1957.

Beginning in January, 1958, and more or less regularly from then on various citizens of the community made known to the Board their opinion of the resolution and materials were presented to the Board by at least one group in support of their point of view. In February of 1958, a committee of ten persons was appointed by the Board to study the question. Their report was submitted to the Board in May, 1958. In accordance with the committee's recommendations, the Board made no change in the resolution previously adopted.

The statutes clearly authorize the Board of Education to establish an entrance age for initial school entrance. R. S. 18:14-1 states:

“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. . . .”

R. S. 18:15-1 provides:

“The board of education of any school district may establish a kindergarten school or kindergarten school department in any school under its control and . . . shall admit to such kindergarten school or department any child over the age of five and under the age of six years who is a resident of the district. No child under the age of five years shall be admitted to any public school unless such school is a regularly organized kindergarten school or has a kindergarten department.”

R. S. 18:14-3 provides:

“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.”

Petitioner does not contend that the Board of Education exceeded its authority in establishing a new initial school entrance age, but that it did so without proper study. With this contention the Commissioner cannot agree. The testimony clearly shows that the decision of the Board was not made hastily, that there was an interval of three months between the introduction of the resolution and its adoption, that there ensued then more than a year, during which the subject was before the members of the Board and was examined into by a committee appointed to do so and to whom materials representing various points of view were available.

There is no basis for petitioner's contention that the respondent should have given notice of its intention to adopt the resolution in question. The action was taken at a regular meeting of the Board of Education, open to the public, and attended by a representative of the press. According to the testimony, the action was not questioned until some eight months later. There is no evidence to show that petitioner was not afforded an opportunity to be heard. Such opportunity would be available at any regular meeting of the Board of Education.

There remains the question of respondent's denial of the petition to poll the voters of the district on the question. The pertinent statute is R. S. 18:7-61, as follows:

“The board may call a special meeting of the legal voters of the district at any time when in its judgment the interest of the schools require it, or whenever fifty of such legal voters shall by petition so request.”

It has been held that the calling of such special meeting is discretionary on the part of the Board of Education. *Wills vs. Upper Freehold Township Board of Education*, 1938 S. L. D. 167, and reaffirmed in *Holt vs. Board of Education of the Borough of Ridgefield*, 1955-1956 S. L. D. 136.

Petitioner argues that, even if not mandatory, the Board of Education in the instant case flagrantly abused its discretion. No evidence has been produced to support this charge. On the contrary, the testimony shows that one member, who abstained from voting on the resolution and voted “no” on adopting the committee’s recommendation, gave cogent reasons for her vote to refuse the petition.

Finally, it is well established that the Commissioner will not substitute his judgment for that of the Board of Education in the absence of any showing of passion or prejudice.

In *Kenney vs. Montclair*, 1938 S. L. D. 647 at 653, it was stated:

“The School Law vests the management of the public schools in each district in the local board of education, and unless they violate the law, or act in bad faith, the exercise of their discretion in the performance of the duties imposed upon them is not subject to interference or reversal.”

“. . . it is not a proper exercise of judicial function for the Commissioner to interfere with local boards in the management of their schools unless they violate the law, act in bad faith (meaning acting dishonestly), or abuse their discretion in a shocking manner. Furthermore, it is not the function of the Commissioner in a judicial decision to substitute his judgment for that of the board members on matters which are by statute delegated to the local boards. . . .”

*Boult and Harris vs. Board of Education of the City of Passaic*, 1939-1949 S. L. D. 7, at 13.

After considering all the facts, testimony and briefs presented, the Commissioner finds and determines that the actions of the Board of Education of the Borough of River Edge, in adopting a resolution establishing a minimum initial school entrance age and in denying a petition requesting a special meeting of the legal voters of the district, complied with the statutes and were clearly within the discretionary powers of the Board and that these actions were not arbitrary, unreasonable, or capricious.

The appeal is dismissed.

COMMISSIONER OF EDUCATION.

June 24, 1959.

Appealed to the State Board of Education, August 17, 1959, and is pending.