

State of New Jersey
Department of Education
Trenton

NEW JERSEY
SCHOOL LAWS
Enacted during the Legislative
Session of 1952

SCHOOL LAW DECISIONS
1951 - 1952

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SCHOOL LAWS, SESSION OF 1952

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SCHOOL LAWS, SESSION OF 1952

AMENDMENTS OF 1952*

CHAPTER 15, LAWS OF 1952

AN ACT concerning the assessment of dues by the State Federation of District Boards of Education, and amending section 18:9-6 of the Revised Statutes.

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

1. Section 18:9-6 of the Revised Statutes is amended to read as follows:

18:9-6. For the purpose of defraying the necessary expenses of the State Federation, the various district boards may pay the necessary expenses incurred by its delegates, and may appropriate annually *such sums for dues as may be assessed by the Federation at any delegate's meeting, which assessment of dues shall be made only upon two-thirds vote of the delegates present at such delegate's meeting, after notice of the taking of such vote shall have been given to each district board in writing at least sixty days before such delegate's meeting. The aforesaid dues shall be assessed upon a graduated scale according to the size of the school district, but in no case shall the dues for any one district exceed the sum of one hundred fifty dollars (\$150.00) for any one year. Dues shall be payable by the custodian of school moneys of the school district to the treasurer of the State Federation.*

2. This act shall take effect immediately.

Approved April 14, 1952.

CHAPTER 38, LAWS OF 1952

AN ACT to amend "An act to provide for temporary bonus for certain persons holding public office, position, or employment, whose compensation is paid by any county, municipality, school district, or other political subdivision of this State, or by any board, body, agency, or commission of any county, municipality, or school district of this State," approved February fifteenth, one thousand nine hundred and fifty-one (P. L. 1951, c. 3.)

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

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

7. The provisions of this act shall not be held or construed to permit such body, board or officer to grant or pay any such bonus to any person after the thirty-first day of December, one thousand nine hundred and fifty-four.

2. This act shall take effect immediately.

Approved April 17, 1952.

CHAPTER 111, LAWS OF 1952

AN ACT to amend "An act concerning regional school districts, and supplementing Title 18 of the Revised Statutes," approved May third, one thousand nine hundred and forty-six (P. L. 1946, c. 266).

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

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

1. *In the absence of an agreement to the contrary between the regional board of education and the respective local constituent boards of education when two or more*

* Italics show amendments of 1952.

school districts have voted to establish a regional board of education as provided in sections 18:8-1 to 18:8-3 of this Title, the board of education created under chapter eight of Title 18 of the Revised Statutes and chargeable with the education of high school pupils therein shall not take charge and control of the high school pupils of such regional district until, in the judgment of such board, suitable facilities and accommodations are available for the instruction of such pupils. *In the absence of an agreement, the instruction of such pupils shall continue under the respective local boards of education now chargeable with their instruction, until suitable facilities and accommodations are provided by such regional board of education, at which time the board of education of the regional high school district shall assume the responsibilities of their instruction.*

2. This act shall take effect immediately.

Approved April 28, 1952.

CHAPTER 115, LAWS OF 1952

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

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

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

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

2. This act shall take effect July first, one thousand nine hundred and fifty-two.

Approved May 5, 1952.

CHAPTER 127, LAWS OF 1952

AN ACT providing for the employment of optometrists by boards of education, and amending section 18:14-56 of the Revised Statutes.

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

1. Section 18:14-56 of the Revised Statutes is amended to read as follows:

18:14-56. Every board of education shall employ a physician, licensed to practice medicine and surgery within the State, to be known as the medical inspector, and

may also employ *an optometrist licensed to practice optometry within the State, to be known as the school vision examiner, and a nurse, and fix their salaries and terms of office. The board of education may appoint more than one medical inspector, more than one optometrist, and more than one nurse.*

Every board of education shall adopt rules for the government of the medical inspector, *school vision examiner, and nurse, which rules shall be submitted to the State Board for approval.*

2. This act shall take effect immediately.

Approved May 6, 1952.

CHAPTER 135, LAWS OF 1952

AN ACT to amend "An act concerning audits of the books, accounts and moneys of the boards of education of school districts, and supplementing chapter five of Title 18 of the Revised Statutes," approved June fourteenth, one thousand nine hundred and fifty-one (P. L. 1951, c. 229).

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

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

7. Except as otherwise provided in this act, the auditing of the accounts of school districts, when required by law, shall be made only by a registered municipal accountant of New Jersey or a certified public accountant of New Jersey who shall hold an uncanceled registration license as a public school accountant for New Jersey. Such registration licenses shall be issued to qualified persons annually by the New Jersey State Board of Public Accountants, *who shall charge a fee of five dollars (\$5.00) for each license, and each such license shall state that the holder thereof has complied with the statutory requirements and is authorized to make audits of accounts of school districts of the State of New Jersey until January first following unless sooner canceled as herein provided. The New Jersey State Board of Public Accountants may refuse to issue any such license for any cause authorizing a cancellation thereof as herein provided, or for any other stated cause which it may determine to be good and sufficient.*

2. This act shall take effect immediately.

Approved May 6, 1952.

CHAPTER 142, LAWS OF 1952

AN ACT concerning education, and amending sections 18:13-81, 18:13-82 and 18:13-83 of the Revised Statutes.

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

1. Section 18:13-81 of the Revised Statutes is amended to read as follows:

18:13-81. The State Comptroller shall pay annually from the school apportionment fund into the pension fund an amount as certified to him by the board of trustees which shall be equal to a percentage of the total compensation paid to all present-entrants for service during the preceding school year to be known as the "normal contribution" and an additional amount to be known as the "deficiency contribution," *which shall be two million dollars (\$2,000,000.00) annually beginning with the payment due July first, one thousand nine hundred and fifty-three. The amount of such "deficiency contribution" shall be increased to the extent determined by actuarial valuation to be needed to pay, within the period in which the deficiency contribution would have otherwise been payable, the amount of the liability resulting from any increase in the obligations of the pension fund arising from liberalizing amendments to the benefits payable from this fund which may be hereafter adopted.*

2. Section 18:13-82 of the Revised Statutes is amended to read as follows:

18:13-82. The normal contribution rate shall be the average percentage rate of contribution which the aggregate contribution of the State to the pension accumulation fund bears to the payroll of new-entrants on which it is computed.

3. Section 18:13-83 of the Revised Statutes is amended to read as follows:
18:13-83. The aggregate payment into the pension fund shall be sufficient when combined with the amount in the fund to provide the pensions payable out of the fund during the year then current.
4. This act shall take effect July first, one thousand nine hundred and fifty-two.
Approved May 6, 1952.

CHAPTER 152, LAWS OF 1952

AN ACT concerning education, and amending section 18:14-52 of the Revised Statutes.

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

1. Section 18:14-52 of the Revised Statutes is amended to read as follows:

18:14-52. A board of education may exclude from school any teacher or pupil who has not been successfully vaccinated or revaccinated, unless the teacher or pupil shall present a certificate signed by the medical inspector appointed by the board of education that the teacher or pupil is an unfit subject for vaccination, *but a board of education may exempt a teacher or pupil from the provisions of this section, if said teacher or the parent or guardian of said pupil objects thereto in a written statement signed by him upon the ground that the proposed vaccination interferes with the free exercise of his religious principles.*

2. This act shall take effect immediately.

Approved May 8, 1952.

CHAPTER 153, LAWS OF 1952

AN ACT to amend "An act relating to the public schools of this State, and supplementing chapter fourteen of Title 18 of the Revised Statutes," approved August second, one thousand nine hundred and thirty-nine (P. L. 1939, c. 299).

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

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

1. The Board of Education of any school district may require immunization to diphtheria as a prerequisite to attendance at school, and it may at its discretion require or waive proof of immunity, *except as hereinafter provided.*

Any pupil failing to comply with such a requirement may be excluded from school, unless the pupil shall present a certificate signed by a physician stating that the pupil is unfit to receive the immunizing treatment, or a certificate signed by a physician or by the board of health or the health officer of the municipality in which the pupil resides to the effect that the pupil is known by evidence of an appropriate test to be immune to diphtheria; *provided*, that in either or any such instance the certification and the test employed shall have the approval of the school medical inspector.

A board of education may exempt the pupil from the provisions of this section if the parent or guardian of said pupil objects thereto in a written statement signed by him upon the ground that the proposed immunization interferes with the free exercise of his religious principles.

2. This act shall take effect immediately.

Approved May 8, 1952.

CHAPTER 235, LAWS OF 1952

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending sections 18:13-43 and 18:13-47 of the Revised Statutes.

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

1. Section 18:13-43 of the Revised Statutes is amended to read as follows:

18:13-43. Each new entrant shall file a detailed statement of school service and service in a similar capacity in other States rendered by him prior to so becoming a member for which he desires credit and on account of which he desires to contribute and of such other facts as the board of trustees may require for the proper operation of the system. New entrants who enroll on or after *July first, one thousand nine hundred and forty-six*, shall be given one year from the date of enrollment to file such statement and to agree to purchase credit for the prior service evidenced therein. New entrants who were enrolled in the retirement system prior to *July first, one thousand nine hundred and forty-six*, shall be given one year from that date to file such statement, *except that any new entrant in service on July first, one thousand nine hundred and fifty-two, who has rendered service prior to September first, one thousand nine hundred and nineteen, as a teacher in the public schools of the State, for which no credit is allowed, may within one year after July first, one thousand nine hundred and fifty-two, file a statement showing the period of service as a teacher in the public schools of the State not now creditable for which he is willing to contribute. Credit may be obtained for such service by making a lump sum payment, or by contributing at an additional percentage rate of deduction. The amount of the lump sum payment shall be computed by the board of trustees to be sufficient to provide an annuity approximately equal to the pension allowable on account of such service at age sixty-two at the rate of one one-hundred-fortieth of average salary for each year so claimed. The additional percentage rate of deduction shall be the rate which if contributed to age sixty-two shall be computed to be sufficient to produce a like benefit. Any member electing to contribute towards such service, who retires prior to age sixty-two, will receive pro rata credit for service purchased to the date of retirement, subject to the provisions of section 18:13-55 of the Revised Statutes, but if he so elects at the time of retirement, he may make such additional lump sum payment as will be necessary to provide full credit at such earlier retirement date.*

2. Section 18:13-47 of the Revised Statutes is amended to read as follows:

18:13-47. In his prior service certificate, a new entrant shall be credited in full up to the nearest number of years and months, but not exceeding ten years, with all service rendered by him as a teacher in public schools in or outside of the State prior to becoming a member, for which he desires credit and on account of which he desires to contribute, *except that the limit of ten years shall not apply to new-entrant members who are in service on July first, one thousand nine hundred and fifty-two, who rendered service in the State prior to September first, one thousand nine hundred and nineteen, and who elect to contribute for prior service in the State prior to July first, one thousand nine hundred and fifty-three.*

3. This act shall take effect immediately.

Approved May 19, 1952.

CHAPTER 236, LAWS OF 1952

AN ACT concerning education, relating to superintendents of schools in school districts, and amending sections 18:2-4, 18:3-19, 18:3-20, 18:5-50.2, 18:6-37, 18:6-38, 18:6-40, 18:6-42, 18:7-70, 18:13-1, 18:13-8, 18:13-16, 18:13-17, 18:13-19, 18:13-20 and 18:14-89, and supplementing Title 18 of the Revised Statutes.

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

1. 18:2-4. The State Board may:

a. Frame and modify by-laws for its own government, and elect its president and other officers;

b. Prescribe and enforce rules and regulations necessary to carry into effect the school laws of this State;

c. Prescribe rules and regulations for holding teachers' institutes and teachers' meetings called by the commissioner;

d. Decide appeals from the decisions of the commissioner;

e. Make and enforce rules and regulations for the granting of appropriate certificates or licenses to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education, for each of which certificates a fee of not less than five dollars (\$5.00) shall be charged.

In addition to the other powers conferred by law upon the State Board, it shall:

f. Prescribe a uniform and simple system of bookkeeping for use in all school districts, and compel all school districts to use the same;

g. Appoint, upon application, a *superintendent* of schools in two or more districts whenever in its opinion it is advisable so to do, and apportion the expense equitably among the districts;

h. Withhold or withdraw its approval of any secondary school whenever in its opinion its academic work, location or enrollment and per capita cost of maintenance shall not warrant its establishment or continuance;

i. Except as provided by sections 18:14-5 and 18:14-7 of this Title, fix rates to be paid by a district for the tuition of children sent from it to the schools of other districts, when the districts cannot agree among themselves as to the proper rates, and require any districts having the necessary accommodations to receive pupils from other districts at rates agreed upon or which it may fix in the event of disagreement;

j. Compel the production at such time and place within the State as it may designate of any and all books, papers, and vouchers in any way relating to schools or to the receipt or disbursement of school moneys; compel the attendance before it or before any of its committees or before the commissioner or one of his assistants at such time and place as it may designate of any member of a board of education or of any person in the employ of a board of education, and suspend from office any person refusing to attend or to submit such books, papers, and vouchers as he may have been directed to produce;

k. Issue subpoenas signed by its president and secretary compelling the attendance of witnesses and the production of books and papers in any part of the State before it or before any of its committees or before the commissioner or one of his assistants. Any person who shall neglect or refuse to obey the command of the subpoena or who, after appearing, shall refuse to be sworn and testify, except such refusal be on grounds recognized by law, shall in either event be liable to a penalty of one hundred dollars (\$100.00) for each offense to be recovered by the State Board of Education in an action of debt. Such penalty when recovered shall be paid into the treasury of the State;

l. Advance the education of people of all ages;

m. Establish standards of higher education;

n. License institutions of higher education as authorized by sections 18:20-5, 18:20-6, and 18:20-7 of this Title;

o. Approve the basis or conditions for conferring degrees as authorized by sections 18:20-8, 18:20-9, and 18:20-10 of this Title;

p. Require from institutions of higher education such reports as may be necessary to enable the State Board to perform the duties imposed upon it by statute;

q. Survey the needs for higher education and the facilities available therefor and recommend to the Legislature procedures and facilities to meet such needs;

r. Investigate and recommend respecting the needs for facilities and services at the State University of New Jersey as an instrumentality of the State for providing public higher education and thereby to increase the efficiency of the public school system of the State, advise with the State University of New Jersey regarding its annual budget for services, lands, buildings, and equipment and jointly with the State University make recommendations to the Governor and to the Legislature in support of such budget, and make with the State University contracts in behalf of the State in accordance with legislative appropriations;

s. Make to the Governor and the Legislature such recommendations as the State Board deems necessary with regard to appropriations that may be required for services, lands, buildings, and equipment to be furnished by institutions of higher education other than the State University of New Jersey, and make contracts in behalf of the State with such institutions in accordance with legislative appropriations; *provided*, that no disbursement of moneys so appropriated shall be made to any such institution or institutions utilized by the State for the purpose of public higher education, except

on recommendation of the State Board; and the State Board shall see to the application of the money for such purposes;

t. Exercise visitorial general powers of supervision and control over such institutions of higher education as may be utilized by the State. Its visitorial general powers of supervision and control are hereby defined as visiting such institutions of higher education to examine into their manner of conducting their affairs and to enforce an observance of their laws and regulations and the laws of the State;

u. The State Board shall have all other powers requisite to the performance of its duties.

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

18:3-19. The commissioner shall from time to time instruct county *superintendents* and superintendents *of schools* as to their duties and the best manner of conducting schools and constructing and furnishing schoolhouses.

3. Section 18:3-20 of the Revised Statutes is amended to read as follows:

18:3-20. The commissioner with the advice and consent of the State Board shall hold meetings of county *superintendents* and superintendents *of schools* at least once in each year for the discussion of school affairs and ways and means of promoting a thorough and efficient system of education.

4. Section 18:5-50.2 of the Revised Statutes is amended to read as follows:

18:5-50.2. Any teacher, school nurse, school dentist, principal, supervisor, superintendent *of schools* or janitor in any of the public schools of this State, against whom an action in damages is instituted for any act or acts arising out of, or in the course of his employment, shall be furnished by his employing board of education with legal counsel to advise and defend him and such board of education shall defray the fees and expenses of counsel in such suit; but should such employee decline the services of the counsel provided, then and in that event the employing board shall be relieved of all further responsibility. The employing board may not be required to provide or to defray the fees and expenses of counsel where the suit for damages is instituted on the grounds of the alleged use of corporal punishment.

5. Section 18:6-37 of the Revised Statutes is amended to read as follows:

18:6-37. 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. He shall receive such salary as the board shall determine, which salary shall not be reduced during his employment. He shall have a seat in the board and the right to speak on all educational matters, but not the right to vote.

6. Section 18:6-38 of the Revised Statutes is amended to read as follows:

18:6-38. The superintendent of schools shall, when required by the board *of education of the district*, devote himself exclusively to the duties of his office. He shall have general supervision over the schools of the district, *under rules and regulations prescribed by the State Board*, and shall examine into their condition and progress and report thereon from time to time as directed by the board *of education*. He shall have such other powers and perform such other duties as may be prescribed by the board *of education*. He may appoint and, subject to the provisions of section 18:6-27 of this Title, may remove clerks in his office, but the number and salaries of such clerks shall be determined by the board.

7. Section 18:6-40 of the Revised Statutes is amended to read as follows:

18:6-40. The board may, on the nomination of the superintendent of schools, appoint assistant superintendents and shall fix their salaries. Assistant superintendents may be removed by a majority vote of all the members of the board, *subject to the provisions of sections 18:13-16 to 18:13-19 of this Title*.

8. Section 18:6-42 of the Revised Statutes is amended to read as follows:

18:6-42. The superintendent of schools may, with the approval of the president of the board, suspend any assistant superintendent, principal, or teacher, and shall report such suspension to the board forthwith. The board, by a majority vote of all of its members, shall take such action for the restoration or removal of such assistant superintendent, principal, or teacher as it shall deem proper, subject to the provisions of sections 18:13-16 to 18:13-18 of this Title.

9. Section 18:7-70 of the Revised Statutes is amended to read as follows:

18:7-70. A board may, under rules and regulations prescribed by the State Board, appoint a *superintendent of schools by a majority vote of all of the members of the board, for a term not to exceed five years*, and define his duties and fix his salary, whenever the necessity for such appointment shall have been agreed to in writing by the county superintendent of schools and approved by the commissioner and the State Board. No *superintendent of schools* shall be appointed except in the manner provided in this section.

The appointee shall be a suitable person who holds an appropriate certificate as prescribed by the State Board of Education, and no person shall act as *superintendent of schools* or perform the duties of a *superintendent of schools*, as prescribed by rules and regulations of the State Board of Education, unless he holds such a certificate.

The boards of two or more districts may unite in employing a *superintendent of schools*.

The superintendent of schools shall have the right to a seat in the board or boards and the right to speak on all educational matters, but not the right to vote.

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

18:13-1. There shall be a State Board of Examiners, consisting of the Commissioner of Education, one assistant commissioner of education, two presidents of State teachers colleges, a county superintendent of schools, a superintendent of schools, *appointed pursuant to chapter six of this Title and a superintendent of schools appointed pursuant to chapter seven of this Title*, a high school principal, a high school teacher, a principal of an elementary school, an elementary teacher and a librarian employed by the State or by one of its political subdivisions. With the exception of the Commissioner of Education, who shall be chairman of the board, the members shall be appointed by the commissioner subject to the approval of the State Board of Education. The State Board of Examiners as herein constituted shall organize not later than September fifteenth of any year. Members shall hold office for two years from the date of organization of the board except that in the first appointments one-half of the members shall be appointed for a term of one year. Vacancies in membership shall be filled for the unexpired term in the same manner as for full terms.

All persons appointed to said board other than the commissioner and the assistant commissioner of education shall receive reimbursement for necessary traveling expenses for attendance upon meetings of said board of examiners.

The board shall grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education, and such other certificates as it shall be authorized to issue by law based upon certified scholastic records or upon examinations, and revoke the same under rules and regulations prescribed by the State Board of Education.

Nothing contained in this section shall be construed to conflict with the present existing tenure rights of teachers under sections 18:13-16 to 18:13-19 of this Title.

11. Section 18:13-8 of the Revised Statutes is amended to read as follows:

18:13-8. Any contract or engagement between a board of education and a teacher shall cease and determine and be of no effect against the board whenever the board shall ascertain by notice in writing received from the county superintendent *or superintendent of schools of the district, if any*, or otherwise, that the teacher is not in possession of a proper teacher's certificate in full force and effect, notwithstanding the term or engagement for which the contract was made may not then have expired.

12. Section 18:13-16 of the Revised Statutes is amended to read as follows:

18:13-16. The services of all teachers, principals, *superintendents and assistant superintendents*, of the public schools, excepting those who are not the holders of proper teachers' certificates in full force and effect, shall be during good behavior and efficiency, (a) after the expiration of a period of employment of three consecutive calendar years in that district unless a shorter period is fixed by the employing board, or (b) after employment for three consecutive academic years together with employment at the beginning of the next succeeding academic year, or (c) after employment, within a period of any four consecutive academic years, for the equivalent of more than three academic years, some part of which must be served in an academic year after July first, one thousand nine hundred and forty; *provided*, that the time any teacher, principal or supervising principal had taught in the district in which he was employed at the end of the academic year immediately preceding July first, one thousand nine hundred and forty, shall be counted in determining such period or periods of employment in that district.

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

13. Section 18:13-17 of the Revised Statutes is amended to read as follows:

18:13-17. No teacher, principal, *superintendent or assistant superintendent* under the tenure referred to in section 18:13-16 of this Title shall be dismissed or subjected to a reduction of salary in the school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause and after a written charge of the cause or causes has been preferred against him, signed by the person or persons making the same, and filed with the secretary or clerk of the board of education having control of the school in which the service is being rendered, and after the charge has been examined into and found true in fact by the board of education upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of the school board or not.

14. Section 18:13-19 of the Revised Statutes is amended to read as follows:

18:13-19. Nothing contained in sections 18:13-16 to 18:13-18 of this Title or any other provision of law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of superintendents *of schools*, assistant superintendents, principals or teachers employed in the school district whenever, in the judgment of the board of education it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization of the district, or other good cause. Dismissals resulting from such reduction shall not be by reason of residence, age, sex, marriage, race, religion or political affiliation. Any dismissals occurring because of the reduction of the number of persons under the terms of this section shall be made on the basis of seniority according to standards to be established by the Commissioner of Education with the approval of the State Board of Education. In establishing such standards, the commissioner shall classify, in so far as practicable, the fields or categories of administrative, supervisory, teaching or other educational services which are being performed in the school districts of this State and may, at his discretion, determine seniority upon the basis of years of service and experience within such fields or categories of service as well as in the school system as a whole. Whenever it is necessary to reduce the number of persons covered by this section, the board of education shall determine the seniority of such persons according to the standards established by the Commissioner of Education with the approval of the State Board of Education and shall notify each person as to his seniority status. A board of education may request the Commissioner of Education for an advisory opinion with respect to the applicability of the standards to particular situations and all such requests shall be referred to a panel to consist of the county superintendent of schools of the county in which the school district is situate, the secretary of the State Board of Examiners, and one assistant commissioner of education to be designated by the Commissioner of Education. No determination of any panel shall be binding upon the board of education or any other party in interest, nor upon the Commissioner of Education and the State Board of Education in the event of an appeal pursuant to sections 18:3-14 and 18:3-15 of the Revised Statutes. All persons dismissed shall be placed on a preferred eligible list to be prepared by the board of education of the school district, and shall be re-employed by the board of education of the school district in order of seniority as determined by the said board of education. In computing length of service within the district, the time of service by such superintendents *of schools, whether served as superintendents of schools, city superintendents* or supervising principals, assistant superintendents, principals or teachers in or with the military or naval forces of the United States of America or of this State subsequent to September first, one thousand nine hundred and forty, shall be credited in determining seniority under this act as though such superintendents, assistant superintendents, principals or teachers had been regularly employed within the district during the time of such military service. Should any superintendent *of schools*, assistant superintendent, principal or teacher under tenure be dismissed as a result of such reduction such person shall be and remain upon a preferred eligible list in the order of seniority for re-employment whenever vacancies occur and shall be re-employed by the body causing dismissal in such order when and if a vacancy in a position for which such superintendent, assistant superin-

tendent, principal or teacher shall be qualified. Such re-employment shall give full recognition to previous years of service.

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

15. Section 18:13-20 of the Revised Statutes is amended to read as follows:

18:13-20. Any teacher, principal, or superintendent of schools, under tenure of service, desiring to relinquish his position, shall give the employing board of education sixty days' written notice of his intention, unless the local board of education shall approve of a release on shorter notice.

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

16. Section 18:14-89 of the Revised Statutes is amended to read as follows:

18:14-89. Appropriate exercises for the observance of Arbor Day shall be held in all of the public schools, and the several county and superintendents of schools shall prepare a program of exercises for the schools in their respective jurisdictions.

17. The superintendent of schools in districts governed under the provisions of chapter seven of Title 18 of the Revised Statutes shall, when required by the board or boards of education of the school district or districts of which he is superintendent, devote himself exclusively to the duties of his office and he shall have the same powers within such district or districts as are conferred by sections 18:6-38 and 18:6-42 of the Revised Statutes upon superintendents of schools in school districts governed under the provisions of chapter six of Title 18 of the Revised Statutes.

18. The board or boards of education of any school district or school districts governed under the provisions of chapter seven of Title 18 of the Revised Statutes having a superintendent of schools may, on the nomination of the superintendent of schools, appoint assistant superintendents and fix their salaries and assistant superintendents may be removed by a majority vote of all of the members of each such board subject to the provisions of sections 18:13-16 to 18:13-19 of the Revised Statutes.

19. On or before August first the superintendent of schools of each district or districts governed under the provisions of chapter seven of Title 18 of the Revised Statutes shall render a report to the Commissioner of Education, in the manner and form prescribed by him, of such matters relating to the schools under the supervision of the superintendent as shall be required by the commissioner.

20. No person employed as a teacher, principal, supervising principal, assistant superintendent or superintendent of the public schools shall be in any manner affected after July first, one thousand nine hundred and fifty-two, in relation to his tenure of service or tenure of service rights obtained or to be obtained, on or prior to said date, pursuant to the provisions of sections 18:13-16 to 18:13-19 of the Revised Statutes or of any other law because of any change, on or after said date, in the method of government in the school district or school districts by which he was employed on said date, or by reason of any change of name or title of the office or position so held by him, on said date, on account of any such change in the method of government of such school district or school districts, but said person shall continue in said office or position by its original or changed name or title, as the case may be, with the same tenure of service and with the same tenure of service rights which he would have had if such change in the method of government had not occurred.

21. Any person serving as assistant superintendent or superintendent of any school district, on July first, one thousand nine hundred and fifty-two, shall be continued in said office or position after said date, with the same tenure of service and tenure of service rights, and any person serving as supervising principal of any school district or school districts as of said date, shall continue in said office or position under the name or title of superintendent of schools of said district or districts after said date, with the same tenure of service and the same tenure of service rights as though the name or title of said office or position had not been so changed, as he was entitled to on said date under sections 18:13-16 to 18:13-19 of the Revised Statutes or under any other law and any time during which any such person shall have served as supervising principal, assistant superintendent or superintendent, in said district or districts, prior to said date, shall be counted in calculating

the period or periods of his employment in such district or districts and in determining his tenure of service or tenure of service rights and pension rights in said offices or positions under sections 18:13-16 to 18:13-19 of the Revised Statutes or under any other law, all notwithstanding the passage of this act.

22. This act shall take effect July first, one thousand nine hundred and fifty-two. Approved May 20, 1952.

CHAPTER 237, LAWS OF 1952

AN ACT to amend the title of "An act to provide for and regulate the granting of sick leave to teachers, principals and supervising principals in the public schools of this State, and supplementing chapter thirteen of Title 18 of the Revised Statutes," approved May sixth, one thousand nine hundred and forty-two (P. L. 1942, c. 142), so that the same shall read "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 thirteen of Title 18 of the Revised Statutes," and to amend the body of said act.

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

1. The title of "An act to provide for and regulate the granting of sick leave to teachers, principals and supervising principals in the public schools of this State, and supplementing chapter thirteen of Title 18 of the Revised Statutes," approved May sixth, one thousand nine hundred and forty-two, is amended to read "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 thirteen of Title 18 of the Revised Statutes."

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

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

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

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

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

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

5. This act shall take effect July first, one thousand nine hundred and fifty-two. Approved May 20, 1952.

CHAPTER 241, LAWS OF 1952

AN ACT concerning the transportation of school children, and amending section 18:14-12 of the Revised Statutes.

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

1. Section 18:14-12 of the Revised Statutes is amended to read as follows:

18:14-12. At the time and place fixed in such advertisement for the submission of proposals the board of education, or any committee thereof authorized so to do, or any officer or employee of such board designated therefor, shall receive such proposals and immediately proceed to unseal the same and publicly announce the contents in the presence of the parties bidding or their agents, if such parties choose to be then and there present. Such board shall have the right to reject any and all bids. No proposals shall be opened previous to the hour designated in the advertisement and none shall be received thereafter.

The State Board of Education shall prescribe the amount of liability insurance to be carried by the contractor or bus driver as well as other rules and regulations applicable to pupil transportation.

Nothing contained in this section or section 18:14-11 of this Title shall apply to school buses owned by boards of education, nor to annual extensions of a contract secured through competitive bidding when such annual extensions are made without additional cost by the board of education with the approval of the county superintendent of schools or in any case in which the board of education, with the approval of the county superintendent of schools under rules and regulations prescribed by the State Board of Education, shall, in its discretion, extend (a) an original contract entered into prior to May fourteenth, one thousand nine hundred and forty-two, by increasing the original contractual amount in an additional amount not to exceed thirty per centum (30%) of the original contractual amount; or (b) an original contract entered into on or subsequent to May fourteenth, one thousand nine hundred and forty-two, by increasing the original contractual amount in an additional amount not to exceed fifteen per centum (15%) of the original contractual amount.

2. This act shall take effect immediately.

Approved May 19, 1952.

CHAPTER 242, LAWS OF 1952

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

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

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

13. In event that the basic aid determined to be payable to any district in any school year shall be less than the total amount apportioned to that district by way of State aid by the county superintendent of schools for the school year beginning July first, one thousand nine hundred and forty-three, exclusive of the apportionments made for that year under Revised Statutes 18:10-24, chapter ninety-one of the laws of one thousand nine hundred and forty-three, Revised Statutes 18:13-22, Revised Statutes 18:14-45, Revised Statutes 18:14-46, Revised Statutes 18:14-48 and Revised Statutes 18:14-112, such deficiency to a maximum equivalent to seventy-four and seventeen one hundredths per centum (74.17%) of the State school tax paid by the municipality or municipalities, comprised in such district, in the year one thousand nine hundred and forty-three, shall be paid to such district by its municipality or municipalities in two equal installments, one on or before September first and the other on or before December first of such year, except that municipalities operating under section 18:6-51 of the Revised Statutes may make payment of the second installment on or before February first of the succeeding year. The municipality or municipalities shall place such amounts in their budgets in any year upon certification of the commissioner on or before December thirty-first of the preceding year.

2. This act shall take effect immediately.

Approved May 19, 1952.

CHAPTER 252, LAWS OF 1952

AN ACT concerning the issuance of bonds and other obligations and the incurring of indebtedness by school districts or by city, borough, town, township, village or any other municipality, amending sections 18:5-84, 18:5-85, 18:5-86, 18:5-87, 18:5-88, 18:6-61, 18:6-62, 18:6-63, 18:6-73, 18:6-74 and 40:1-16.1 of the Revised Statutes, and repealing section 18:6-76 of the Revised Statutes.

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

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

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

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

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

c. No regional school district shall authorize the issuance of bonds the principal amount of which, added to the net school debt of *such* school district at the date of such authorization, shall exceed four per centum (4%) of the average assessed valuation of property in *such* school district.

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

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

18:5-85. (a) Any school district, within the limitations and upon compliance with the provisions of this section, may authorize the issuance of bonds notwithstanding the provisions of section 18:5-84 of this article. The issuance of any such bonds shall be authorized (1) in the case of a chapter six school district, (a) upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least two-thirds of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section, or (b) upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least a majority of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section, and the subsequent adoption by the qualified voters of such municipality, by a majority of the legal ballots cast thereon, of a proposition confirming such ordinance, which proposition shall be in form and substance as stated in this section, (2) in the case of a school district which has a board of school estimate and is not a chapter six school district, upon the making of the certificate of said board upon delivery of which the board of education, but for the provisions of section 18:5-84 of this article, would be authorized to issue such bonds and the subsequent adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section, or (3) in the case of a school district which has no board of school estimate, upon the adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section.

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

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

Resolved that the board of education is hereby authorized:

To * * * ; and

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

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

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

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

Shall the ordinance of the (insert name of municipality) adopted on (insert date of adoption) authorizing the issuance of \$ (insert amount of bonds to be issued) bonds (or promissory notes or temporary loan bonds) for school purposes and using up \$ (insert amount of borrowing margin to be used) of the \$ (insert amount of borrowing margin before adoption of proposition) borrowing margin of the (insert name of municipality) previously available for other improvements, be confirmed.

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

18:5-86. (a) Any school district, upon compliance with the provisions of this section, may authorize the issuance of bonds notwithstanding the provisions of section 18:5-84 of this article. The issuance of any such bonds shall be authorized (1) in the case of a chapter six school district, upon the final adoption by the governing body of the municipality comprised within such school district, by the recorded affirmative vote of at least a majority of all the members thereof, of an ordinance of the municipality authorizing the issuance of such bonds, which ordinance shall be in form and substance as stated in this section and upon a copy of which ordinance shall have been endorsed, prior to its adoption by said governing body, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for, and the subsequent adoption by the qualified voters of such municipality, by a majority of the legal ballots cast thereon, of a proposition confirming such ordinance, which proposition shall be in form and substance as stated in this section, (2) in the case of a school district which has a board of school estimate and is not a chapter six school district, upon the making of the certificate of said board upon delivery of which the board of education, but for the provisions of section 18:5-84 of this article, would be authorized to issue such bonds and the subsequent adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption

by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for, or (3) in the case of a school district which has no board of school estimate, upon the adoption by the legal voters of such school district, by a majority of the legal ballots cast thereon, of a proposal authorizing the board of education to issue such bonds, which proposal, in the case of a local school district, shall be in form and substance as stated in this section and upon a copy of which proposal shall have been endorsed, prior to its adoption by said legal voters, the consents of the State Commissioner of Education and of the Local Government Board hereinafter in this section provided for.

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

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

(d) Within sixty days after the submission to the Local Government Board of any copy of a proposal or ordinance pursuant to subsection (b) of this section, it shall cause its consent to be endorsed thereon if it shall be satisfied and shall record by resolution its estimates that the amounts to be expended for the new educational facilities to be financed pursuant to such proposal or ordinance are not unreasonable or exorbitant, and that issuance of the bonds mentioned and described in such proposal or ordinance will not materially impair the credit of any municipality comprised within such school district or substantially reduce its ability during the ensuing ten years to pay punctually the principal and interest of its debts and supply essential public improvements and services, and that authorization of such bonds would not be possible under the provisions of either section 18:5-84 or section 18:5-85 of this article, and that, taking into consideration trends in population and in values and uses of property and in needs for educational facilities, the net school debt of such school district will at some date within fifteen years be less, in the case of a certified local school district, than eight per centum (8%), or in the case of a regional school district, than four per centum (4%), or in the case of any other school district, than six per centum (6%) of the average assessed valuation of property in such school district as stated in supplemental debt statements, which might be filed on such date. If the Local Government Board shall not be so satisfied within said period of sixty days, it shall cause its disapproval to be endorsed on such copy.

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

such proposal shall be sufficient if set forth in substantially the following form with appropriate figures inserted:

Resolved that the board of education is hereby authorized:

To * * * ; and

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

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

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

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

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

4. Section 18:5-87 of the Revised Statutes is amended to read as follows:

18:5-87. *Prior to the authorization of any bonds of a school district, a supplemental debt statement and a school debt statement shall be prepared and filed in accordance with this section. In the case of any school district other than a chapter six school district, the chief financial officer of any municipality comprised within such school district shall, prior to any such authorization and at any other time within five days after receipt of request therefor from the board of education of the school district, make in the manner required by law and file in the office of the clerk of such municipality, in the office of the Director of the Division of Local Government, and in the office of the district clerk or secretary of the school district a supplemental debt statement, prepared as of a date subsequent to the last day of the month next preceding such authorization or request, and giving effect to such authorization or, if such statement is made and filed pursuant to any such request of the board of education, to a proposed authorization of bonds of the school district in a principal amount to be stated in such request. In the case of a chapter six school district, the chief financial officer of the municipality comprised within such school district shall, prior to the passage on first reading of the ordinance authorizing the issuance of such bonds, make in the manner required by law a supplemental debt statement, prepared as of a date subsequent to the last day of the month next preceding such passage, and giving effect to such authorization, and shall file the same in the office of the clerk of such municipality prior to such passage on first reading and in the office of the Director of the Division of Local Government prior to final adoption of such ordinance. The district clerk or secretary of such school district shall, prior to any such authorization and at any other time within five days after receipt of request therefor from the board of education of the school district, make, swear to and file in his office a school debt statement setting forth the amounts of any and all bonds or notes of the school district issued and outstanding or authorized but not issued and determining the net school debt of the school district, prepared as of a date subsequent to the last day of the month next preceding such authorization or request, and giving effect to such authorization or, if such statement is made, sworn to and filed pursuant to any such request of the board of education, to a proposed authorization of bonds of the school district in a principal amount to be stated in such request. Every such debt statement shall be presumed to be accurate and correct for a period of at least sixty days after the filing thereof, and after the issuance of any bond or other obligation, authorized within the principal amount of bonds to which effect is given therein and authorized or provided for in reliance thereon by a proposal or ordinance adopted within sixty days after the filing thereof, such presumption shall be conclusive and shall not be rebutted and the correctness and sufficiency of such debt statement shall not be contested or questioned in any suit, action or proceeding relating to such bond or other obligation or the levy or collection of taxes for the payment of the same.*

5. Section 18:5-88 of the Revised Statutes is amended to read as follows:

18:5-88. For all purposes of this article,

a. "School district" means a local school district, a certified local school district or a regional school district and also, *in the case of any school district other than a chapter six school district*, when required by the context, the board of education of such a school district;

b. "*Chapter six school district*" means a school district to which are applicable the provisions of chapter six of this Title (§ 18:6-1 et seq.);

c. "Local school district" means a school district to which are applicable the provisions of chapter six of this Title (§ 18:6-1 et seq.) or chapter seven of this Title (§ 18:7-1 et seq.), including a *chapter six school district*, a certified local school district and a school district comprising more than one municipality, but not including a regional school district;

d. "Certified local school district" means a local school district which is certified by the State Commissioner of Education as having title to an approved high school, or which authorizes the issuance of bonds for the purpose of providing a high school;

e. "Regional school district" means a school district which is governed by or to which are applicable provisions of chapter eight of this Title (§ 18:8-1 et seq.);

f. "Net school debt" of a school district means the amount of all the bonds and notes of the school district issued and outstanding or authorized but *not issued*, less the amount of any sinking funds held for payment of the same;

g. *Bonds of a chapter six school district include bonds, promissory notes or temporary loan bonds of the school district, of the board of education of the school district or of the municipality comprised within the school district, authorized or issued*

pursuant to the provisions of chapter six of this Title (§ 18:6-1 et seq.), and are deemed to be authorized by the fact and at the time of the final adoption by the governing body of said municipality of an ordinance of the municipality authorizing the issuance of such bonds, or, if authorization of such bonds by such ordinance would not be possible under the provisions of this article without adoption of a proposition as in section 18:5-85 or section 18:5-86 provided, by the fact and at the time of the adoption by the qualified voters of such municipality of a proposition confirming such ordinance;

h. Bonds of a school district which has no board of school estimate are deemed to be authorized by the fact and at the time of the adoption by the legal voters of the school district of a proposal authorizing the board of education to issue the same;

i. Bonds of a school district which has a board of school estimate and is not a chapter six school district are deemed to be authorized by the fact and at the time of the making of the certificate of said board upon delivery of which the board of education is authorized to issue the same, or, if authorization of such bonds would not be possible under the provisions of section 18:5-84 of this article, by the fact and at the time of the adoption by the legal voters of the school district of a proposal authorizing the board of education to issue the same;

j. "Supplemental debt statement" means the statement of the debt condition of a municipality provided for in sections 40:1-82 to 40:1-84 of the local bond law (§ 40:1-1 et seq.), and prepared, made and filed as in said law directed;

k. "Average assessed valuation of property" in a school district comprising one municipality means the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of bonds of the school district, as the average of the three next preceding assessed valuations of the taxable real property (including improvements) of the municipality, as stated in the annual debt statement of the municipality last filed, and in a school district comprising more than one municipality means the sum of all such amounts so stated in the several supplemental debt statements so required to be filed;

l. "Net debt" of a municipality means the amount stated in the supplemental debt statement required by this article to be filed prior to the authorization of bonds of a school district as the net debt of the municipality; and

m. "Borrowing margin" of a municipality means the excess, if any, of seven per centum (7%) of the amount stated in the supplemental debt statement required by this article to be filed prior to authorization of bonds of a school district, as the average of the three next preceding assessed valuations of the taxable real property (including improvements) of the municipality, over the net debt of the municipality as stated in such supplemental debt statement after adjustment of such net debt so as to disregard the proposed authorization of bonds of the school district.

6. Section 18:6-61 of the Revised Statutes is amended to read as follows:

18:6-61. The governing body of the municipality shall, subject to the provisions of section 18:6-62 of this Title, either:

a. *Make appropriation of the sum or sums, fixed as provided in section 18:6-60 of this Title, for the purpose or purposes so fixed, in the same manner as other appropriations are made by it pursuant to the local budget law (§ 40:2-1 et seq.), and upon the taking effect of such appropriation pay said sum or sums 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 for such purpose or purposes; or*

b. *By ordinance appropriate the sum or sums, fixed as provided in section 18:6-60 of this Title, for the purpose or purposes so fixed and, pursuant to said ordinance, borrow the sum or sums so appropriated and secure the repayment of the sum or sums so borrowed, together with interest thereon at a rate not to exceed six per centum (6%) per annum, by the authorization and issuance of bonds in the corporate name of such municipality in accordance with the provisions of article eighteen of chapter five of this Title (§ 18:5-84 et seq.). Bonds so issued shall be designated "school bonds," may be registered or coupon, or both, and of such denominations as the governing body may determine.*

7. Section 18:6-62 of the Revised Statutes is amended to read as follows:

18:6-62. *Except with the concurrence and consent of the governing body of the municipality expressed by resolution or ordinance, no amount shall be appropriated under section 18:6-61 of this Title which, if added to the net school debt, as defined in section 18:5-88 of this Title, of the district at the date of such appropriation shall*

exceed three per centum (3%) of the average assessed valuation of property, as defined in said section 18:5-88 in the district.

8. Section 18:6-63 of the Revised Statutes is amended to read as follows:

18:6-63. *A proposition confirming an ordinance of the municipality authorizing the issuance of bonds under the provisions of section 18:5-85 or section 18:5-86 of this Title shall be submitted to the qualified voters of such municipality at a general, special or municipal election to be held therein, whenever the governing body of the municipality shall have, by resolution or ordinance adopted not less than forty days prior to such election, directed that such proposition be so submitted and, in the case of a special election, specified the day and time thereof, the place or places thereof and the polling districts therefor by reference to the general election districts established and used in the municipality, and the hours (which need include only four consecutive hours) during which the polls at such election shall be open. It shall be the duty of the clerk of the municipality to give notice of any such election, setting forth, in addition to the proposition to be submitted, the day and time thereof and place or places thereof and the polling districts therefor by reference to the general election districts established and used in the municipality and the hours during which the polls at such election will be open. At least seven days before the date of such election, said clerk shall post not less than seven copies of such notice, one on each schoolhouse within the municipality and the others at such other public places in the municipality as he may select, and shall publish said notice in a newspaper published in the municipality if there be one or, if there be no such newspaper, in a newspaper published in the county and circulating in the municipality. No other or different notice of said election shall be required to be posted, published, delivered or otherwise given. Such election shall be held and the result of the balloting on such proposition ascertained and determined in accordance with the provisions of Title 19, Elections, of the Revised Statutes which are not inconsistent with this section and are applicable to the holding in such municipality of a general, special or municipal election, as the case may be, provided, however, that any notice or demand therein required to be given to or made upon any person or body for the performance of an official duty with regard to such election shall be sufficient if given or made at least ten days before the date of such election. No action, suit or proceeding to contest or in any manner question the validity of such election or the result of the balloting on such proposition shall be instituted after the expiration of twenty days from the date of such election.*

9. Section 18:6-73 of the Revised Statutes is amended to read as follows:

18:6-73. Upon making an appropriation as authorized by *paragraph (b)* of section 18:6-61 of this Title and *authorizing the sum or sums appropriated to be borrowed upon bonds, such bonds being called "permanent bonds" in this section and sections 18:6-74 and 18:6-75 of this Title, the governing body may issue promissory notes or temporary loan bonds in anticipation of the sale of the permanent bonds.*

10. Section 18:6-74 of the Revised Statutes is amended to read as follows:

18:6-74. The notes or temporary loan bonds referred to in section 18:6-73 of this Title, upon the making of the appropriation, *may be authorized by resolution which shall fix the maximum amount of such notes or bonds and the maximum rate of interest thereon.*

The other matters in respect of the notes or temporary loan bonds may be left to be determined by subsequent resolution or by officials executing them or by a financial officer, from time to time as the money is called for by the board of education. The aggregate face amount thereof shall not exceed the amount of the appropriation. The notes or temporary loan bonds shall be general obligations of the municipality.

The board of education may, after any such appropriation and within the amount thereof, make contracts notwithstanding that the moneys appropriated are not in hand.

The proceeds of the permanent bonds when issued shall be applied to the payment of the principal of the notes or temporary loan bonds, and the interest thereon, and the principal thereof if not otherwise paid, shall be raised in the annual tax levy.

11. Section 18:6-76 of the Revised Statutes is repealed.

12. 40:1-16.1 of the Revised Statutes is amended to read as follows:

40:1-16.1. Computation of borrowing power under section 40:1-16d. a. The annual amount referred to in subsection "d" of section 40:1-16 as to a fiscal year subsequent to the thirty-first day of December, nineteen hundred and thirty-eight, in which an appropriation has been made in the budget to meet debt redemption charges for indebtedness as defined in subsection "b" of this section, shall be a portion of such appropriation, computed as follows: said appropriation shall be multiplied by four in the case of a county, or by seven in the case of a municipality, and shall be divided by an amount (which in no event shall be less than four in the case of counties or seven in the case of municipalities) equal to one hundred multiplied by the percentage of net debt shown in the annual debt statement last filed prior to said appropriation.

The fiscal year referred to above shall be each fiscal year in which the debt of a county or municipality exceeds the limitations imposed by section 40:1-14 or 40:1-15, as shown in the annual debt statement filed at the end of such fiscal year or, where said fiscal year has not ended, as shown in the supplemental debt statement filed pursuant to section 40:1-13 prior to the authorization by the county or municipality of obligations pursuant to subsection "d" of section 40:1-16. *As to a fiscal year subsequent to the thirty-first day of December, nineteen hundred and fifty-two, the amount of said appropriation, before its multiplication as aforesaid, may be increased by the amount of any decrease during the preceding fiscal year, as shown by the two annual debt statements last filed prior to said appropriation, in the amount of notes or bonds issued for school purposes and included in the gross debt, issued by the municipality or by any school district, in excess of the amount of the deductions in said statements applicable to such notes or bonds under the provisions of paragraph (a) or paragraph (c) or paragraph (d) of section 40:1-77 of this Title.*

b. For the purposes of subsection "a" of this section:

"Indebtedness" shall mean indebtedness included in the gross debt of said county or municipality as defined in section 40:1-76 of this Title, other than indebtedness incurred for school, relief of the poor or self-liquidating purposes or to be retired by funds taken as a deduction (pursuant to subsection "a" of section 40:1-77 of this Title) in the last annual debt statement filed prior to said appropriation.

"Debt redemption charges" shall mean required payments for sinking fund purposes as well as payments of principal of obligations maturing in such year.

"The percentage of net debt shown in the annual debt statement" shall mean the percentage shown in the annual debt statement except that where said percentage has been wrongly computed or has not been stated as a decimal computed to four decimal places it shall be recomputed to four decimal places, for the purposes of this section.

13. Any bonds of a school district, authorized by the adoption of a proposal adopted by the legal voters of such school district prior to July first, one thousand nine hundred and fifty-two, and any bonds of a municipality, authorized by an ordinance of the municipality adopted prior to July first, one thousand nine hundred and fifty-two may theretofore or thereafter be issued as if this act had not taken effect.

14. This act shall take effect July first, one thousand nine hundred and fifty-two.
Approved May 20, 1952.

CHAPTER 266, LAWS OF 1952

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending sections 18:13-52 and 18:13-55 of the Revised Statutes.

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

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

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

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

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

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

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

b. A pension, in addition to the annuity, of one-one-hundredth-and-fortieth of his average salary multiplied by the number of years of his total service.

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

Approved May 22, 1952.

CHAPTER 268, LAWS OF 1952

AN ACT to amend the title of "An act regulating the distribution of printed and other kinds of matter by public school pupils in connection with annual school elections pursuant to article three of chapter seven of Title 18 of the Revised Statutes or in connection with general or school elections whenever any question shall hereafter be submitted pursuant to sections 18:6-3 and 18:7-3 of the Revised Statutes," approved July sixteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 228), so that the same shall read "An act regulating the distribution of printed and other kinds of matter by public school pupils in connection with annual school elections or in connection with the submission of public questions at any election," 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 regulating the distribution of printed and other kinds of matter by public school pupils in connection with annual school elections pursuant to article three of chapter seven of Title 18 of the Revised Statutes or in connection with general or school elections whenever any question shall hereafter be submitted pursuant to sections 18:6-3 and 18:7-3 of the Revised Statutes," approved July sixteenth, one thousand nine hundred and forty-eight, is amended to read "An act regulating the distribution of printed and other kinds of matter by public school pupils in connection with annual school elections or in connection with the submission of public questions at any election."

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

1. No printed, written, multigraphed or any other kind of matter, which, in any way, in any part thereof, promotes, favors, or opposes the candidacy of any candidate for election at any annual election conducted pursuant to the provisions of article three of chapter seven of Title 18 of the Revised Statutes, or at any general or municipal or school election, whenever any question shall be hereafter submitted pursuant to sections 18:6-3 and 18:7-3 of the Revised Statutes, or which, in any way, in any part thereof, promotes, favors, or opposes the adoption of any bond issue proposal or other public question submitted at any general or municipal or school election shall be given to any public school pupil in any public school building, or on the grounds thereof, for the purpose of having such pupil take such matter to his home or to distribute it to any person or persons outside the school building or the grounds thereof. *Nor shall officials or employees of public schools request or direct such pupils to engage in activities which promote, favor, or oppose any bond issue proposal or other public question submitted at any general or municipal or school election.*

3. This act shall take effect immediately.

Approved May 22, 1952.

CHAPTER 270, LAWS OF 1952

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending section 18:13-56 of the Revised Statutes.

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

1. Section 18:13-56 of the Revised Statutes is amended to read as follows:

18:13-56. The total retirement allowance, *prior to any reduction in accordance with section 18:13-68 of the Revised Statutes*, to be paid on and after July second, one thousand nine hundred and *fifty-two*, to a member who shall have retired prior to said date with twenty or more years of service as a *teacher to his credit in the New Jersey Teachers' Pension and Annuity Fund*, shall be his annuity plus a pension of not less than eight hundred dollars (\$800.00) per annum, except that a *minimum pension of four hundred dollars (\$400.00) instead of such minimum pension of eight hundred dollars (\$800.00) shall apply in the case of any new entrant referred to in subsection "C" of section 18:13-55 of the Revised Statutes who shall have retired prior to said date.*

The total retirement allowance to be paid after *July first*, one thousand nine hundred and *fifty-two*, to a member who retires after said date, with twenty or more years of service, shall be his annuity plus a pension of not less than four hundred dollars (\$400.00) per annum.

2. This act shall take effect July first, one thousand nine hundred and fifty-two.

Approved May 23, 1952.

CHAPTER 357, LAWS OF 1952

AN ACT concerning education, and amending sections 18:7-2 and 18:7-3 of the Revised Statutes.

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

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

18:7-2. The provisions of this chapter shall apply:

(a) In every township, incorporated town or borough school district except where the provisions of chapter six of this Title (§ 18:6-1 et seq.) are accepted as permitted by section 18:6-3 of this Title; and

(b) In every city school district in which the provisions of this chapter are accepted as permitted by section 18:7-3 of this Title.

(c) *In any township, town or borough school district having accepted the provisions of chapter six of this Title (§ 18:6-1 et seq.) in which the provisions of this chapter are subsequently accepted, as permitted by section 18:7-3 of this Title.*

2. Section 18:7-3 of the Revised Statutes is amended to read as follows:

18:7-3. The acceptance of the provisions of this chapter shall be submitted to the qualified voters of any city, *or of any town, township or borough in which the provisions of chapter six of this Title (§ 18:6-1 et seq.) have been accepted*, at any general or municipal election to be held therein whenever the governing body *thereof* or the board of education of the school district situated therein, shall have, by resolution, directed that the question be so submitted.

The question to be submitted shall be for or against the adoption of the provisions of chapter seven of the Title Education of the Revised Statutes (§ 18:7-1 et seq.).

If a majority of the votes cast upon the question are for the adoption of the provisions of this chapter, the school district in such city, *town, township or borough* shall thereafter in all respects be governed by the provisions of this chapter, and the board of education therein shall have all the powers and duties given and imposed by the several provisions of this chapter.

3. This act shall take effect immediately.

Approved June 18, 1952.

ACTS AND RELATED LAWS, 1952

CHAPTER 116, LAWS OF 1952

AN ACT to amend "An act concerning the renewal of certain licenses, registration certificates or permits by certain veterans," approved April fourth, one thousand nine hundred and forty-six (P. L. 1946, c. 51).

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

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

1. The word "veteran" as used in this act shall mean any person who served in the active military or naval service of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to the termination of the war by lawful Federal authority, or during the present emergency, who was a resident of this State when he entered such active service, who shall have been discharged, or released, therefrom under conditions other than dishonorable and who either shall have served ninety days or shall have been discharged or released from active duty by reason of an actual service-incurred injury or disability.

The term "present emergency" as used in this act shall mean and include any time after June twenty-third, one thousand nine hundred and fifty, and prior to the termination, suspension or revocation of the proclamation of the existence of a national emergency issued by the President of the United States on December sixteenth, one thousand nine hundred and fifty, or termination of the existence of such national emergency by appropriate action of the President or Congress of the United States.

2. This act shall take effect immediately.

Approved May 5, 1952.

CHAPTER 120, LAWS OF 1952

AN ACT concerning the establishment and maintenance of mental health programs for children by counties and municipalities.

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

1. The board of chosen freeholders of any county or the governing body of any municipality may establish and maintain a mental health program for the operation or the support of centers for the diagnosis and treatment of mental disorders in persons, such as mental hygiene clinics and child guidance centers. Such program may be carried on by the establishment and operation of separate facilities or by conducting the same in connection with an existing county or municipal institution or by contract with a licensed hospital or approved child care center or the board of chosen freeholders of another county or the governing body of another municipality.

2. The board of chosen freeholders of such county or the governing body of such municipality may appropriate sufficient funds to carry out said program, when established and maintained pursuant to this act.

3. This act shall take effect immediately.

Approved May 5, 1952.

CHAPTER 160, LAWS OF 1952

AN ACT concerning the tenure, seniority, and pension rights of certain persons in school districts upon the division of such school districts.

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

1. Whenever any school district is divided into two or more school districts those persons having tenure, in office, position or employment in such school district, shall continue to have tenure in the district which comprises the territory in which they were serving at the time of the division; the persons having tenure in office, position or employment in such district whose services were not exclusively confined to the territory comprising any one of the districts as so divided, at the time of the division, shall be employed, if their services are so required, in the district having the highest number of pupils in average daily attendance during the second academic year preceeding the academic year in which the new district is created as certified by the Department of Education and those persons having tenure in office, position or employment in the original district who are not employed by the board of education of either district shall retain the seniority and tenure rights acquired in the original district and shall be employed in accordance therewith as vacancies occur in either the original school district or the new school district before any other persons are so employed in similar office, position or employment.

2. The tenure, seniority and pension rights of all persons who had office, position or employment in the original district at the time of said division and who are employed in either district after such division shall continue with the same force and effect as though such division had not occurred and any future continuation of service in either district shall be deemed to be a continuation of the service rendered prior to said division and any period of service rendered in the original district shall be credited toward the acquisition of tenure, seniority and pension rights in the original or new district, as the case may be.

3. This act shall take effect immediately.

Approved May 9, 1952.

CHAPTER 196, LAWS OF 1952

AN ACT to amend "An act to provide for the regulation of the business of drivers' schools; to license the persons engaged therein and to place them under the supervision of the Director of Motor Vehicles, and supplementing Title 39 of the Revised Statutes," approved June thirteenth, one thousand nine hundred and fifty-one (P. L. 1951, c. 216).

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

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

2. No person shall engage in the business of conducting a drivers' school without being licensed therefor by the Director of Motor Vehicles. Application therefor shall be in writing and contain such information therein as he shall require. If the application is approved, the applicant shall be granted a license upon the payment of a fee of *fifty dollars (\$50.00)*; *provided, however*, no license fee shall be charged for the issuance of a license to any board of education, school board, public, private or parochial school, which conducts a course in driver education, approved by the State Department of Education. A license so issued shall be valid during the calendar year. The annual fee for renewal shall be the same amount. The director shall issue a license certificate or license certificates to each licensee, one of which shall be displayed in each place of business of the licensee.

In case of the loss, mutilation or destruction of a certificate, the director shall issue a duplicate upon proof of the facts and the payment of a fee of one dollar (\$1.00).

2. This act shall take effect immediately.

Approved May 16, 1952.

CHAPTER 274, LAWS OF 1952

AN ACT providing for the payment of school moneys to the custodian, and amending section 54:4-75 of the Revised Statutes.

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

1. Section 54:4-75 of the Revised Statutes is amended to read as follows:

54:4-75. The governing body of each municipality shall pay over to the custodian of school moneys, in the case of school districts in which appropriations for school purposes are made by the inhabitants of the school district, within forty days after the beginning of the school year, twenty per centum (20%) of the appropriation for local school purposes, and thereafter, but prior to the last day of the school year, the balance of the moneys raised in the municipality for school purposes in such amounts as may from time to time be requested by the board of education, within thirty days after each request. The board of education shall not request any more money at any one time than shall be required for its expenditures for a period of eight weeks in advance; *provided, however, that the board of education may at any time, but not earlier than fifteen days prior to the beginning of the school year, request sufficient moneys to meet all interest and debt redemption charges maturing during the first forty days of the school year.* The governing body may make payments of such moneys in advance of the time and in excess of the amounts required by this section.

2. This act shall take effect immediately.

Approved May 24, 1952.

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HIGH SCHOOL DESIGNATION CASE
Decided Pursuant to R. S. 18:14-7

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Pursuant to R. S. 18:13-58

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SCHOOL LAW DECISIONS 1951 - 1952

I

JOHN BLACK

IN RE RECOUNT OF BALLOTS CAST AT THE SPECIAL ELECTION IN THE SCHOOL DISTRICT
OF THE BOROUGH OF NORTH ARLINGTON, BERGEN COUNTY

For the Petitioner, Percy Osrowitz.

For the Respondent, Bruck & Bigel (Milton Bruck, of Counsel).

DECISION OF THE COMMISSIONER OF EDUCATION

A special election was held in the School District of the Borough of North Arlington, Bergen County, on June 28, 1951, at which there was submitted a proposal to bond the school district in the amount of \$460,000. At the conclusion of a recount of the ballots cast, conducted by Chester Robbins, Assistant Commissioner of Education in Charge of Controversies and Disputes, in the Bergen County Administration Building, Hackensack, New Jersey, on Thursday, July 12, 1951, the results showed 883 votes in favor and 868 against the proposal. Fifty-seven ballots were set aside for determination. It was agreed by the parties that 19 of these ballots must be voided and that 7 must be counted in favor and 1 against, bringing the count to 890 for and 869 against the proposal. An inspection of the remaining ballots set aside for determination revealed that, even if these ballots were counted, the referendum would still carry. Therefore, it is unnecessary to determine the remaining ballots.

The Commissioner finds and determines that the proposal submitted to the legal voters of the School District of the Borough of North Arlington on June 28, 1951, was carried by a majority of the legal ballots cast.

COMMISSIONER OF EDUCATION.

July 19, 1951.

II

OBLIGATION OF BOARD OF EDUCATION TO PROVIDE TRANSPORTATION FACILITIES

DENMAR L. DIXON,

Petitioner,

vs.

BOARD OF EDUCATION OF THE TOWN OF WESTFIELD, UNION COUNTY,

Respondent.

For the Petitioner, Harris N. Goldberg.

For the Respondent, Beard & McGall (William M. Beard, of Counsel).

DECISION OF THE COMMISSIONER OF EDUCATION

This action is brought by the Petitioner to require the Board of Education of the Town of Westfield to furnish transportation for his children and other children residing two miles or more from the grade school or two and one-half miles from the high school which they attend.

It is stipulated that the children included in this petition reside two miles or more from the grade school or two and one-half miles or more from the high school which they attend.

The petitioner contends that it is well established in previous School Law decisions that transportation facilities must be supplied for children residing the distances from the schoolhouses stipulated above.

Respondent maintains that the pertinent statute (R. S. 18:14-8) permits but does not require the Board of Education to furnish transportation to pupils remote from school.

The pertinent statutes read as follows:

"18:14-8. Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part. . . ."

"18:11-1. Each school district shall provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. Such facilities and accommodations shall include proper school buildings, together with furniture and equipment, convenience of access thereto, and courses of study suited to the ages and attainments of all pupils between the ages of five and twenty years. *Such facilities and accommodations shall be provided either in schools within the district convenient of access to the pupils, or as provided in Sections 18:14-5 to 18:14-9 of this Title.*" (Italics ours.)

It was settled in the case of *Phillips vs. Board of Education of the Township of West Amwell*, 1938 Compilation of School Law Decisions 754, affirmed by the State Board of Education and by the Supreme Court, that a board of education must furnish transportation to children if the school building to which they are assigned is not convenient of access.

The issue raised by Respondent was determined contrary to his contention in the *Phillips vs. West Amwell* case, *supra*. The State Board said at page 758:

"It seems to us that the clear intent of Section 126 as amended (now R. S. 18:11-1) is, as held by the Commissioner, that school facilities must be furnished either by providing schools convenient of access or by means recited in Sections 117, 118, and 119 (now R. S. 18:14-8, 18:14-5 and 18:14-6) which include the transportation within the district of children whose residences are not convenient of access to the school building or buildings."

The Supreme Court said at page 759:

"Our reading of the statute agrees with the construction and application made by the Commissioner of Education . . ."

It has been well established in a series of decisions, in which Boards of Education were ordered to furnish transportation, that "remote" means two miles or more from the schoolhouse for elementary pupils and two and one-half miles or more for high school pupils. On February 3, 1950, the State Board of Education embodied the above statutory construction of the word "remote" in policies adopted to guide the County Superintendents in exercising their discretion in approving transportation for purposes of State aid. The following is the pertinent excerpt:

"The words 'remote from the schoolhouse' should mean 2½ miles or more for high school pupils and 2 miles or more for elementary pupils, except for pupils suffering from physical or organic defects."

The Assistant Commissioner of Education in Charge of Business Matters and the Assistant Commissioner in Charge of Controversies and Disputes, who are acquainted with transportation situations throughout the State, rode over the requested route with representatives of the respective parties to determine whether there are any elements in the Westfield situation so different from other situations as to make the above mentioned distances inapplicable. They found nothing in the Westfield situation which would justify any departure from the standards used in other districts of the State to determine whether transportation is to be required.

The Board of Education of the Town of Westfield is directed to furnish transportation to the children for whom this action is brought.

COMMISSIONER OF EDUCATION.

July 31, 1951.

III

IN ABSENCE OF STATUTORY REQUIREMENT, CONTRACT FOR
SCHOOL FURNITURE MAY BE AWARDED WITHOUT
COMPETITIVE BIDDING

JOHN A. FOCHI,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF LODI, BERGEN COUNTY AND FRANK MANZO,

Respondents.

For the Petitioner, James V. Toscano.

For the Respondent Board of Education, Gerald LoProto.

DECISION OF THE COMMISSIONER OF EDUCATION

Petitioner is a taxpayer of the Borough of Lodi and seeks to set aside a purchase of furniture for the schools of the School District of the Borough of Lodi for the following reasons:

1. The Board of Education unlawfully delegated to the Repairs and Replacements Committee the purchase of the furniture.
2. The amount of \$4,983.80 was highly exorbitant and so disproportionate to the current price levels that it was an apparent manifest abuse of the power of discretion of the Board of Education.

The respondent Board denies the allegations and says that assuming, without admitting, that there was an illegal delegation of authority, the action was duly ratified by the Board, and that the allegation of abuse of discretion is vague and indefinite.

It is not necessary to determine whether there was an illegal delegation of authority because, even if there were such a delegation, the Board legally ratified the purchase.

"A municipality becomes bound either by formal, preliminary act authorizing a thing to be done, or, in the absence of such preliminary act, by ratification." *DeMuro vs. Martini*, 1 N. J. 517.

"An assembly may ratify any action which it has the power to authorize in advance, in which case the ratification relates back to the date of the action ratified. *Harker vs. McKissock*, 10 N. J. Super, 26.

It is well established that a Board of Education has the power to purchase furniture without preliminary bidding. There is no statute requiring a Board of Education to advertise for bids for furniture. Where no statute requires a Municipal Board to advertise for proposals for doing work, such Board may make such contracts without advertising, and if it does advertise, reserving a right to reject any or all bids, it may enter into any contract it deems best for the interests of the municipality, without reference to the advertisement. *Coward vs. Bayonne*, 67 N. J. L. 470. See also *Halpern vs. Passaic Township Board of Education*, 1938 School Law Decisions, 259.

It is the opinion of the Commissioner that the purchase of furniture was duly ratified. Even if there were no ratification, it would be futile for the Commissioner to set aside the contract since the board could purchase the same furniture legally without advertising.

Finally, it must be determined whether there was an abuse of discretion. The only evidence adduced in support of the petitioner's contention is the following affidavit made by Thomas Ferraro:

"State of New Jersey, }
County of Bergen, } ss.:

"THOMAS FERRARO, of full age, being duly sworn according to law, upon his oath deposes and says that:

- "1. I am a cabinet maker and a furniture dealer for the past 24 years and conduct my business and warehouse at 78 and 71 Main Street, Lodi, New Jersey, respectively, under the name of Ferraro Furniture Co.

- "2. On January 16, 1951, John A. Fochi asked me to make an inspection of newly purchased furniture.
- "3. On the aforesaid date, accompanied by Mr. Fochi, I personally visited the Wilson School, Lodi, New Jersey, wherein the recently purchased school furniture was stored and made an inspection of the same.
- "4. After inspection of the same, I was asked by Mr. Fochi if I could duplicate the same and, if I could, at what price.
- "5. Accordingly, on January 22, 1951, I purchased one desk and chair from one of the furniture concerns of which I am an agent and representative and sold the same to Mr. Fochi for \$17.00.
- "6. The aforesaid desk and chair, in my opinion, is superior both as to construction and usefulness to that of the desks and chairs purchased by the Lodi Board of Education from Frank Manzo, t/a Superfine Furniture Co., the same desks and chairs as previously inspected by me.

(Signed) THOMAS FERRARO (L.S.)
Thomas Ferraro

"Sworn and subscribed to before
me this 15th day of June, 1951.
(Signed) JAMES V. TOSCANO, JR.,
An Attorney-at-Law of N. J."

The quoted price of \$17.00 per desk and chair in Mr. Ferraro's affidavit compares with \$22.44 per desk and chair purchased by the Board of Education. It should be noted that the price is not for a duplicate of the desk and chair purchased by the Board of Education. The standards by which the Commissioner must be guided in determining whether to set aside an action of a Board of Education for abuse of discretion have been established in the following decisions:

"Even though motive was corrupt or the action was done for the purpose of spite or revenge, an action of a board is immune from judicial interference if it is within the range of the board's legal discretion." *Iverson vs. Springfield, etc., Union Free High School Dist.*, 186 Wisc. 342, 202 N. W. 788, quoted from the decision of the State Board of Education in *Downs vs. Hoboken*, 1938 S. L. D. at page 526.

"The board appears to have acted within the authority conferred upon it by law, and its action involved the exercise of discretion, and in the absence of clear abuse, its action ought not to be disturbed; . . ." *Downs vs. Hoboken*, 12 N. J. Misc. 345.

"The action does not offend any statutory regulations. As held in *Downs et al vs. Hoboken, supra*, the motives, reasons and considerations of the local board in so acting are not evidence of bad faith." *Liva vs. Lyndhurst*, 126 N. J. L. 224.

"It remains to say a word upon that view of the case which assumes that it is within the judicial province to protect constituencies from the 'recreancy' of their representatives by undoing legislation which evinces 'bad faith.' To which the answer is—first, that the power to so intervene has wisely been withheld from the judiciary; secondly, that if the power existed, its exercise would be most mischievous, and lastly, that the redress of the betrayed constituent is in his own hands to be sought at the polls and not in the courts." *Moore vs. Haddonfield*, 62 N. J. L. 391.

"Faced with such a serious charge, and faced with the legal principle that courts do not substitute their judgment for the judgment of those selected by the people and charged with the duty of acting in good faith unless a clear showing of bad faith be disclosed (*Blair vs. Brady*, 11 N. J. Misc. 854, 857; 168 Atl. Rep. 668; *Cohn vs. Hamilton Township Committee*, 15 N. J. Misc. 687, 690; 194 Atl. Rep. 436) I continued the cause in fairness and justice to all parties, to the end that counsel for prosecutors be given every opportunity of supplying proof to substantiate their claim of bad faith and dishonesty."

"I desire to make clear that I express no opinion as to the policy employed by the majority in the selection which they made or in the manner in which they made their selection effective. *That is their responsibility to those whom they govern.* Courts cannot compel governing officials to act wisely, but it can

and does compel them to act in good faith. *And to say governing officials must act in good faith is merely equivalent to saying that they must act honestly.*" *Peter's Garage Inc. vs. City of Burlington*, 121 N. J. L. 523, 527.

It was held by the Court of Errors and Appeals in the case of *Boult and Harris vs. Board of Education of the City of Passaic*, 136 N. J. L. 521, that:

"Neither of the quoted statutory provisions (R. S. 18:3-14 and 18:3-15) was intended to vest in the appellate officer or body the authority to exercise originally the discretionary power vested in the local board."

It is the opinion of the Commissioner that the evidence adduced does not satisfy the standards established above for setting aside the action of the Board of Education for abuse of discretion.

The Commissioner finds and determines that the purchase of furniture referred to above was duly ratified and that the evidence in support of the allegation of abuse of discretion is not sufficient to set aside the action of the Board of Education of the Borough of Lodi. The petition is dismissed.

COMMISSIONER OF EDUCATION.

September 25, 1951.

IV

WHERE LOW BIDDER IS FINANCIALLY RESPONSIBLE, ALLEGED
FURNISHING OF COAL OF INFERIOR GRADE UNDER A PREVIOUS
CONTRACT NOT GROUNDS FOR REJECTING BID, IF NO
ATTEMPT WAS MADE TO REQUIRE CONTRACTOR
TO MEET SPECIFICATIONS

R. McALLISTER,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF LAWNESIDE, CAMDEN COUNTY, AND
HADDON ICE AND COAL COMPANY,

Respondent.

For the Petitioner, Carl Kisselman.

For the Respondent Board of Education, Edward A. Reid.

DECISION OF THE COMMISSIONER OF EDUCATION

The Respondent Board received bids for coal on the fifth day of June, 1951, at 8:00 P. M. The Petitioner was the lowest bidder but was not awarded the contract. He says that this action of the Respondent is contrary to law and asks the Commissioner to determine the controversy and dispute arising under the School Law because of this allegedly illegal action.

The Respondent admits that the Petitioner's bid was lowest, but denies that the award should be made to the Petitioner solely on that ground. Its defenses are that (1) during the school year 1949-1950 the Petitioner furnished fifty tons, more or less, of coal of an inferior grade which was comprised of more than 10% dirt, resulting in the clogging of the furnaces, with the consequent failure to furnish proper heat; (2) during the school year 1950-1951, the Petitioner, even though the low bidder, was denied the award and did not protest; (3) the Petitioner was not awarded the contract for the school year 1951-1952, under litigation, because of the unsatisfactory quality of his product. The Board of Education, because of its previous experience with the Petitioner, felt that he was not a responsible bidder, and that it was contrary to the best interest of the Board of Education to accept the bid of the Petitioner solely on the ground that it was the lowest bid.

The pertinent statute is R. S. 18:7-65, which reads as follows:

"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 essential facts are stipulated. A comparison of the specifications and the bid of the Petitioner shows that his bid was in accordance with the specifications. It is stipulated that the Petitioner was the lowest bidder, was not awarded the contract, and is financially responsible. In the stipulation is submitted an affidavit made by Joseph P. McShane, General Manager for the Petitioner, wherein it is set forth he objected to the award of the contract to the Haddon Ice and Coal Company because R. McAllister was the lowest bidder. It is further set forth in the affidavit that the Petitioner has been in the fuel business for over seventy years, maintains an excellent reputation, and sells fuel oil to the State of New Jersey, armories, soldiers' homes, etc. He also serves such corporations in South Jersey as the New Jersey Bell Telephone Company, Public Service Interstate Transportation Company, hospitals, schools, churches, theatres, hotels and the American public.

The Commissioner, in the case of *Crater vs. Board of Education of the Township of Bedminster, Somerset County*, 4 N. J. S. L. D. 6, after a study of *Paterson Contracting Company vs. City of Hackensack, et al.*, 1 Misc. 171, 99 N. J. L. 260, and *Peluso vs. Commissioners of the City of Hoboken*, 98 N. J. L. 706, laid down the following principles for determining the responsibility of a bidder and a review of a Board's determination thereon:

- "1. The question for the determination of the board of education is whether the bidder is so lacking in experience, financial ability, machinery and facilities as to justify the belief upon the part of fair-minded men that he would be unable to carry out the contract if awarded to him.
- "2. To reject the bid of the lowest bidder, there must be such evidence of the irresponsibility of the bidder as would cause fair-minded and reasonable men to believe that it is not for the best interests of the school district and the public at large to award the contract to the lowest bidder.
- "3. The lack of ability to work in harmony or to enforce the terms of a previous contract by the board of education cannot be the controlling factor in determining the bidder's responsibility. Disputes involving controverted questions of fact with reference to the performance of a previous contract do not constitute grounds for declaring a bidder irresponsible if such disputed matters can be taken care of under a contract properly safeguarding the public interest, with a contractor who is financially responsible.
- "4. To set aside the determination of the board of education that a bidder is irresponsible, it is not necessary to prove corruption or fraud on the part of the board of education. The determination of the board of education must be set aside if the evidence in the record does not justify its determination according to the principles stated above."

In the instant case as well as in the *Crater case, supra*, the third principle stated above seems applicable. The Petitioner in that case was financially responsible. It is the opinion of the Commissioner, therefore, that the determination of the Respondent Board should be reviewed in the light of the principles stated above, and especially in the light of the holding of the Court in the case of *Peluso vs. Hoboken, supra*, at page 706, which reads as follows:

"The test of whether a bidder is responsible is whether the bidder has the necessary equipment and financial responsibility to perform the contract, and the refusal to grant a contract to the lowest bidder on the ground that such bidder was not responsible, because in a prior contract there had been frequent disputes in reference to the performance of that contract, is in violation of the statute."

There is nothing in the record to indicate that in the school year 1949-1950 any attempt was made to require the Petitioner to meet the specifications, assuming that his coal was not up to the specifications. Respondent admits that the petitioner is financially responsible. The Board could have checked his coal against the analysis in the specifications and required him to meet the specifications. It is the opinion of the Commissioner that the Respondent Board erred for the reason that the Petitioner can be held responsible for meeting the specifications.

The coal has been delivered and the bill has been paid. In the case of *Roberts vs. Board of Education of the Township of Cranford*, decided December 24, 1931, dealing with a somewhat similar situation where the bill had been paid, the Commissioner said:

"The contracts and bills referred to in this case having been fulfilled or paid at the time of the hearing, the legality of the board's action in relation thereto appears for the most part to constitute a moot case.

"Courts do not adjudicate moot cases and will not hear a case when the object sought is not attainable. *Jones vs. Montague*, 194 U. S. 150.

"A case is not moot where interests of a public character are asserted by the government under condition that they may be immediately repeated merely because a particular order has expired. *Southern Pacific Terminal Company vs. Interstate Commerce Commission*, 219 U. S. 498.'

"In order to avoid repetition of the illegal procedures reviewed in this case, the Commissioner, in answer to the prayer of the appellant, must hold there were no initial authorizations for the actions of the board in the award of the contracts and the payment of bills enumerated by the petitioner. The Board of Education of the Town of Cranford is, therefore, directed to hereafter comply with the provisions of Section 89, Chapter 1, P. L. 1903."

The Commissioner finds and determines that the action of the Lawnside Board of Education in awarding the contract to the Haddon Ice and Coal Company is not in accordance with the provisions of R. S. 18:7-65 and the Board is directed at all times to comply with the statute. The Commissioner must leave the Petitioner to what further remedy, if any, he may have in the courts. See *Mahoney and Fifer vs. Board of Education of Lyndhurst*, 1938 S. L. D. 249.

COMMISSIONER OF EDUCATION.

October 16, 1951.

V

FUEL OIL CONTRACT MUST BE AWARDED TO LOWEST RESPONSIBLE BIDDER

SHORE GAS AND OIL COMPANY, INC., A CORPORATION
Petitioner,

vs.

THE BOARD OF EDUCATION OF THE BOROUGH OF BELMAR, MONMOUTH COUNTY,
Respondent.

For the Petitioner, Elvin R. Simmill.
For the Respondent, Harry R. Cooper.

DECISION OF THE COMMISSIONER OF EDUCATION

This petition brings before the Commissioner the award of a contract to Burns Bros. to supply fuel oil to the public schools of the Borough of Belmar. On July 6, 1951, the Respondent advertised that proposals would be received on July 16 for No. 2 and No. 4 fuel oil. The proposal is as follows:

"Proposals will be received by the Belmar Board of Education of the Borough of Belmar, New Jersey, at the school house on Monday, July 16th, 1951, at 8 P. M. (E.D.T.) for fifteen thousand (15,000) gallons more or less of No. 2 fuel oil and twenty-five thousand (25,000) of No. 4 fuel oil, to be delivered as required in the tanks of the school building in Belmar, for the 1951-1952 school year.

"The names of the producing companies from which the oil is to be supplied, and an analysis of the oil must accompany all proposals.

"The Board of Education reserves the right to reject any or all bids.

"(Signed) JOSEPH H. LYON,
"District Clerk."

The bids were not opened on July 16, 1951, but were opened on a subsequent date, at which time four bids were received as follows:

<i>"Burns Bros.</i>	
15,000 gals. No. 2 oil @ \$.106	\$1590.00
25,000 gals. No. 4 oil @ \$.0875	2187.50
	<hr/>
	\$3777.50
<i>"Shore Gas & Oil Co., Inc. (Appellant)</i>	
15,000 gals. No. 2 oil @ \$.104	\$1560.00
25,000 gals. No. 4 oil @ \$.088	2200.00
	<hr/>
	\$3760.00
<i>"Certified Oil</i>	
15,000 gals. No. 2 oil @ \$.109	\$1635.00
25,000 gals. No. 4 oil @ \$.0865	2162.50
	<hr/>
	\$3797.50
<i>"Raymond Cater</i>	
15,000 gals. No. 2 oil @ \$.111	\$1665.00
25,000 gals. No. 4 oil @ \$.0859	2147.50
	<hr/>
	\$3812.50"

The Respondent awarded the fuel oil contract to Burns Bros. and not to the Petitioner, who asks that said contract be set aside and that the contract be awarded to him.

Respondent's defense is that inasmuch as the difference in the combined bids was infinitesimal, it was justified in awarding the contract to Burns Bros. because of their previous very satisfactory service. After due deliberation and taking all facts into consideration, the Board of Education, in its discretion, felt it to be for the best interests of the Board to accept the Burns Bros. bid.

The pertinent statutes are N. J. S. A. 18:7-64 and 18:7-65 which read as follows:

"18:7-64. The board shall, prior to the beginning of each school year, cause advertisements 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 five hundred dollars (\$500.00) without advertisement. . . .

"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."

It is settled in this State that in the absence of a question as to financial responsibility, the low bidder is entitled to an award of the contract as a matter of right. *Sellitto vs. Cedar Grove*, 133 N. J. L. 41, *Frank P. Farrell, Inc. vs. Board of Education of Newark*, 137 N. J. L. 408. The status of the lowest bidder on a public contract is not one of grace but one of right and may not be lightly disturbed for it is based upon competition, a State policy. *Sellitto vs. Cedar Grove, supra*. To reject the bid of the lowest bidder there must be such evidence of the irresponsibility of the bidder as would cause fair minded and reasonable men to believe that it was not for the best interest of the municipality to award the contract to the lowest bidder. *Sellitto vs. Cedar Grove, supra*.

The lowest bidder acquires a status which entitles him to a hearing before a valid contract may be awarded to another. *Armitage vs. Newark*, 86 N. J. L. 5, *Sellitto vs. Cedar Grove*, 132 N. J. L. 27. If there is an allegation that a bidder is not responsible, he has a right to be heard upon that question, and there must be a distinct finding against him, upon the proper facts, to justify it. *Faist vs. Hoboken*, 72 N. J. L. 361, *Sellitto vs. Cedar Grove*, 132 N. J. L. 27.

The record fails to show that the Petitioner was given a hearing before the contract was awarded. Therefore, the Commissioner must conclude, in view of the foregoing citations, that the award of the contract to Burns Bros. was in violation of the statute.

Respondent cites *Kraft vs. Board of Education*, 67 N. J. L. 512, *Schwitzer vs. Board of Education*, 79 N. J. L. 342, and *Peluso vs. Hoboken*, 98 N. J. L. 706. The Commissioner has examined these cases and finds them inapplicable to the case under consideration. The Kraft case dealt with a situation where bids were not required by law. In *Schwitzer vs. Board of Education*, a determination was made after proper notice was given and a hearing afforded to the bidder. In *Peluso vs. Hoboken*, testimony was taken and it was determined that Peluso was not a responsible bidder. This determination was set aside by the Court.

The Commissioner concludes that the Shore Gas and Oil Co., Inc., was not given an opportunity to be heard and was not shown to be an irresponsible bidder before its bid was rejected and the award made to Burns Bros.

The award will be set aside.

COMMISSIONER OF EDUCATION.

November 5, 1951.

VI

IN RE RECOUNT OF BALLOTS CAST AT THE SPECIAL SCHOOL ELECTION HELD IN THE TOWNSHIP OF MADISON, MIDDLESEX COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

At a special school election held in the School District of the Township of Madison, Middlesex County, on Tuesday, October 30, 1951, the Board of Education submitted to the legal voters the following question:

“Resolved, That the Madison Township Board of Education is hereby authorized to transfer the sum of \$13,000.00 from the free cash balance in the current expense account to the capital outlay account for the purchase of fourteen acres of land in the Old Bridge section of Madison Township.”

The results of the election as announced were 322 votes for and 319 votes against the proposal.

A recount of the ballots was held in the Office of the County Superintendent of Schools of Middlesex County on November 15, 1951. The recount of the unchallenged ballots showed 303 in favor and 314 against the proposal. An examination of the challenged ballots revealed that the counting of those challenged ballots most favorable to the respondent would not overcome the unfavorable majority against the proposal. It was conceded that the proposal had not carried. The Commissioner, therefore, considers it unnecessary to determine whether or not the challenged ballots should be counted.

The Commissioner finds and determines that the above-mentioned proposal was not approved by the legal voters at the special school election. Accordingly, the Board of Education is without authority to make the transfer of \$13,000.00 from the current expense account to the capital outlay account for the purchase of land.

COMMISSIONER OF EDUCATION.

November 19, 1951.

VII

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION HELD IN THE SCHOOL DISTRICT OF THE BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, ON FEBRUARY 13, 1952.

DECISION OF THE COMMISSIONER OF EDUCATION

At the annual school election held on February 13, 1952, in the Borough of North Caldwell, Essex County, Charles W. Deaney and Edward F. Mittenzwei each received 141 votes.

A recount of the votes cast for these candidates 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 at 2:00 P. M. on Thursday, February 21, 1952. The result of the recount was the same as that announced by the election officials following the school election. Inasmuch as a tie vote results in a failure to elect a board member, it now becomes the duty of the County Superintendent of Schools, pursuant to R. S. 18:4-7d, to appoint a member to serve until the next Annual School Election.

COMMISSIONER OF EDUCATION.

February 27, 1952.

VIII

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

DECISION OF THE COMMISSIONER OF EDUCATION

A recount of the ballots cast for Carl F. Thompson, Archie Tedeski, and Mario DiFonzo at the annual school election held in the School District of the Borough of Paulsboro, Gloucester County, on February 13, 1952, was held in the office of the County Superintendent of Schools of Gloucester County on Friday, February 28, 1952.

The results of the recount show 410 votes for Carl F. Thompson, 410 votes for Archie Tedeski, and 406 votes for Mario Dionzo. One vote for Archie Tedeski was challenged. Since two positions are to be filled, both Carl F. Thompson and Archie Tedeski are elected regardless of how this ballot is determined. Therefore, it is not necessary to determine this ballot.

The Commissioner finds and determines that Carl F. Thompson and Archie Tedeski were elected to membership on the Board of Education of the School District of the Borough of Paulsboro for a term of three years.

COMMISSIONER OF EDUCATION.

March 4, 1952.

IX

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION HELD IN THE SCHOOL DISTRICT OF THE TOWNSHIP OF GREENWICH, GLOUCESTER COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

A recount of the ballots cast at the annual school election held on February 13, 1952, for Edward J. Marcelli and H. O. Richardson was held in the office of the County Superintendent of Schools of Gloucester County on Friday, February 28, 1952.

The results of the recount show 201 votes for Edward J. Marcelli and 199 votes for H. O. Richardson.

The Commissioner finds and determines that Edward J. Marcelli was elected to membership on the Board of Education of the School District of the Township of Greenwich for a term of three years.

COMMISSIONER OF EDUCATION.

March 4, 1952.

X

WRITE-IN VOTE IN PERSONAL CHOICE COLUMN GIVING LAST NAME ONLY CANNOT BE COUNTED

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST IN THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF HAINESPORT, BURLINGTON COUNTY.

DECISION OF THE COMMISSIONER OF EDUCATION

At the annual school election held in the School District of the Township of Hainesport, Burlington County, on February 13, 1952, the results of the election as announced for Harmon Moyerman and John Million show:

John Million50 votes
Harmon Moyerman49 votes

A recount of the ballots in so far as John Million and Harmon Moyerman are concerned was held by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Burlington County in Mount Holly on Thursday, February 28, 1952.

At the close of the recount the vote stood as follows:

Harman Moyerman49 votes
John Million48 votes

Two ballots were referred to the Commissioner of Education for determination. One ballot was marked as Exhibit A and the other as Exhibit B.

EXHIBIT A. The name of John Million, Jr. was written in a blank space but no cross (X), plus (+) or check (V) mark was found in the square before Mr. Million's name. According to the General Election Law (N. J. S. A. 19:16-3g) and previous decisions of the Commissioner, this ballot cannot be counted. *George W. Evans vs. Clementon Township Annual School Election, 1938 Compilation of School Law Decisions at 181; In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, Union County, 1949 School Law Decisions at 95.*

EXHIBIT B. The name Million is written in a blank space with a cross (X) mark in the square before this name. The Assistant Commissioner inquired of those present whether any person within the district other than the candidate has the same name. All those present thought that Mr. Million's wife is the only resident of the district with the same name. However, the Commissioner finds that, according to *Weeks vs. Kip*, 64 N. J. L. 61, he cannot receive testimony to prove that Mr. Million is the only person in the district with that name. The Supreme Court held in *Weeks vs. Kip, supra*, that upon a recount of ballots, proffered testimony cannot be received to prove that no other person by the name of Kip was a candidate and no person named Kip other than the candidate was a resident within the school district. In *Weeks vs. Kip, supra*, it was decided that a vote for "Kipp" could not be counted. While the General Election Law has been amended in such manner that most of the votes rejected in the Kip case *supra* can now be counted, the Commissioner cannot find any amendment of the General Election Law which would permit the counting of a write-in vote in the personal choice space with only the last name of a candidate, and has found no subsequent decision superseding the ruling that testimony cannot be taken to prove that there is only one person with a certain name within the district. Therefore, it is the opinion of the Commissioner that this ballot cannot be counted.

The Commissioner finds and determines that Harmon Moyerman received 49 votes and John Million received 48 votes. It is the opinion of the Commissioner that Harmon Moyerman was duly elected to membership on the Board of Education of the Township of Hainesport for the term of three years.

COMMISSIONER OF EDUCATION.

March 20, 1952.

XI

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION
IN THE BOROUGH OF WALLINGTON, BERGEN COUNTY

For the Petitioners, Louis A. Schiffman.

(Benjamin Weiss, of Counsel.)

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the Annual School Election held on February 13, 1952, for members of the Board of Education of the Borough of Wallington, Bergen County, for the following candidates:

Tony Galka	678 votes
Edward R. Smagula	677 votes
Frank Monkowski	674 votes

A recount of the ballots was held in the County Administration Building, Hackensack, on Wednesday, March 5, 1952, in so far as the above-mentioned candidates were concerned.

At the close of the recount at Hackensack, the results were as follows:

Tony Galka	675 votes
Edward R. Smagula	671 votes
Frank Monkowski	667 votes

The ballots to be referred to the Commissioner for determination were classified into Exhibits.

EXHIBIT A. Ten ballots with six votes for Frank Monkowski, six votes for Edward R. Smagula, and two for Tony Galka. These ballots have cross (X) or check (V) marks after the candidates' names but have no mark in the squares before the names. According to the General Election Law (N. J. S. A. 19:16-3g) and previous decisions of the Commissioner, these ballots cannot be counted. *In the Matter of the Recount of Ballots Cast at the Annual School Election in the Township of Union, Union County, 1949 School Law Decisions at page 92; George W. Evans vs. Clementon Township Annual School Election, 1938 School Law Decisions at page 181.*

An examination of the other referred ballots shows that by counting the remainder of the ballots in a manner most favorable to Edward R. Smagula and Frank Monkowski and most unfavorable to Tony Galka, Tony Galka's lead could not be overcome. Therefore, it is not necessary for the Commissioner to determine the other ballots referred to him.

It is the opinion of the Commissioner that Tony Galka was duly elected a member of the Board of Education of the Borough of Wallington for a term of three years.

COMMISSIONER OF EDUCATION.

March 20, 1952.

XII

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION
IN THE BOROUGH OF SAYREVILLE, MIDDLESEX COUNTY

For Frank M. Uszczak, Mr. Samuel S. Cohen (Mr. Eric J. Gavel, of Counsel).
For Stanley Marcinczyk, Mr. Paul Kemeny.

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the Annual School Election held in the Borough of Sayreville, Middlesex County, on February 13, 1952:

Stanley Marcinczyk	693 votes
Frank M. Uszczak	690 votes

A recount of the ballots cast for the above-mentioned candidates was held in the Middlesex County Court House, New Brunswick, on Thursday, March 13, 1952. Counsel for Stanley Marcinczyk objected to the Commissioner's granting a recount based on a petition alleging the probability of human error in the original count by the local school election officials. There were 2,086 ballots cast in this election. The Commissioner considers that a difference of three votes was sufficient for a recount in view of the number of ballots cast. It has been held that a recount is a controversy under the School Law and that the Commissioner is authorized to conduct a recount under the terms of R. S. 18:3-14. See *Buren vs. Albertson*, 54 N. J. L. 72, 22 A. 1083.

The result of the recount of all ballots counted at New Brunswick is as follows:

Stanley Marcinczyk	680 votes
Frank M. Uszczak	675 votes

The ballots which were referred to the Commissioner for determination were classified into Exhibits, as follows:

EXHIBIT A. One ballot with one vote for Frank M. Uszczak. It appears to the Commissioner that the voter made a cross (X) mark in the square for Frank M. Uszczak and then pencilled over the cross to erase it. Counsel for Frank M. Uszczak contends that the mark is a "doodle mark," the intent is good, and that the vote should, therefore, be counted. The Commissioner cannot agree because, in his opinion, the cross (X) mark was erased. Both the School Law (N. J. S. A. 18:7-30) and the General Election Law (N. J. S. A. 19:16-3g) require a cross (X), plus (+) or check (V) in the square before the candidate's name if the vote is to be counted. Also see *George W. Evans vs. Clementon Township Annual School Election*, 1938 School Law Decisions at 181; *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, Union County*, 1949 School Law Decisions at 95.

EXHIBIT B. Fourteen ballots with eight votes for Stanley Marcinczyk and six votes for Frank M. Uszczak. All these ballots have erasures. The question to be determined by the Commissioner is whether an erasure before the name of one or more candidates may be counted if the ballot is otherwise properly marked for other candidates. Both the General Election Law (N. J. S. A. 19:16-4) and previous decisions of the Commissioner of Education provide that an erasure does not void a ballot, unless the Commissioner shall be satisfied that the erasure was intended to identify or distinguish the ballot. It is the opinion of the Commissioner that the erasures were not intended to identify the ballots and, therefore, these votes will be counted. *In re. East Rutherford Annual School Election*, 1938 School Law Decisions, at 186; *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, supra*.

EXHIBIT C. Six ballots with four votes for Stanley Marcinczyk and two votes for Frank M. Uszczak. Legal marks are made in the squares but the same kind of mark is not used in all the squares. For example: A ballot might have a cross (X) mark in the square before the name of a candidate and a check (V) mark in the

squares before the public questions, or a cross (X) mark might be made before one question and a check (V) before another question. Counsel for Frank M. Uszczak maintains that such markings were used to distinguish the ballots. It is significant that such ballots were cast for both candidates and that the markings follow no consistent pattern. It is the opinion of the Commissioner that the ballots were not marked for purposes of identification. However this may be, the Commissioner cannot void ballots on which legal marks are made. The illustrated ballots for school elections under N. J. S. A. 18:7-31 and 18:7-32 specifically provide that a voter may make a cross (X), plus (+) or check (V) in the squares before the names of candidates or before public questions. Therefore, these ballots will be counted.

EXHIBIT D. Two ballots with two votes for Stanley Marcinczyk. The ballots have cross (X) marks in the squares before candidates' names and also at the right of their names. Both N. J. S. A. 19:16-3b and the decision of the Commissioner *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, Union County, supra*, provide that such ballots must be counted unless the Commissioner is satisfied the ballots were so marked for purposes of identification. It is the opinion of the Commissioner that the ballots were not marked for purposes of identification and, therefore, must be counted.

EXHIBIT E. Five ballots with five votes for Frank M. Uszczak. There are marks before the public questions which counsel for Stanley Marcinczyk contends were used to identify the ballots. One ballot has an eccentric cross (X) mark before the "NO" on the first question; the second has a "NO" before the "YES" on the second question; the third ballot has a cross (X) mark over the "NO" on the first question; the fourth ballot has the "NO" underscored before the first question and the "YES" underscored before two other questions; the fifth ballot has a cross (X) mark in the square before the first question and the "NO" on the same question is also underscored. It is quite common to find in recounting ballots that the voters express certain idiosyncrasies. It is the opinion of the Commissioner that these marks were not intended to identify the ballots. See N. J. S. A. 19:16-4 and the following decision of the Commissioner *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, Union County, supra*.

The following is the result of the recount:

	<i>Stanley Marcinczyk</i>	<i>Frank M. Uszczak</i>
Votes at conclusion of recount	680	675
Exhibit A	0	0
Exhibit B	8	6
Exhibit C	4	2
Exhibit D	2	0
Exhibit E	0	5
	----- 694	----- 688

The Commissioner finds and determines that 694 votes were cast for Stanley Marcinczyk and 688 votes cast for Frank M. Uszczak.

COMMISSIONER OF EDUCATION.

March 20, 1952.

XIII

PROTECTION UNDER THE SENIORITY PROVISIONS OF THE TENURE
ACT NOT RETROACTIVE

MARY E. LANGE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF AUDUBON, CAMDEN COUNTY,

Respondent.

For the Petitioner, Finnegan and Mohrfeld (John J. Finnegan, of Counsel).
For the Respondent, Edward T. Curry.

DECISION OF THE COMMISSIONER OF EDUCATION

The Petitioner claims that, by virtue of the tenure laws, R. S. 18:13-16, 18:13-17, and 18:13-19, she is entitled to a principalship in the School District of the Borough of Audubon and asks the Commissioner to review the action of the Board of Education of the District in appointing another person to a vacant principalship in July, 1951.

The essential facts are stipulated, as follows:

- "1. The Petitioner was appointed a teacher in the School District of the Borough of Audubon in 1912 and has remained continuously in said Board's employment to date.
- "2. The Petitioner was appointed a teaching principal in the grade schools in 1914 and served as such until the end of the school year, June 30, 1927.
- "3. In June of 1927, Petitioner was appointed 'Supervisor to Supervise Grade Schools,' starting her duties with the opening of schools in September, 1927.
- "4. In June of 1944, the Respondent, for reasons of economy and diminution of pupils, abolished the position of 'Supervisor to Supervise Grade Schools.'
- "5. At the end of the school year 1943-1944, Petitioner was appointed a teaching principal in one of the grade schools. Petitioner served as such from the beginning of the Fall term until September 18, 1944, when it was ascertained there was no vacancy as a teaching principal in the Audubon Grade Schools.
- "6. On September 18, 1944, Petitioner became a teacher in the said school district.
- "7. In June of 1951, Petitioner made application for appointment to the vacancy in the position of Principal created by the resignation of one Maude Burkett, Principal of one of the district's two grade schools.
- "8. Petitioner has the necessary certificates and is otherwise qualified for the position of principal in the grade school.
- "9. No other applicant for said position had tenure as a Principal.
- "10. On July 25, 1951, the Respondent appointed George A. Oldham, a teacher in the Audubon Schools, to fill the vacancy of Principal created by the resignation of Maude Burkett.
- "11. There was no diminutions of pupils in the Audubon Schools in the Spring of 1927 at the time of the appointment of Petitioner as 'Supervisor to Supervise Grade Schools.'
- "12. Respondent admits that Petitioner presented herself at this Fall term, as Principal and the continuance of the Petitioner as a teacher is not deemed an acquiescence on her part in the appointment of another to the position of Principal of a grade school, which position Petitioner is seeking by these proceedings.
- "13. Mrs. Maude Burkett became a teacher in the Audubon Schools in 1916 and first became a Principal in the school year 1926-1927.
- "14. Miss Gladys Linck first came to the Audubon School System on September 1, 1921, and first became a principal in the grade schools at the beginning of the school year 1927-1928."

The principal question to be answered in this case seems to be whether petitioner's service as principal from 1914 to 1927 entitled her to the principalship which became vacant in 1951. The answer must be in the negative. It is the opinion of the Commissioner that, when the Petitioner accepted the assignment of Grade Supervisor and relinquished her duties as Grade School Principal, the Respondent Board of Education was not required by law to place the Petitioner upon the preferred eligible list for reappointment as Principal when a vacancy in a principalship should occur.

There was no seniority law prior to March 26, 1935, when Chapter 126 of the Laws of 1935 was enacted. Prior to the enactment of this law, a Board of Education was not required to recognize seniority in dismissing teachers under tenure, except that nontenure teachers had to be dismissed before tenure teachers. *Downs vs. Hoboken*, decided by the Commissioner and State Board of Education, 1938 Compilation of School Law Decisions, 515, and by the Supreme Court, 12 N. J. Misc. 345, and Court of Errors and Appeals, 13 N. J. Misc. 853. The provisions of seniority laws enacted since 1927 are not applicable to the instant case because the Supreme Court in the case of *Nichols vs. Board of Education of the City of Jersey City*, 9 N. J. 241, held that the seniority statute R. S. 18:13-19, does not have a retrospective operation.

Presumably, the Petitioner voluntarily accepted the supervisory assignment in 1927. According to the decision in the case of *Davis vs. Overpeck*, 1938 Compilation of School Law Decisions, 464, she could not have been required to relinquish the principalship without a hearing under the tenure act. The State Board said that the language "no Principal or teacher shall be dismissed . . . is the equivalent of (1) no Principal shall be dismissed and (2) no teacher shall be dismissed except for just cause after a trial. When a Principal is reduced to the rank of teacher, he is dismissed as a Principal . . ." In the case of *Wythes vs. Camden*, 1949 School Law Decisions, 131, the Board of Education attempted to assign a High School Principal to the position of "Director of Secondary Commercial Education." It was decided by the Commissioner that he could not be assigned to such a position without his consent because the principalship is specifically designated for tenure protection and cannot be abolished. It was pointed out that the position of "Director of Secondary Commercial Education" could be abolished at any time. The reasoning of this decision is that when a person gives up a principalship protected by a specific designation in the law in order to assume a position without such definite protection, he loses his tenure as Principal and has thereafter only such protection as may be construed to exist for a position not specifically referred to in the tenure act. If the Petitioner was not satisfied with her new assignment, she should have asserted her rights, if any, in 1927 and she is now, of course, barred by laches from asserting them.

The word "supervisor" is not mentioned specifically in the tenure law. The Commissioner held, however, in the case of *Werlock vs. Board of Education of the Township of Woodbridge, Middlesex County*, 1949 School Law Decisions, 107; 5 N. J. Super. 140, that the word "teacher" is broad enough to include supervisors. Therefore, it is the opinion of the Commissioner that the only tenure held by the Petitioner was that of a teacher when her position as supervisor was abolished in 1944.

Petitioner contends that considerations of public policy and legislative intent require construction of the tenure act in effect in 1927 that she retained her tenure as Grade School Principal while serving as supervisor. This is tantamount to reading into the prior provisions of the tenure statute the acts of 1935 and 1951. In the *Nichols case, supra*, the Supreme Court rejected the theory that the new enactment is merely a clarification of the existing statute. The Court said:

"These differences between the prior provision and the 1951 act are so great as to indicate not clarification of the existing statute, but an entirely new legislative scheme, one of far greater scope. The language of the 1951 amendment is clear and unambiguous and makes no provision for retrospective operation."

The intent of a statute must be gathered from its language. "Where the words of a statute are clear and their meaning and application plain, there is no room for judicial construction." *Preziosi vs. Buonaccorsi*, 16 N. J. Super. 15. The Commissioner cannot supply an omission in the law. *City Affairs Committee of Jersey City vs. Division of Local Government of State Department of Taxation and Finance*, 46 A. 2d. 558.

It appears in the stipulation that the Petitioner was appointed a Principal after her supervisory position was abolished in June of 1944 and served as such until September 18, 1944. Thereafter, she was appointed a teacher on September 18, 1944. It remains to determine whether this service as principal gave the Petitioner seniority rights which she can now assert.

It would appear from Petitioner's brief that her appointment as a principal in September, 1944, was made without an understanding of the tenure rights of the incumbents of the two elementary principalships. It seems that both principals of the elementary schools, although appointed as principals subsequent to the Petitioner's appointment as Principal, had during her incumbency as supervisor acquired more service as Principal than the Petitioner. Petitioner then acquiesced in a local ruling that she was not entitled to the principalship and accepted a teaching position. She maintains, however, that she did not, thereby, relinquish any rights to the next principalship vacancy.

The Commissioner has already decided that the Petitioner, under the act in effect in 1927 when she gave up the principalship to accept a supervisory position, had no right to remain on a preferred eligible list as principal for subsequent re-employment as Principal. When an attempt was made to appoint her a Principal in 1944, the principals of both elementary schools were under tenure. Therefore, there was no vacancy. The Commissioner in the case of *Alice Marie DeBros vs. Board of Education of the Town of West New York*, 1949 School Law Decisions 167, affirmed by the State Board of Education, held that a person appointed to a principalship when no vacancy exists has no tenure or seniority rights when a vacancy occurs thereafter. Therefore, it is the opinion of the Commissioner that the Petitioner's appointment as Principal in 1944 was void and that she acquired no seniority rights thereby.

The Commissioner concludes that the Petitioner is not upon any preferred eligible list which now entitles her to re-employment as Principal, pursuant to R. S. 18:13-19.

The petition is dismissed.

COMMISSIONER OF EDUCATION.

June 12, 1952.

HIGH SCHOOL DESIGNATION CASE DECIDED PURSUANT TO
R. S. 18:14-7

XIV

CHANGE OF DESIGNATION OF HIGH SCHOOL FOR GOOD CAUSE
APPROVED BY THE COMMISSIONER OF EDUCATION

IN RE APPLICATION OF BOARD OF EDUCATION OF THE TOWNSHIP OF DELRAN, BURLINGTON COUNTY, FOR A CHANGE OF DESIGNATION FOR ITS HIGH SCHOOL PUPILS FROM PALMYRA HIGH SCHOOL TO THE RIVERSIDE HIGH SCHOOL

For the Petitioner, James M. Davis, Jr.
For the Respondent, Parker, McCay and Criscuolo.
(Albert McCay, of Counsel.)

DECISION OF THE COMMISSIONER OF EDUCATION

For a number of years the high school pupils of Delran Township have attended Palmyra High School, the designated high school for Delran Township. The Petitioner, pursuant to Section 18:14-7 of the Revised Statutes, has petitioned the Commissioner of Education for a change of designation in order that the Delran high school pupils will, in the future, attend the Riverside High School.

The case has been presented on briefs and sworn statements by both parties and through oral argument held on May 15, 1951, in the office of the Commissioner of Education. The Commissioner of Education can also take notice of the records available to him in the Department of Education.

The pertinent statute reads in part as follows:

"18:14-7. Any school district heretofore or hereafter created, which has not heretofore designated a high school or schools outside such district for the children thereof to attend, and which district lacks or shall lack high school

facilities within the district for the children thereof to attend, may designate any high school or schools of this State as the school or schools which the children of such district are to attend. . . .

"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 unless good and sufficient reason exists for such change and unless an application therefor is made to and approved by the Commissioner."

Both the Petitioner and the Respondent agree that Palmyra High School is the designated high school for Delran pupils. The petition for change and the Respondent's reply raise the question whether "good and sufficient reason exists for such change" to be approved by the Commissioner. Reasons advanced for the change revolve around three major points:

1. The welfare of the pupils.
2. Economies in operation.
3. Effect upon the present designated High School District if pupils are transferred to another high school.

These will be considered in the order in which they appear above.

1. *The welfare of the pupils.* The Commissioner finds that the formal educational offerings listed in the programs of studies of both Palmyra and Riverside High Schools are approximately equal in scope and content, except that Palmyra High School offers a course in agriculture which is not now available in the Riverside High School. Under affidavit, the President of the Riverside Board of Education has stated that the Riverside Board of Education has agreed to introduce a course in agriculture, if the Delran pupils are transferred to the Riverside High School. While the Riverside High School does not offer the Social Scientific Curriculum which is available at Palmyra High School, its program of studies is so arranged that any pupil may choose, under advisement of school counsellors, the individual subjects which he and his parents consider most suited to his needs, interests and abilities.

In the amount of extra-curricular opportunities, such as athletics, clubs, dramatics, and musical organizations, which are available to Delran pupils, the Petitioner and the Respondent differ. The Petitioner argues that Delran pupils are restricted in their opportunity to participate in after-school activities because of the difficulties of securing transportation except at the time when the regular school buses operate. The Respondent replies that public transportation is available at other times. The Respondent points out that "all of the members of the graduating class of 1950 who lived in Delran Township, except one, participated in extra-curricular activities. Thirty-seven per cent of the Delran pupils participated in extra-curricular activities in the school year 1950-1951, while only 31.5% of the students enrolled the same year from Delair in Pennsauken Township participated in such activities."

The Commissioner believes that the difference in the rate of participation between Delair pupils and the Delran pupils does not constitute a valid argument that there would not be greater participation by the Delran pupils if they were attending a school within walking distance for most of them. Since almost all of Delran Township is within a two and one-half mile radius of Riverside High School and the more densely populated sections lie considerably closer, it appears reasonable to expect that there would be opportunity for more extensive participation of pupils in activities occurring outside regular school hours if the pupils were not dependent upon any form of transportation but were able to come and go between school and home by walking.

The Commissioner also believes that pupils who are not dependent upon bus transportation are also more free to use the school library and to visit their classroom teachers before and after school hours. Pupils who regularly walk to school are not subjected to missing a day at school because they have arrived at a bus stop after the bus has passed the pick-up point.

In the welfare of the pupils there is also to be considered the effects of the attendance of pupils at a school which lies within the social and economic reaches of the community it serves. The Petitioner says:

"All of the five communities from which the principal part of the Delran school population is drawn are in effect suburbs of Riverside. They have little or no community interest with the Borough of Palmyra. In many places the line of demarcation between homes in Riverside Township and those in Delran Township is not apparent to persons who are not concerned officially with this jurisdictional boundary. The Riverside and Delran people intermingle socially and businesswise. The strong probabilities are that high school graduates residing in Delran Township will find their life's work in or in the vicinity of Riverside and not in or in the vicinity of Palmyra. It is an advantage not easily to be discarded that these young people who are preparing themselves for a business or professional career should have the advantage of the school ties which are local to the community in which they are likely to earn their living in their post school years."

In an affidavit by Frank C. Ackerman, President of the Board of Education of Delran Township, the following statement is made:

"5. On the contrary, I know that there is a community of interest centering in Riverside with respect to the school children of Delran Township. The service clubs consisting of the Lions Club and the Kiwanis Club, draw upon Delanco, Delran Township and Riverside for their membership. These organizations have offered prizes to children showing proficiency in certain subjects in the Delran Township Public Schools. The American Legion, having its home in Riverside, and drawing its membership from Delran, Delanco, as well as Riverside, has also followed this practice for many years. When these children have finished their grammar school training and enter the Palmyra High School that interest does not follow them to that particular school."

The Respondent points out that a similar contention was made by the Borough of Jersey Homesteads, *Board of Education of Jersey Homesteads vs. Board of Education of Upper Freehold*, 2 N. J. S. L. D. 59 (April 25, 1946), affirmed by the State Board of Education, 3 N. J. S. L. D. 22 (October 11, 1946), and that the petition was dismissed.

The Commissioner calls attention to the fact that in the decision cited above, he said:

"Due consideration has been given to the desire of the petitioner that its pupils attend school in its community orbit and to the fact that Hightstown is nearer to Jersey Homesteads than Allentown. However, these considerations are not sufficient in the opinion of the Commissioner to outweigh the considerations unfavorable to the granting of the request for a change of high school designation. The petition is dismissed."

It should be noted that community ties were considered but that they were outweighed by other conditions.

It is the Commissioner's opinion that in two communities located as are Delran and Riverside, there are many natural ties which would not be likely to develop in two communities which are as separated as Delran and Palmyra. For instance, the opportunity for Delran parents to visit the school in Riverside involves less travel than to visit Palmyra. Chances for parents to consult teachers and guidance counsellors are greater. Parents can, more easily, visit the Riverside School to attend evening affairs and to witness sports events. Delran parents will need to travel less distance if they are invited to participate in the planning of the school program. Presumably, too, the high school can more easily call parents into the school building to seek out the sentiment of parents in a contiguous district than it can in a district which is at some distance from the school.

In New Jersey, the principle of strong local autonomy results in the schools being community schools. The evidence indicates that Riverside and Delran are parts of a community bound together by natural ties. While, under the sending-receiving relationship, the provision for adequate educational service will often require pupils to be transported out of their natural community, it is the opinion of the Commissioner that the advantage of educating pupils within their own natural community should not be overlooked.

The welfare of the pupils also involves their safety. The possible hazards of walking along highways from the Delran communities into Riverside are given attention by both the Petitioner and the Respondent. The Petitioner points out that grade children on their way to parochial schools in Riverside from parts of Delran Township now travel along the streets and roads that lead from the various sections of Delran Township to Riverside.

In affidavit the President of the Delran Board of Education says:

"14. I wish to state that in my opinion, the hazard of the highways in the vicinity of and leading to Riverside has been greatly overemphasized by the advocates of Palmyra's cause. While it is true that Route 25 is a very busy highway, the school children at Burlington have to cross it on foot as do the children in Bordentown and Pennsauken. It seems to our Board, however, that if children of grade school age attending the Riverside parochial schools have sufficient judgment to cope with this highway traffic, that certainly children attending high school can be depended upon to do at least as well."

The Respondent contends:

"If the Delran Township Board does not furnish transportation for them, entirely at the Board's own expense, the children will be compelled to walk a considerable distance to school, over dangerous highways. For example, the children living in or near Bridgeboro will be compelled to cross State Highway Route 25, a very dangerous highway, and walk along the Bridgeboro-Riverside Road, a dangerous highway without sidewalks; and the students who live in Cambridge and Riverside Park will be compelled to walk along St. Mihiel Drive, also a dangerous highway without sidewalks."

The Commissioner notes that some of the elementary school pupils now attending the Delran Public School find it necessary to cross Route 25. While Route 25 cuts Delran Township into two approximately equal parts, more than half of the school population lives in the area of Delran Township which lies between Route 25 and Riverside High School. In traveling to Riverside High School less than half the Delran high school pupils would find it necessary to cross Route 25. There is no testimony to indicate that pedestrian travel along the streets and roads that lead from Delran Township into Riverside, or that the crossing of Route 25 by pedestrians has been unusually hazardous or that the hazards are beyond the ability of high school pupils to cope with them. The Commissioner is convinced that there is no evidence to indicate that the hazards of pedestrian travel from Delran Township to Riverside are greater than those which are normally encountered by pupils on their way to and from school.

The Commissioner's conclusion in respect to the welfare of the pupils may be brought together in substance as follows:

While the curricular program of Palmyra and Riverside are approximately equivalent, the Delran pupils would profit educationally through the opportunity to make greater use of the activities program and other services available at Riverside High School.

Although circumstances may often require pupils to be transported out of their natural community, there are educational advantages in educating pupils within their own natural community; Riverside and Delran are parts of a community bound together by natural ties.

There is no testimony to indicate that the hazards of pedestrian travel from Delran Township to Riverside are greater than those which are normally encountered by pupils on their way to and from school.

2. *Savings.* In respect to savings to Delran Township and to the State of New Jersey on cost of transportation, it is apparent that there will be a reduction in the amount of transportation to which the State of New Jersey will contribute if Riverside High School should become the receiving school for Delran pupils. Most of the pupils live within the two and one-half mile limit which has been recognized as the distance beyond which the State may furnish subsidy for high school pupils. For pupils living beyond the two and one-half mile distance, the length of transportation to Riverside would be less than to Palmyra.

The Petitioner claims that there will be savings in tuition costs to Delran Township if Riverside High School becomes the designated school for Delran pupils. The Petitioner says, in part:

"Exclusive of the transportation cost, the cost to the Township of Delran of educating its pupils in the Palmyra School for the coming year will be the sum of \$247.00 each, whereas Riverside by a firm offer has agreed to take these pupils at a cost of \$200.00 each. The annual saving in tuition alone would therefore amount to \$3,100.00."

The Respondent says, in part:

"No facts are alleged which would show any financial savings to the Delran Township Board if the proposed change of designation is granted. . . ."

"Assuming that the Riverside Board of Education is willing to accept the Delran pupils for a tuition rate of \$200.00, it can give the Delran Township Board no assurance that the rate will remain at that figure."

The Respondent cites the decision of the Commissioner in the case of the *Board of Education of the Township of Sparta vs. Board of Education of the Town of Newton*, 3 N. J. S. L. D. 15 (October 11, 1946), in support of his position.

In respect to savings in cost of tuition to a sending district, the Commissioner of Education has said (*Board of Education of the Township of Sparta, Petitioner, vs. Board of Education of the Town of Newton, Sussex County, Respondent*, October 11, 1946):

"Where financial conditions alone are involved, a change should be granted only in cases where the financial condition of the petitioning district relative to the receiving district is so unfavorable and its plight so desperate that relief through a transfer to a district with a lower tuition rate is imperative."

The Commissioner's decision was supported by the Decision of the State Board of Education upon appeal January 3, 1947. In the present case no evidence has been introduced to indicate that a condition of financial distress exists in Delran Township.

In another part of the decision quoted above, the Commissioner pointed out that there can be no assurance that the lesser tuition rate will continue for any extended period of time. This is particularly significant in the present case since the present allowable maximum charge for tuition in Riverside Borough exceeds that of Palmyra Borough. It is conceivable that an increase in the tuition charge in Riverside would in time exceed the potential saving in transportation costs of Delran pupils.

The Commissioner concludes that the difference in tuition charges and transportation costs are not pertinent to a decision in this case.

3. *Effect upon the present designated High School District if pupils are transferred to another high school.* The Petitioner states that "there can, therefore, be no financial loss to Palmyra" if the change of designation is made. Petitioner's brief refers to "studies of projected school population made under the direction of your department (Department of Education) and of the County Superintendent of Schools of Burlington County with respect to school districts involved." Giving figures in terms of Average Daily Attendance rather than as enrollment or as figures used for apportionment purposes, Petitioner says in part:

"Palmyra is a receiving district for Delair (part of Pennsauken Township in Camden County), a small fragment of Delanco (the bulk going to Burlington), Cinnaminson, Delran and Riverton. According to your survey in 1949-1950 Delran had a high school population of 64 and for the year 1952-1953 it is estimated that the Delran high school population would still be 64. There were during 1950-1951 actually 66 pupils in attendance at the Palmyra school from

Delran. The students to which I am referring are expressed in terms of A. D. A. and therefore these figures are in substantial conformity with actual number of pupils. Palmyra during 1949-1950 educated 197 students of its own in its high school, and in 1952-1953 it expects to educate 264 pupils of its own. A difference of 67 pupils. 1952-1953 is only one year away. Therefore, by the very next school year Palmyra through the increase in its own school population would more than replace all of the pupils which Delran sends or can be expected to send. . . ."

"Carrying this projection still further for the school year 1954-1955, the anticipated high school population of Delran is still 64, whereas the Palmyra population would have increased 15 more to 279, and by 1960 the Delran high school population still being estimated at 64, Palmyra's is estimated to be 397. Over the next nine years, therefore, no increase is expected so far as the Delran pupils are concerned but Palmyra is expecting to increase its own high school population by more than 100%. Additionally, the Palmyra High School, in 1949-1950, educated 601 pupils which include its own 197 and Delran's 64. By 1960 it expects to be educating 801, an increase of 33 $\frac{1}{3}$ % without Delran contributing in any wise to this increase. . . ."

The Respondent denies enlightenment as to any facts upon which the figures quoted by the Petitioner are based. Although Respondent presents some enrollment figures for 1950-1951 and earlier years to show that Palmyra's resident enrollment has declined, none of the Petitioner's average daily attendance figures is directly contested by the Respondent's brief either as the figures apply to 1949-1950 conditions or they apply to forecasts of future enrollments. The Respondent raises the question, "Who knows now what the 'future strain' upon the facilities of any school will be?" No alternate study of forecasts of enrollments or of average daily attendance is offered by the Respondent.

It is the opinion of the Commissioner that any contemplated change of designation must take into account the effect upon the designated school of transferring pupils out of this school. The Commissioner has said (*Board of Education of Haworth, Petitioner, vs. Board of Education of Dumont, Respondent, August 24, 1950*):

"The success of the so-called 'receiving-sending set-up' has given New Jersey an enviable position in the nation in secondary education. New Jersey has fewer small high schools than any other State in the United States. It was to give stability to the receiving-sending set-up that the first high school designation law was passed. Before the enactment of this law receiving districts hesitated to bond themselves to erect buildings and to expand their facilities to provide for tuition pupils for the fear that the tuition pupils might be withdrawn after the facilities have been provided. The high school designation law protects such districts from the withdrawal of tuition pupils without good cause. This statute benefits the sending district as well as the receiving district. If the law were not in effect, many sending districts, either individually or by uniting with other districts, would be burdened with the erection and maintenance of high schools."

In order to consider the enrollment of the Palmyra High School and the districts from which the pupils come, the following figures are taken from the Report of Statistics for Determining Apportionment under Chapter 63, P. L. 1946, commonly called Form B-4:

<i>District</i>	<i>Number of Pupils Attending Palmyra High School from the Districts Named, 1949-1950</i>	<i>Same, 1950-1951</i>
Palmyra	231	260
Cinnaminson	130	137
Delanco	97	74
Delran	71	69
Riverton	81	79
Pennsauken	60	54
Other	1	0
Total	671	673

Palmyra High School is the designated school for all the high school pupils from Cinnaminson, Delran and Riverton. Delanco pupils are divided between Palmyra and Burlington. Pennsauken pupils are shared by Palmyra, Merchantville and Moorestown. In the figures above, although there is a decrease in the number of pupils received in Palmyra, the resident enrollment of Palmyra has increased sufficiently to compensate for the loss.

The Commissioner is convinced that anticipated enrollments must be considered, if adequate housing is going to be provided for the schooling of children born during the period of high birth rate. New building or other provisions must be planned in advance in order to be ready when needed. The Commissioner believes that the Petitioner's argument appears valid that the enrollment of Palmyra High School can be expected to increase considerably during the next ten years largely from increase in resident pupils.

Evidence was introduced by the Respondent to show that additional high school facilities have been provided by Palmyra since 1934-1935 (the first year that Delran students attended Palmyra High School). Respondent includes in these facilities the construction of a large high school stadium, four additional classrooms made available, the renovation of the high school auditorium, library, cafeteria and classrooms, and the purchase of new books, furniture and other classroom equipment. In addition "since that year, it has also constructed a greenhouse, garage and farm shop for use in the agriculture courses, and has purchased a large quantity of welding equipment, farm machinery and other equipment for use in the agricultural courses. These and many other things have been done for the purpose of enhancing the educational offerings of Palmyra High School."

The Commissioner notes that the purpose of the additions and improvements is stated to have been the enhancing of the educational offerings. As there was no evidence to indicate that the decrease in enrollment since 1941-1942 had resulted in rooms being left vacant, it may be reasonably assumed that the additional rooms are being used either to provide a more broadened program of offerings than were available in 1941-1942, or to reduce the class sizes. There is no indication that Palmyra has facilities now unused which would not be necessary for a normal enrollment. Although the Commissioner feels that it is necessary to give careful consideration to the effect of removal of pupils from a designated school, the evidence indicates that, in the face of growing enrollments, Palmyra will not find itself with excess facilities left upon its hands by the gradual withdrawal of the Delran pupils.

After consideration of all the facts, in the opinion of the Commissioner good and sufficient reasons have been established for the transfer of Delran pupils from Palmyra High School to the Riverside High School. Although the evidence indicates that the educational offerings in both Palmyra High School and Riverside High School are approximately equal, the geographical relationship of Delran and Riverside is such that pupils will have greater opportunity to participate in activities and to utilize the facilities of the Riverside High School to improve their education. The Commissioner believes that there is no evidence to indicate that the hazards to safety of pupils walking from Delran to Riverside are greater than would normally be encountered by pupils walking to and from school. The Commissioner has concluded that the differences in tuition charges and transportation costs cannot be considered pertinent to a decision in this case. It is the Commissioner's opinion that a gradual change of designation can be brought about without danger of reducing the enrollment of Palmyra High School in a way which will result in injury to the educational program of Palmyra High School.

The Commissioner therefore grants the petition subject to the following conditions:

1. That Riverside High School shall become the designated high school for all pupils who are promoted from the eighth grade of Delran Township in June 1952 and thereafter, and also for all high school pupils who move into Delran Township who have not previously been enrolled in Palmyra High School.
2. That Palmyra High School shall continue to be the designated high school for all high school pupils who are now residents of Delran and who are currently enrolled in Palmyra High School.

COMMISSIONER OF EDUCATION.

December 19, 1951.

Appeal to State Board of Education withdrawn.

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DECISION OF THE STATE BOARD OF EDUCATION
PURSUANT TO R. S. 18:13-58

XV

TRUSTEES OF THE TEACHERS' PENSION AND ANNUITY FUND MAY
REQUIRE A THIRTY-DAY WAITING PERIOD FOR DISABILITY
RETIREMENT UNDER OPTION I

NANCY FRIGIOLA, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROSE FRIGIOLA,
Petitioner,

vs.

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

For the Petitioner, Alfred N. Cozzi.

For the Respondent, Theodore D. Parsons, Attorney-General of New Jersey
(Daniel DeBrier, Deputy Attorney-General, of Counsel).

DECISION OF THE STATE BOARD OF EDUCATION

This is an appeal under the provisions of R. S. 18:13-58 from a ruling of the Board of Trustees of the Teachers' Pension and Annuity Fund, denying to the Petitioner payment to her, as representative of her sister, Rose Frigiola, and as designated beneficiary, of certain pension funds allegedly due her under Option 1 contained in R. S. 18:13-68, selected by her sister, the decedent above named, prior to the latter's death.

The essential facts are stipulated: On June 16, 1949, Rose Frigiola sent a letter to the Supervising Principal of the Fairview Public Schools enclosing an application for retirement with the request that the form be forwarded to the Teachers' Pension and Annuity Fund after certain necessary information had been filled in by the District Clerk of the Board of Education. The Supervising Principal mailed the application for retirement to the Pension Fund on June 20, 1949, and receipt of the same was acknowledged on June 22, 1949.

On July 7, 1949, the Board of Trustees of the Pension Fund approved the disability retirement as of June 22, 1949, to become effective thirty days thereafter; namely, on July 22, 1949. Rose Frigiola died on July 15, 1949, which was, of course, prior to July 22, 1949, the date designated by the Respondent as the effective date of the pension.

Under a rule of the Respondent Board of Trustees, retirement under Option I does not become effective earlier than thirty days from the time the Option I request is received in the Pension Fund office. Inasmuch as Rose Frigiola did not live until July 22, 1949, the Respondent maintains that the Option I selection was not effective and, therefore, the named beneficiary is entitled only to the return of accumulated contributions made by Rose Frigiola, amounting to \$2,724.80, plus interest, which amount the Respondent has tendered. If Rose Frigiola had been retired by the Respondent under Option I, without the thirty-day waiting period, her beneficiary, Nancy Frigiola, would have been entitled to \$9,575.00, less any amount paid to Rose Frigiola prior to her death. Petitioner maintains that the pension became vested upon its approval by the Board of Trustees on July 7, 1949, and that the Respondent was without authority to require a waiting period of thirty days before the pension became effective.

The question presented is stated in the stipulation as follows:

"The legal issue is whether or not the pension granted in this matter accrued immediately upon approval or had to wait the expiration of thirty days."

R. S. 18:13-68, relating to option benefits at retirement reads as follows:

"18:13-68. At the time of his retirement, any contributor may elect to receive his benefits in a retirement allowance payable throughout life, or he may, on retirement, elect to receive the actuarial equivalent at the time of his annuity, his pension or his retirement allowance in a lesser annuity, or a less pension, or a less retirement allowance, payable throughout life with the provisions 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 having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board of trustees.

"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 having an insurable interest in his life 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, one-half of his annuity, his pension or his retirement allowance shall be continued throughout the life of and paid to such person having an insurable interest in his life 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 such person or persons as he shall nominate, provided 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 to his annuity, his pension or his retirement allowance and shall be approved by the board of trustees."

It should be noted that none of the options requires a thirty-day waiting period. It should also be noted that the above-mentioned options provided in the statute are the same for superannuation retirement, pursuant to R. S. 18:13-50, and for disability retirement, pursuant to R. S. 18:13-57. It should be pointed out further that the postponement of the effective date of retirement under Option I until thirty days after the receipt of the application in the Pension Fund office is not by virtue of a specific statutory provision but rather by virtue of a rule of the Pension Fund Trustees.

Under the terms of R. S. 18:13-28, the Board has the right to adopt rules and regulations for the administration and transaction of its business. R. S. 18:13-28 reads as follows:

"The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article shall vest in a board of trustees. 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 article, and shall perform such other functions as are required for the execution of the provisions of the retirement system."

The following is an excerpt from the Minutes of the March 8, 1929, meeting of the Board of Trustees found on page 82 of Volume 3 of the Minutes of the Board:

"The Board approved the text of the new Application for Retirement and Information to Applicants for Retirement and authorized the secretary to have the new forms printed and put into use at the earliest possible date."

The following is pertinent in the Application for Retirement:

"The Board of Trustees meets on the second Friday of each month, except in the month of August, when there is no meeting. Unless a later date is requested, retirements granted at any meeting become effective the first of the month following the date of approval or one month after the application is received in the Pension Office, whichever is earlier. *If Option I is requested, the retirement does not become effective earlier than thirty days from the time the Option I*

request is received in the Pension Fund Office. Members who contemplate applying for retirement should therefore have their papers in the Pension Fund Office in time for the board to act upon them in advance of the date of which their salary is to stop." (Italics supplied.)

It is by virtue of this rule, which the Board maintains it had a right to pass pursuant to R. S. 18:13-28, that the Respondent justifies its postponement of the effective date of retirement for thirty days.

The question is raised whether the above-mentioned rule of the Board is, in reality, a rule or merely an adoption of a form. However, in the case of *Mark Morgan and Ellen Morgan, Executors of the Estate of Elizabeth I. Hussey, Deceased*, vs. *Board of the Trustees of the Teachers' Pension and Annuity Fund*, 120 N. J. L. 563, 122 N. J. L. 382, this excerpt from the Minutes was referred to as a rule. While the form upon which Rose Frigiola applied for retirement reads somewhat differently, there is no essential change therein in the requirements for retirement.

Petitioner maintains that the rule of the Board is legislative and not administrative and that, under the guise of an administrative rule, the Board of Trustees has imposed an additional condition precedent to the vesting of a pension not contemplated by the Legislature.

The following is an excerpt from *Abelson's Inc. vs. N. J. State Board of Optometrists*, 5 N. J., p. 412, 1950, Heher, J., page 423:

"The defendant board is invested with authority to make 'such rules and regulations not inconsistent with the law, as may be necessary for the proper performance of its duties * * *.' R. S. 45:12-4. This is a grant of administrative power for the execution of the statutory policy; and its exercise is of necessity restrained by the declared policy and spirit of the statute and the criteria and standards therein laid down, for a grant not thus confined would constitute a delegation of essential legislative power in the contravention of constitutional limitations. The distinction is between the making and the execution of the law. *The authority to make rules and regulations for the effectuation of the statutory policy is administrative and not legislative, if its exercise is confined by certain definite standards of action, even though the regulations be given the force and effect of law.*"

The decision in the case under litigation would seem to turn on whether the rules requiring a thirty-day waiting period before the vesting of the pension is administrative or legislative.

The right of the Board of Trustees to require a thirty-day waiting period was upheld by the State Board of Education and the Supreme Court in *Morgan, supra*. While the *Morgan case, supra*, dealt with a superannuation situation and not a disability situation, nevertheless the reasoning of the State Board of Education and of the Supreme Court is helpful in deciding this case. Both the State Board and the Supreme Court held that retirement is not automatic upon the receipt of an application. Before retirement can be effective, some action must be taken by the Board of Trustees. The State Board of Education held that a time for retirement might be fixed by a general rule to apply to all cases. Since the Board of Trustees exercises discretion in fixing the time for retirement, the only limitation upon the Board is that it not abuse its discretion. The authority of the Board of Trustees to delay the effective date of retirement under Option I for thirty days is not derived from the provisions of R. S. 18:13-50 but rather from its rule-making power pursuant to R. S. 18:13-28. The Board of Trustees was, therefore, within its rule-making power in requiring the thirty-day waiting period. *Griffin vs. Jersey City*, 4 N. J. Super. 81, 66 Atl. 2d. 350; *City of Philadelphia vs. Pennsylvania Public Utility Commission*, 73 Atl. 2d. 391, 164 Pennsylvania Super. 96.

The thirty-day clause in R. S. 18:13-50 should be regarded as a limitation upon the number of days which the Board of Trustees may take in making retirement effective. We shall not indulge in speculation as to why the Legislature imposed no limitation of time for retiring an applicant for disability retirement. It does not follow because no limitation was made that the Board in acting upon an application for retirement cannot fix a reasonable time in the future for effective date of the retirement. The Board has imposed upon itself the same limitation for disability re-

tirement as the law has imposed upon it for superannuation retirement. In so doing, it has not abused its discretion.

The rule under consideration has been in effect since 1929. We should not, therefore, set aside this rule without cogent reasons.

"Although administrative practice does not avail to overcome a statute so plain in its command as to leave nothing for construction, yet, where such practice has been construed and generally unchallenged, it will not be overturned except for very cogent reasons where scope of command is indefinite and doubtful." *Bosley vs. Dorsey*, 60 A. 2d. 691.

"Long established custom or usage is considered in determining construction to be placed on ambiguous statutes unless such custom is plainly at variance with Statute." *Weinacht vs. Board of Chosen Freeholders of Bergen County*, 3 N. J. 330.

Therefore, we conclude that the Board did not err in making a rule requiring an applicant for disability retirement under Option I to wait thirty days before the application is effective.

The petition is dismissed.

STATE BOARD OF EDUCATION.

Dated: April 15, 1952.

Pending before Superior Court.

DECIDED BY THE COMMISSIONER OF EDUCATION JUNE 29, 1951

DOROTHY MATEER,

Petitioner-Respondent,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF FAIR LAWN, BERGEN COUNTY, NEW JERSEY,
Respondent-Appellant.

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed for the reasons stated in the opinion of the Commissioner of Education.

STATE BOARD OF EDUCATION.

October 5, 1951.

DECISION OF THE SUPREME COURT OF NEW JERSEY

A-99, September Term, 1951

CONSTANCE P. NICHOLS,

Petitioner-Appellant,

vs.

BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY,
Defendant-Respondent.

Argued March 17, 1952. Decided

On appeal from Decision of State Board of Education.

Mr. Kenneth C. Hand argued the cause for the Appellant (Mr. Milton A. Feller, Attorney).

Mr. Robert H. Doherty argued the cause for the Respondent.

The opinion of the Court was delivered by BURLING, J.

This is an action in lieu of prerogative writ. The appeal is brought under Rule 3:81-8 to review a decision of the State Board of Education of the State of New Jersey whereby a decision of the Commissioner of Education denying rights under the tenure laws (more specifically detailed, post) to the petitioner-appellant, Constance P. Nichols (hereinafter called the Petitioner), was affirmed. The appeal was

addressed to the Superior Court, Appellate Division, but prior to hearing there certification was allowed on this court's own motion. The proceeding before the Commissioner had been instituted by the Petitioner to test the validity of action taken by the defendant, Board of Education of the City of Jersey City, Hudson County, New Jersey (hereinafter called the City Board), upon abolishing Petitioner's position as assistant superintendent of schools.

The facts, stipulated in this case, are: that Petitioner was appointed as a teacher in the Jersey City school system on September 1, 1928, that she acquired tenure as a teacher in said system in September, 1931, and had tenure as a teacher when, by the City Board's resolution of December 19, 1946, she was appointed assistant superintendent of schools, and on the date, January 1, 1947, when she entered employment in that capacity; that Petitioner is a citizen of the United States of America and holds a State Teacher's Certificate; that Petitioner was employed as assistant superintendent of schools from January 1, 1947, to December 15, 1949, during which time her State Teacher's certificate was in full force and effect; that the City Board on or about December 15, 1949, by resolution of that date, for reasons of economy, abolished the position of Petitioner as assistant superintendent of schools; and that on or about December 15, 1949, Petitioner was assigned to teaching at school No. 22. It appears that Petitioner, under protest, accepted this classroom teaching assignment by letter of December 16, 1949. It also appears that by letter of the same date she protested the abolition of her position as an assistant superintendent of schools.

The Petitioner on or about November 22, 1950, filed a petition with the Commissioner of Education of this State (hereinafter called the Commissioner) wherein and whereby she requested an order directing that she "be placed on a preferred eligible list in order of years of service for re-employment as assistant superintendent of schools whenever a vacancy shall occur in that position." The City Board, by answer to the petition so addressed to the Commissioner asserted two separate defenses, namely, that Petitioner never acquired tenure as assistant superintendent of schools, and that there existed no statute making Petitioner eligible for placement on a preferred list for re-employment whenever a vacancy should occur in the position of assistant superintendent of schools.

The Commissioner dismissed Petitioner's petition on the ground that there existed no statute giving Petitioner eligibility for placement on a preferred list for re-employment in the position of assistant superintendent of schools, in that her position was abolished for reasons of economy and not by reason of natural diminution of the number of pupils in the district. The Commissioner held that it was unnecessary to decide the question of tenure. On Petitioner's appeal the State Board of Education affirmed for the reasons stated by the Commissioner. The State Board although presented with the tenure question likewise found its determination unnecessary. Petitioner, on October 8, 1951, noticed her appeal from this adverse decision of the State Board to the Superior Court, Appellate Division. Prior to hearing there certification of the appeal was allowed upon this court's own motion as hereinbefore stated.

There are three questions involved in this appeal. These may be stated as follows: (a) Did Petitioner have tenure as an assistant superintendent of schools under L. 1938, c. 288, sec. I, as amended by L. 1948, c. 470, sec. 2 (N. J. S. A. 18:13-16.1); (b) Does R. S. 18:13-19 afford re-employment protection to assistant superintendents of schools where the position is abolished by reason of economy and not by reason of a natural diminution of pupils in the school district; and (c) Is L. 1951, c. 292, sec. I, amending R. S. 18:13-19 (as amended by L. 1942, c. 269, sec. I) retroactive in effect? Although the question of tenure as presented on this appeal may be resolved in Petitioner's favor, we decide against her on the construction and application of R. S. 18:13-19 as amended by L. 1942, c. 269, sec. I, *supra*, and as to the effect of L. 1951, c. 292, sec. I, *supra*.

a. TENURE:

On the question of tenure the facts as detailed above are not in dispute and the conclusions to be drawn depend upon construction of the pertinent statutory provisions. On December 19, 1946, when she was appointed and on January 1, 1947, when she became employed, as an assistant superintendent of schools, Petitioner was qualified to hold the position under R. S. 18:6-41. There is no question involved on this appeal as to the construction or effect of L. 1947, c. 148, sec. 9 (effective May 12, 1947),

amendatory of R. S. 18:6-41, *supra*. We pass on the question of tenure as presented, namely, whether "tacking" of prior employment as a teacher is permitted in determining Petitioner's tenure as an assistant superintendent. In doing so no consideration has been given to the effect, if any, of L. 1947, c. 148, sec. 9, *supra*.

Petitioner acquired tenure as an assistant superintendent under L. 1938, c. 288, sec. 1 (N. J. S. A. 18:13-16.1), as amended by L. 1948, c. 473, sec. 2 (effective October 29, 1948), which reads as follows:

"In all school districts superintendents and assistant superintendents of public schools shall during good behavior and efficiency, after the expiration of a period of employment of three calendar years, or after employment for three consecutive academic years together with employment at the beginning of the next succeeding academic year, have and enjoy tenure of service and shall not be removed therefrom except for cause, after hearing and upon due notice. *The time any superintendent or assistant superintendent has served in the district in which he or she is employed at the time this act becomes effective shall be counted in determining such period of employment.*" (Italics supplied.)

The tacking of consecutive periods of service in the school district for the purpose of tenure as assistant superintendent of schools is clearly authorized by the above-quoted statute. The legislature did not confine service to employment as a *superintendent or assistant superintendent*. Compare *Noonan vs. Board of Education of the City of Paterson*, 1938 School Law Decisions 331, 336 (Comm'r of Educ. 1935) aff'd Id. 338 (State Bd. of Educa. 1925); *MacNeal vs. Board of Education of Ocean City*, 1938 School Law Decisions 374 (Comm'r of Educ. 1926) aff'd Id. 377 (State Bd. of Educ. 1927), aff'd *per curiam* Id. 377 (Sup. Ct., 1928).

b. PREFERRED ELIGIBILITY LIST UNDER R. S. 18:13-19 as amended by L. 1942, c. 269, sec. 1:

The Petitioner by these proceedings sought to have her name placed upon a preferred eligibility list for re-employment as an assistant superintendent of schools. It is apparent that she is not entitled to the relief she claims. The benefit she seeks is created by R. S. 18:13-19, as amended by L. 1942, c. 269, sec. 1. The pertinent portion of this statute reads:

"Nothing contained in sections 18:13-16 to 18:13-18 of this title shall be held to limit the right of any school board to reduce the number of *supervising principals, principals or teachers* employed in the school district *when the reduction is due to a natural diminution of the number of pupils in the district.*" (Italics supplied.)

Following the quoted portion, the statute provides that persons having tenure in the designated positions shall be dismissed only in the order of seniority based upon their years in service (juniors being first affected) and those dismissed "shall be and remain upon" a preferred eligible list for re-employment in the order of their years of service.

There are two contentions upon which the City Board relies in opposition to the Petitioner's claims. The first of these is that by the terms of the statute Petitioner's office was not protected. In 1942 assistant superintendents had no tenure status under the existing statutes and there was therefore no logical reason to accord them preferred eligibility for re-employment under R. S. 18:13-19. Subsequently by L. 1948, c. 470, sec. 2 (amending L. 1938, c. 288, sec. 1; see N. J. S. A. 18:13-16.1), assistant superintendents were placed in tenure status. This change in policy resulted in the enactment of L. 1951, c. 292, sec. 1, the effect of which does not enure to the benefit of Petitioner, as hereinafter discussed.

The second contention of the City Board is to the effect that the statute, R. S. 18:13-19 as amended by L. 1942, c. 269, sec. 1, *supra*, does not apply where reduction of the number of officers named therein occurs as a result of economy rather than due to a natural diminution of the number of pupils in the district. This must likewise be resolved in favor of the City Board. In the first place, the statute as it then read did not apply to instances where an office or position was abolished, but only to cases where the *number* of persons holding such office was reduced. In the record before us there is no indication that there was a mere *reduction* of the number of assistant superintendents. The matter has been presented here as well as before

the administrative tribunals below on the premise that the office of assistant superintendent was abolished. Secondly, the statutory language refers only to reduction by reason of natural diminution of the number of pupils in the district, and not by reason of economy. Economy may well be construed as inclusive of the statutory reason (natural diminution of the number of pupils) but the converse is not acceptable. Economy may dictate a reduction of the number of principals, superintendents or teachers or the abolition of an office even where there is a natural *increase* in the number of pupils. The necessity may result from an improvement of teaching methods or administrative practices or from an increased cost of maintenance of the school system arising from causes other than natural diminution of pupils. Compare *Werlock vs. Bd. of Education of Twp. of Woodbridge*, 5 N. J. Super. 140 (App. Div., 1949). These views are not inconsistent with *Seidel vs. Bd. of Education of Ventnor City*, 110 N. J. L. 31 (Sup. Ct., 1933). In that case it was held that where a Board in absence of statute *reduced the number of teachers* those qualified and having tenure should have been retained until those not qualified and not having tenure were released. In the matter before us the question of retention in the office of assistant superintendent was not raised by the Petitioner and in addition the facts as presented indicate that the position was abolished.

c. EFFECT OF L. 1951, c. 292, sec. I (amending R. S. 18:13-19, *supra*) :

The Petitioner contends that L. 1951, c. 292, sec. I, amending R. S. 18:13-19, *supra*, should be construed as merely a curative statute and therefore be accorded retroactive operation. Such construction is not permissible here.

Words in a statute ought not to have a retrospective operation unless they are so clear, strong and imperative that no other meaning can be annexed to them. *Kopczynski vs. County of Camden*, 2 N. J. 419, 424 (1949). In the foregoing construction of R. S. 18:13-19 as amended by L. 1942, c. 269, sec. I, the reason for the omission of the office of assistant superintendent from the statutory provision has been demonstrated. In addition, the 1951 enactment provides tenure security where an office is abolished, as well as where the number of persons holding an office of the designated category is reduced; it adds to the existing reason for reduction (and now abolition of office), namely, natural diminution of pupils, the additional reasons of "economy, a change in the administrative or supervisory organization of the district, or other good cause." These differences between the prior provision and the 1951 act are so great as to indicate not clarification of the existing statute, but an entirely new legislative scheme, one of far greater scope. The language of the 1951 amendment is clear and unambiguous and makes no provision for retrospective operation.

In passing it is noted that the Petitioner invokes the legislative "statement of purpose" accompanying the 1951 amendment. The statement of purpose itself contains no clear, strong and imperative language indicative of an intent to make the legislation retroactive, and it is in any event not available as an index of legislative intent. *Hoffman vs. Hock*, 8 N. J. 397, 407, 408 (1952).

For the reasons stated, the decision of the State Board of Education is affirmed.

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