

State of New Jersey  
Department of Education  
Trenton

NEW JERSEY  
SCHOOL LAWS  
Enacted during the Legislative  
Session of 1953

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SCHOOL LAW DECISIONS  
1952 - 1953

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## SCHOOL LAWS, SESSION OF 1953

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SCHOOL LAWS, SESSION OF 1953  
AMENDMENTS OF 1953\*

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CHAPTER 90, LAWS OF 1953

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

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

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

18:8-1. Whenever the boards of education of two or more school districts and the commissioner after study and investigation shall deem it advisable to unite in creating a regional school district and maintaining a regional board of education for the establishment and development of elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational service or facilities in the territory comprised within the school districts *and shall determine whether the amounts to be raised for annual or special appropriations for such regional school district pursuant to subsection three of section 18:8-17 of the Revised Statutes are to be apportioned upon the basis of ratables, or of average daily attendance, of the districts during the preceding school year*, each of the district boards shall call and conduct an election in the manner provided for the conduct of school elections in chapter seven of this Title (§ 18:7-1 et seq.) and submit the question of creating and maintaining a regional board of education for any one or more specific purposes. *In the question so submitted shall be set forth whether the amounts to be raised for annual or special appropriations pursuant to subsection three of section 18:8-17 of the Revised Statutes are to be apportioned upon the basis of ratables or average daily attendance of the districts during the preceding school year, as determined by the boards of education of the constituent districts.*

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

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

(1) *The amounts to be raised for interest and the redemption of bonds shall be apportioned upon the basis of ratables of the districts.*

(2) *The amounts to be raised for annual or special appropriations for regional districts created prior to the first day of July, one thousand nine hundred and fifty-three, shall be apportioned upon the basis of ratables of the districts.*

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\* Italics show amendments of 1953.

(3) *The amounts to be raised for annual or special appropriations for regional districts created on or subsequent to the first day of July, one thousand nine hundred and fifty-three, shall be apportioned either upon the basis of ratables or average daily attendance of the district during the preceding school year, whichever shall have been determined upon by the boards of education of the constituent districts and stated in the question of creating and maintaining a regional board of education submitted pursuant to section 18:8-1 of the Revised Statutes; but in cases where average daily attendance is to be used as a basis for apportionment, ratables shall be used until such time as average daily attendance statistics are available for the regional district.*

*The amount of money thus determined to be raised by the respective districts shall be certified to the county board or county boards of taxation and to the assessors of the several taxing districts so uniting and the amount thus apportioned to each taxing district shall be assessed, levied, and collected in the same manner and at the same time as other school taxes are assessed, levied and collected therein and shall be paid upon requisition as provided for in districts governed by chapter seven of this Title (§ 18:7-1 et seq.).*

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

Approved April 15, 1953.

#### CHAPTER 120, LAWS OF 1953

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

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

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

18:13-118. When any superintendent, supervisor, principal, or teacher applies to the board of education of the district wherein he is employed for permission to attend the annual convention of the *New Jersey Education Association*, such permission shall be granted for a period of not more than two days in any one year. If a certificate is procured and filed with the district clerk or secretary of the board of education, signed by the secretary of the *New Jersey Education Association*, showing that the superintendent, supervisor, principal, or teacher was in actual attendance at all of the sessions of the convention, the superintendent, supervisor, principal, or teacher shall receive his full salary for the days he has actually attended the sessions of the convention.

2. This act shall take effect immediately.

Approved April 24, 1953.



CHAPTER 121, LAWS OF 1953

AN ACT relating to the Teachers' Pension and Annuity Fund, and amending section 18:13-69 of the Revised Statutes.

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

1. Section 18:13-69 of the Revised Statutes is amended to read as follows:

18:13-69. All pensions payable prior to the month of September, one thousand nine hundred and nineteen, by the State under the provisions of an act entitled "An act to amend an act entitled 'A supplement to an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three,' approved March thirteenth, one thousand nine hundred and twelve," approved April twentieth, one thousand nine hundred and fourteen (P. L. 1914, c. 263, p. 557), shall, beginning with said month of September, one thousand nine hundred and nineteen, be paid from the pension fund created by this article; and any such pension as is below eight hundred dollars (\$800.00) shall be increased to and be paid at the rate of eight hundred dollars (\$800.00).

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

Approved April 24, 1953.

CHAPTER 123, LAWS OF 1953

AN ACT concerning education, and amending section 18:13-113 of the Revised Statutes.

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

1. Section 18:13-113 of the Revised Statutes is amended to read as follows:

18:13-113. Each teacher *or other person who is required by the board of education of any school district or county vocational school to keep a school register* in a public school shall keep *such* register in the manner provided therefor, and *the final salary installment of any school year shall not* be paid to him until the *superintendent, secretary, district clerk, principal or other person designated by said board has examined the register and found that it has been kept according to law* and shall enter upon the register a certificate to that effect.

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

Approved April 29, 1953.

CHAPTER 139, LAWS OF 1953

AN ACT concerning the collection and deposit of savings of school children, and amending section 18:14-90 of the Revised Statutes.

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

1. Section 18:14-90 of the Revised Statutes is amended to read as follows:

18:14-90. In order to encourage the habit of saving among the children in schools, the principal or superintendent of any public school, or any person designated for that purpose by the board of education or other school authority under which the school shall be, may collect once a week, or from time to time, small amounts of savings from the pupils of the school, to be deposited by the principal, superintendent, or designated person on the day of collection in any *financial institution having its principal office in New Jersey, whose accounts or deposits are insured or guaranteed by any corporation created or organized under the laws of the United States, which corporation is an instrumentality of the United States or of any successor corporation having for its purpose the insurance of deposits or accounts.*

These moneys shall be placed to the credit of the respective pupils for whom the money has been collected, or if the amount collected at any one time is deemed insufficient for the opening of individual accounts, in the name of the principal, superintendent, or designated person, in trust, and to be by him eventually transferred to the credit of the respective pupils to whom the same belongs. In the meantime, the principal, superintendent, or designated person shall furnish to the *financial institution* a list giving the names, signatures, addresses, ages, places of birth, parents' names, and such other data concerning the respective pupils as the *financial institution* may require.

The words "system of school savings" or "school savings" may be used in circulars, reports, and other printed or written matter used in connection with this section.

2. This act shall take effect immediately.

Approved May 1, 1953.

CHAPTER 154, LAWS OF 1953

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

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

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

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

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

The members shall be appointed by the Governor, by and with the advice and consent of the Senate, for terms of six years, *except that of the successors of the two members whose terms will expire on June twenty-sixth, one thousand nine hundred and fifty-three, there shall be appointed for terms which shall commence on June twenty-seventh, one thousand nine hundred and fifty-three, one for a term which shall expire on June thirtieth, one thousand nine hundred and fifty-four, and one for a term which shall expire on June thirtieth, one thousand nine hundred and fifty-seven; of the successors of the three members whose terms will expire on July first, one thousand nine hundred and fifty-three, there shall be appointed for terms which shall commence on the second day of July, one thousand nine hundred and fifty-three, one for a term which will expire on June thirtieth, one thousand nine hundred and fifty-four, and two for terms which will expire on June thirtieth, one thousand nine hundred and fifty-nine; the successor of the member whose term will expire on June twenty-sixth, one thousand nine hundred and fifty-five, shall be appointed for a term which shall commence on June twenty-seventh, one thousand nine hundred and fifty-five and shall expire on June thirtieth, one thousand nine hundred and fifty-eight; of the successors of the three members whose terms shall expire on July first, one thousand nine hundred and fifty-five, there shall be appointed for terms which shall commence on the second day of July, one thousand nine hundred and fifty-five, one for a term which will expire on June thirtieth, one thousand nine hundred and fifty-seven and two for terms which will expire on June thirtieth, one thousand nine hundred and sixty-one; the successor of the member whose term will expire on March thirteenth, one thousand nine hundred and fifty-six, shall be appointed for a term which shall commence on March fourteenth, one thousand nine hundred and fifty-six and shall expire on June thirtieth, one thousand nine hundred and sixty-two; the successor of the member whose term will expire on May fifteenth, one thousand nine hundred and fifty-six, shall be appointed for a term which shall commence on May sixteenth, one thousand nine hundred and fifty-six and shall expire on June thirtieth, one thousand nine hundred and sixty-two; and the successor of the member whose term will expire on June twenty-sixth, one thousand nine hundred and fifty-eight, shall be appointed for a term which shall commence on June twenty-seventh, one thousand nine hundred and fifty-eight and shall expire on June thirtieth, one thousand nine hundred and sixty-four. The terms of the successors of the above-mentioned board members shall be for six years commencing on July first and expiring on June thirtieth.*

Vacancies in said board occurring for any cause shall be filled in like manner but for the unexpired term only. All members shall continue in office after the expiration of their respective terms until their respective successors are appointed and qualified; *but the holding over of an incumbent beyond the expiration of the term for which he was appointed shall not be held to lengthen his term but shall be held to shorten the term of his successor by the number of days the incumbent shall hold over beyond the expiration date of his term.*

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

2. This act shall take effect immediately.

Approved May 1, 1953.

#### CHAPTER 161, LAWS OF 1953

AN ACT concerning education relating to certain newly-created school districts, and amending section 18:7-10 of the Revised Statutes.

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

1. Section 18:7-10 of the Revised Statutes is amended to read as follows:

18:7-10. Whenever a new district, except a regional school district, or a consolidated school district *or a new district created under the terms of section 18:5-3 of the Revised Statutes* is created there shall be placed upon the official ballot to be voted upon, at the first annual school meeting, the question whether the board shall consist of three, five, seven or nine members.

The balloting for board members shall take place as if nine members were to be elected, three for terms of three years, three for terms of two years, and three for terms of one year.

If it shall be determined as a result of the balloting that the board shall consist of nine members, the three candidates receiving the highest number of votes for each of said terms shall be declared elected.

If it shall be determined that the board shall consist of seven members, the three candidates receiving the highest number of votes for the three-year terms, the two candidates receiving the highest number of votes for the two-year terms, and the two candidates receiving the highest number of votes for the one-year term shall be declared elected.

If it shall be determined that the board shall consist of five members, the two candidates receiving the highest number of votes for the three-year terms, the two candidates receiving the highest number of votes for the two-year terms, and the candidate receiving the highest number of votes for the one-year term shall be declared elected.

If it shall be determined that the board shall consist of three members, each candidate receiving the highest number of votes for each of the terms shall be declared elected.

Annually thereafter there shall be elected a person or persons for the term of three years in the place of the member or members whose terms shall have expired.

2. This act shall take effect immediately.

Approved May 15, 1953.

CHAPTER 255, LAWS OF 1953

AN ACT changing the title of district clerks of boards of education to that of secretary, and amending sections 18:7-68 and 18:7-69 of the Revised Statutes.

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

1. Section 18:7-68 of the Revised Statutes is amended to read as follows:

18:7-68. Every board shall by a majority vote of all its members appoint a *secretary*, who may be elected from among such members, and shall fix his compensation and term of employment. The *secretary*, as such, may be removed by a majority vote of all the members of the board subject, however, to the provisions of section 18:5-51 of this Title.

The *secretary* shall before entering upon the duties of his office execute and deliver to the board a bond in a sum to be fixed by it, with surety to be approved by the board, conditioned for the faithful performance of the duties of his office. The board may accept the bond or undertaking of a company authorized to execute surety bonds and may pay the annual premium or fee therefor as a current expense.

*The title of every district clerk in office on July first, one thousand nine hundred and fifty-three, is changed to that of secretary and every holder of such office shall continue in said office without change in term or tenure of office or pension rights notwithstanding said change of title.*

2. Section 18:7-69 of the Revised Statutes is amended to read as follows:

18:7-69. A *secretary* appointed under the title of *district clerk*, or of *secretary* as provided in this chapter, shall have all of the powers and perform all of the duties provided by law to be exercised or performed by a *district clerk* including the following:

a. Record in a suitable book all proceedings of the board and of the annual and special school meetings;

b. Pay out by orders on the custodian of school moneys and in the manner prescribed by law all school moneys of the district;

c. Keep a correct and detailed account of all the expenditures of school moneys in the district;

d. Report to the board at each regular meeting:

(1) The amount of the total appropriations and the cash receipts for each account;

(2) The amount for which warrants have been drawn and the amount of orders for all contractual obligations since the date of his last report;

(3) The accounts against which the warrants have been drawn and the accounts against which the contractual obligations are chargeable; and

(4) The cash balance and free balance to the credit of each account;

f. Post notices of the annual and of any special *elections* of the legal voters, and insert in the notices the object or objects for which the *election* is called;



g. Notify all members of the board of all regular and special meetings of the board;

h. During the month of July in each year, present to the board a detailed report of its financial transactions during the preceding school year, and file a copy thereof with the county superintendent of schools. The warrant or order for the balance of salary due *a secretary* at the close of the school year shall not be delivered to him until written notice has been received from the county superintendent that the *secretary* has filed with him such annual report; and

i. Report to the Commissioner of Education on or before August first of each year the amount of the interest-bearing school debt then remaining unpaid, if any, together with the rate of interest, the date or dates on which the bonds, notes, or other evidences of indebtedness were issued, and the date or dates on which they will fall due.

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

Approved July 20, 1953.

#### CHAPTER 271, LAWS OF 1953

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

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

1. Section 18:7-3 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 *or whenever a petition, signed by such number of the legally qualified voters of the municipality as shall equal at least fifteen per centum (15%) of the total number of votes cast at the last preceding general election for the election of all of the members of the General Assembly, requesting the submission thereof, is filed with the clerk of the municipality not less than forty days prior to the date fixed for the holding of the election.*

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.

2. This act shall take effect immediately.

Approved July 25, 1953.

CHAPTER 272, LAWS OF 1953

AN ACT concerning education, and amending section 18:11-10 of the Revised Statutes.

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

1. Section 18:11-10 of the Revised Statutes is amended to read as follows:

18:11-10. In the erection, construction, alteration or repair of a public school building, when the entire cost of the work will exceed *two thousand* dollars (\$2,000.00) in amount, the board of education shall, in the manner provided by law, advertise for and receive separate bids for the plumbing and gas fitting, and all work kindred thereto, the steam and hot water heating and ventilating apparatus, steam power plants and all work kindred thereto, and electrical work, structural steel and ornamental iron work. The board shall award contracts for such work to the lowest responsible bidder for each of such branches respectively.

2. This act shall take effect immediately.

Approved July 25, 1953.

CHAPTER 280, LAWS OF 1953

AN ACT to amend "An act concerning public education, supplementing Title 18 of the Revised Statutes, and repealing section 18:16-27 of the Revised Statutes," approved April fourteenth, one thousand nine hundred and forty-four (P. L. 1944, c. 140).

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 president of any State teachers college may, under regulations approved by the commissioner, provide work in or about such teachers college for any student or students who demonstrate financial need. The value of such work as determined by the president under the aforementioned regulations shall be credited toward the payment in part or in whole of *any one or combination of the following charges for such student or students: tuition, room and board; provided*, that the number of students aided under the provisions of this act shall not exceed fifteen per centum (15%) of the number of the full-time students of such college.

2. This act shall take effect immediately.

Approved July 25, 1953.

CHAPTER 361, LAWS OF 1953

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 has retired after said date, or shall retire hereafter, for reasons other than disability and before attaining age sixty-two, 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.

*The total retirement allowance to be paid after July first, one thousand nine hundred and fifty-three, to a member who shall retire after said date, or who has retired after July first, one thousand nine hundred and fifty-two, after attaining age sixty-two or by reason of disability, with twenty or more years of service, shall be his annuity plus a pension of not less than eight hundred dollars (\$800.00) per annum.*

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

Approved August 11, 1953.

CHAPTER 409, LAWS OF 1953

AN ACT concerning education, and amending sections 18:4-7, 18:5-3, 18:7-12, 18:7-18, 18:7-20, 18:7-27, 18:7-30, 18:7-31, 18:7-32, 18:7-35, 18:7-36, 18:7-44, 18:7-45, 18:7-47, 18:7-55 and 18:7-69 of the Revised Statutes.

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

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

18:4-7. A county superintendent of schools may:

- a. Administer, without charge, oaths to teachers and school officers;
- b. Issue orders on the county treasurer in favor of the custodian of the school moneys of the several school districts in the county for that portion of the State school tax, the State appropriation and the interest of the surplus revenue, to which each of such school districts is entitled;



c. Exercise general supervision over the public schools of the county under his charge in accordance with the rules and regulations prescribed from time to time by the State Board;

Visit and examine all the schools under his care;

Inquire into the management, methods of instruction, and discipline in such schools;

Note the condition of the schoolhouses, sites, buildings, and appurtenances;

Examine the courses of study, textbooks, and school libraries;

Advise with and counsel boards of education in relation to their duties, particularly in respect to the construction, heating, ventilating, and lighting of schoolhouses;

Recommend to boards of education and teachers proper studies, methods, discipline and management for schools;

d. Appoint members of the board of education for a new township, incorporated town, or borough school district and for any school district under his supervision which shall fail to elect members at the regular time *or in case of a vacancy in the membership of the board of education which occurs by reason of the removal of a member for failure to have the qualifications required by section 18:7-11 of the Revised Statutes or as the result of a recount or contested election or which is not filled within sixty-five days of the occurrence of the vacancy.* Such appointees shall serve only until the organization meeting of the board of education after the next election in the district for members of the board of education.

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

18:5-3. Upon receipt of a resolution passed by the governing body of any one of the municipalities constituting a single school district under section 18:5-2 of this Title, the board of education of such school district shall at once, in accordance with the request contained in the resolution, appoint a day and hour for the election, which day shall not be more than forty-five days from the receipt of the resolution, and designate a polling place therefor in the municipality requesting the election.

The election shall be held on the day fixed and at the place designated and between the hours *fixed by law for the holding of other school elections* and shall be by ballot. Such election shall be called and shall be conducted in the same manner as, and the question shall be submitted in the form prescribed by, the provisions of law regulating special school elections in school districts governed under chapter seven of this Title and the qualifications of voters eligible to vote at such election shall be the same as those provided for such special school elections.

The tally sheet, poll list and ballots shall be placed in a sealed package by the secretary, indorsed with the name of the municipality, the name of the county, and the date of the election. The package together with a statement of the result of the election signed by the chairman and secretary shall within five days after the election be forwarded by the *chairman* to the county superintendent of schools of the county in which the municipality is situated, who shall preserve the same for one year.

If the county superintendent of schools shall ascertain from the statement received by him that the number of votes cast at the election in favor of constituting the municipality a separate school district exceeds the num-

ber of votes cast against the proposition, he shall immediately notify the board of education of the result of the election, and thereafter the municipality shall be a separate school district.

3. Section 18:7-12 of the Revised Statutes is amended to read as follows:

18:7-12. A member of a board shall, before entering upon the duties of his office, take and subscribe an oath, before an officer authorized to administer oaths, that he possesses the qualifications prescribed in section 18:7-11 of this Title, *and the oath prescribed by section 41:1-3 of the Revised Statutes.* The oaths shall be filed with the secretary.

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

18:7-18. Whenever at two consecutive annual school elections there shall be more than five hundred ballots cast, the board shall provide an additional polling place for each five hundred ballots cast or part thereof, and shall so divide the district that as near an equal number of voters as may be possible shall be eligible to vote in the respective polling places provided.

*Whenever at two consecutive annual elections there shall be less than five hundred votes cast in the district, the board may provide but one polling place for the district so long as the number of votes cast in the entire district at two consecutive annual school elections shall not exceed five hundred.*

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

18:7-20. The secretary shall furnish the proper equipment for polling places. The equipment shall consist of tables, booths, chairs, lights, and all other things which may be considered necessary for the performance of the duties of the election officers. The booths shall be sufficiently large to enable the voter to conveniently prepare his ballot and shall have swinging doors or curtains so arranged that some part of the person of the voters standing in the booths may be seen from the outside thereof when the doors or curtains are closed. Each booth shall contain a counter or shelf suitably placed to enable voters to place their ballots thereon while preparing the same for voting. The equipment shall be ready and properly erected in ample time for the holding of the election. At least one booth shall be provided for each one hundred votes or major fraction thereof cast at the preceding annual election; *provided, however,* that not less than two booths shall be installed at each polling place. The ballot box shall be at least one foot in depth, width, and length, constructed of wood, metal, or glass, with a properly slitted hinged top which shall be kept locked during the time the polls are open.

*The ballot box shall be within the polling room or place and so placed that the voter shall be able to deliver his ballot to the election officer after emerging from the booth and before leaving the room or place within which the booths and ballot box are placed.*

6. Section 18:7-27 of the Revised Statutes is amended to read as follows:

18:7-27. Every citizen of the United States *of the age of twenty-one years, who shall have been a resident of the State one year and of the county in which he claims his vote five months next before the election,* and whose name appears on the signature copy register shall be entitled to vote at any annual or special school election.

No person shall be permitted to vote at any school election unless his name appears on the signature copy register mentioned in section 18:7-28 of this Title, as having been registered to vote, and for the purpose of said school election no person shall be entitled to vote unless he shall be registered at least forty days prior to the date of said school election.

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

18:7-30. All elections for members of the board shall be by ballot. Each ballot shall have at the top thereof a coupon at least one inch deep extending across the ballot above a perforated line. The coupons shall be numbered consecutively from one to the number of ballots prepared for use in such election district. Upon the coupon and above the perforated line shall be the words "To be torn off by the judge of election" and "Fold to this line." Below the perforated line shall be printed the words "School Election Ballot" and below which and extending across the ballot in one or more lines shall be the name of the municipality or municipalities comprising the district, the date of the election, and if the district is divided into two or more polling places, the number, name or other mark or designation to distinguish the polling place, and the printed facsimile signature of the secretary. The heading shall be set apart from the body of the ballot by a heavy diagram rule. Below this rule shall be printed the following directions instructing the voter how to indicate his choice for the person for whom he may desire to vote and stating the maximum number of candidates he may vote for: "To vote for any person whose name appears on this ballot mark a cross (X) or plus (+) or check (✓) mark with black ink or black pencil in the space or square at the left of the name of such person. To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space and mark a cross (X) or plus (+) or check (✓) mark with black ink or black lead pencil in the space or square at the left of the name of such person. Do not vote for more candidates than are to be elected." Below these instructions shall be printed a heavy diagram rule below which shall be printed such directions to the voter as may be necessary as "Vote for one," or "Vote for two," or a greater number, as the case may be, immediately after which shall be printed the names of the candidates duly nominated by petition as they appear signed to the certificate of acceptance in the order prescribed by law, but no candidate who has failed to file a certificate of acceptance shall have his name printed upon the ballot. The grouping of two or more candidates upon any ballot to be used for the election of members of the board is hereby prohibited. The same size and style of type shall be used in printing the name of each candidate and between the name of each candidate shall be printed a heavy diagram rule and the space between each of the rules shall be exactly equal. Immediately after the space allotted to the names of candidates there shall be as many ruled blank spaces as there are members to be voted for. Immediately to the left and on the same line with the name of each candidate and blank space there shall be printed a square the same size of type in which the name of the candidate is printed, which type shall, in no case, be larger than twenty-four point. In case a member of a board is to be elected for a full term, and a member is to be elected to fill an unexpired term, the ballots shall designate which of the persons to be voted for is to be elected for the full term and which for the unexpired term.

8. Section 18:7-31 of the Revised Statutes is amended to read as follows:  
18:7-31. The following is an illustration of the form of ballot:

No. \_\_\_\_\_

To be torn off by the Judge of Election.

Fold to this line.

SCHOOL ELECTION BALLOT

Township of Webster

February 14, 1922

Polling District No. 1  
Main Street School

JOHN HENRY DOE,  
*Secretary.*

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

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

For Membership to Board of Education, Full Term. *Vote for three.*

☐ RUTHERFORD B. FALLON

☐ WILLIAM F. SEIBEL

☐ JAMES A. STEPHENS

☐ THOMAS TEMPLETON

☐

☐

☐

For Membership to Board of Education, Unexpired Two-Year Term.

*Vote for one.*

☐ HENRY JONES

☐ JOHN SMITH

☐

For Membership to Board of Education, Unexpired One-Year Term.

*Vote for one.*

☐ FRANCIS R. LOORI

☐ ARTHUR H. PATTERSON

☐

using as much of the said form as may be applicable to the current school board election and extending the same to provide for cases not herein specified.

9. Section 18:7-32 of the Revised Statutes is amended to read as follows:

18:7-32. All questions to be voted upon at the annual school election or any other proposition or question that may be required shall be placed upon the official ballot immediately following the names of the candidates for election to the board of education in the following form:

	Yes.	(Question to be voted on.)
	No.	

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

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

10. Section 18:7-35 of the Revised Statutes is amended to read as follows:

18:7-35. The board shall make public proclamation through a board member or other person qualified to vote in the school district designated by the president of said board of the opening of the *election*. A chairman who shall also be judge of elections, a secretary, and two tellers shall be appointed, and assistant tellers not to exceed in number one for every two signature copy registers used in the polling district may be appointed, by the board of education at the regular January meeting of the board from the qualified voters of the district other than regularly nominated candidates, board members, or employees *and they shall be notified accordingly. The chairman, secretary and two tellers shall hold office until the next regular January meeting of the board.* In case of any vacancy in such offices at the time of the opening of the *election*, the person authorized to open the *election* shall appoint from among those present to fill the vacancy. *Thereupon* the election shall be open and the balloting shall continue without recess in accordance with the instructions printed upon the ballot and the provisions of this article until the hour of closing has arrived. *In any district having a population of one thousand or less as determined by the last published census, the board of education may pay each such election officer a compensation not to exceed five dollars (\$5.00) and in any district having a population of more than one thousand as so determined, the board of education may pay each such election officer a compensation not to exceed ten dollars (\$10.00).*

Each candidate nominated by petition may act as a challenger and may appoint also one challenger for each polling district in which he is to be voted for. The appointment of challengers shall be in writing under the hand of the person making the same and shall specify the names and addresses of the challengers and the polling district for which they are severally appointed.



The appointment of the challengers shall be filed with the secretary of the board not later than five days preceding the annual election. No person shall be appointed challenger who is not a legal voter of the school district and no challenger shall serve in any polling district other than that to which he is appointed. The secretary of the board shall certify such appointed challengers, and such certification shall be submitted by the challengers to the election officials of the respective polling districts to which they are assigned. *Each challenger shall wear a mark of identification as a challenger which shall be furnished to him by the secretary of the board.* The challengers shall have power to challenge the right to vote therein of any person claiming such right *at any time before the person's ballot shall have been deposited in the ballot box* and shall have the right to ask all necessary questions to determine this right. They may be present while the votes cast at any election are being counted, may stand where they can see the markings on the ballots, provided they do not interfere with the orderly counting of the votes, and shall have the right to challenge the counting or rejecting of any ballot or any part of a ballot. The election officers are authorized to maintain order in the polling place and to require to leave the polling room all persons other than challengers, candidates, and persons in the process of voting, and to prohibit electioneering in the building in which the election is being conducted. Any person interfering with the orderly conduct of the election shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment not exceeding one year, or both.

11. Section 18:7-36 of the Revised Statutes is amended to read as follows:

18:7-36. In all school districts after the election officers shall have ascertained that a voter is properly registered and qualified to vote, the election officers shall furnish to the voter one official ballot numbered to correspond with the poll number of the voter, allowing for spoiled ballots, if any.

No ballot shall be handed to a voter until there is a booth ready for occupancy *and until the voter shall have signed the poll list.* The election officers shall not allow a voter to mark his ballot outside of an election booth unless the voter is unable to enter the booth by reason of his physical disability.

The election officers shall instruct the voter how to fold the ballot and shall crease the ballot so as to indicate the point where the voter shall fold the ballot, but before handing the ballot to the voter the election officers shall see that the face of the ballot including the coupon is exposed, and at the same time shall call off the ballot number to the official having charge of the polling book, who shall make certain that the ballot number and poll number agree, allowing for spoiled ballots, if any.

If the number of the ballot does not follow consecutively the missing number or numbers shall be written on a blank sheet of paper signed by the election officers and placed on the string with the coupons in its or their proper place or places.

Every voter to whom a ballot is given shall thereupon retire into the polling booth. Not more than one voter shall be permitted to enter or be in the same booth at one time. The voter shall prepare his ballot in the booth secretly and screened from the observation of others.

Any person or voter who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not

exceeding five hundred dollars (\$500.00), or by imprisonment not exceeding one year or both at the discretion of the court.

12. Section 18:7-44 of the Revised Statutes is amended to read as follows:

18:7-44. At an annual or special *election* of the legal voters of a district held at a single polling place, the tally sheet, poll list and ballots shall be placed by the secretary in a sealed package indorsed with the name of the district, the name of the county in which the district is situated, and the date on which the election was held. Such package, together with a statement of the result of the election, signed by the chairman and secretary, shall be delivered forthwith by the *chairman to the secretary* of the board who *shall add to the statement the result of the canvass of the military service ballots as certified to him, if any,* shall forward the *statement and package* to the county superintendent of schools within five days after the date of the election, and the same shall be preserved for one year. The unused ballots shall be delivered to the secretary of the board.

13. Section 18:7-45 of the Revised Statutes is amended to read as follows:

18:7-45. At an annual or special *election* of the legal voters of the district held at two or more polling places, the tally sheet, poll list, and ballots shall be placed by the secretary of each *election* in a sealed package indorsed with the address of the polling place and the date on which the election was held, and the *chairman* shall deliver the same immediately to the secretary of the board, together with a statement of the result of the election, signed by the chairman and secretary. Thereupon the *secretary* of the board shall *add to the statement the canvass of the military service ballots as certified to him, if any, and* shall announce the result of the election and shall immediately combine the reports from all polling places, and within five days after the date of the election, forward a sealed package containing the ballots, poll lists, and tally sheets to the county superintendent of schools who shall preserve them for one year.

14. Section 18:7-47 of the Revised Statutes is amended to read as follows:

18:7-47. The form of ballot and the manner of expressing the voter's vote at a special election to authorize the board to issue bonds or other evidences of indebtedness under sections 18:7-85 to 18:7-99 of this Title shall be *the same as is required for the submission of public questions at annual school elections pursuant to section 18:7-32 of the Revised Statutes.*

15. Section 18:7-55 of the Revised Statutes is amended to read as follows:

18:7-55. The board may fill a vacancy in its membership except as provided in section 18:7-51 of this Title and except a vacancy caused by a failure to elect, *or by removal of a member for failure to have the qualifications required by section 18:7-11 of the Revised Statutes or as the result of a recount or contested election or one which is not filled within sixty-five days after the occurrence of the vacancy.* The person so appointed shall serve only until *the organization meeting of the board after the next election for members.*

16. Section 18:7-69 of the Revised Statutes is amended to read as follows:

18:7-69. A secretary appointed under the title of district clerk or a secretary appointed as provided in section 18:7-68 of this Title, shall have all of the powers and perform all of the duties provided by law to be exercised or performed by a district clerk including the following:

a. Record in a suitable book all proceedings of the board and of the annual and special school meetings;

b. Pay out by orders on the custodian of school moneys and in the manner prescribed by law all school moneys of the district;

c. Keep a correct and detailed account of all the expenditures of school moneys in the district;

d. Report to the board at each regular meeting:

1. The amount of the total appropriations and the cash receipts for each account;

2. The amount for which warrants have been drawn and the amount of orders for all contractual obligations since the date of his last report;

3. The accounts against which the warrants have been drawn and the accounts against which the contractual obligations are chargeable; and

4. The cash balance and free balance to the credit of each account;

f. Post notices of the annual and of any special *elections* of the legal voters, and insert in the notices the object or objects for which the *election* is called;

g. Notify all members of the board of all regular and special meetings of the board;

h. During the month of July in each year, present to the board a detailed report of its financial transactions during the preceding school year, and file a copy thereof with the county superintendent of schools. The warrant or order for the balance of salary due a secretary at the close of the school year shall not be delivered to him until written notice has been received from the county superintendent that the secretary has filed with him such annual report; and

i. Report to the Commissioner of Education on or before August first of each year the amount of the interest-bearing school debt then remaining unpaid, if any, together with the rate of interest, the date or dates on which the bonds, notes, or other evidences of indebtedness were issued, and the date or dates on which they will fall due.

17. This act shall take effect immediately.

Approved September 18, 1953.



## SUPPLEMENTS OF 1953

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### CHAPTER 189, LAWS OF 1953

AN ACT concerning regional school districts, and supplementing chapter eight of Title 18 of the Revised Statutes.

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

1. Whenever one or more school districts shall have decided to unite with a union-graded district or a regional board of education comprised of less than nine constituent districts, pursuant to section 18:3-3 of the Revised Statutes, the board of education of the union-graded district or the regional board of education, in office on June thirtieth next ensuing, shall be the board of education of the new union-graded school district or regional board of education and the members of such board of education shall continue in office for the duration of their terms.

2. The membership of the board of education shall be reapportioned forthwith pursuant to section 18:3-5 of the Revised Statutes so that each new district shall have the representation to which it is entitled.

3. In designating the term or terms of the board member or members representing each new district, the county superintendent or county superintendents of schools of the county or counties in which the districts are respectively situated shall designate the term or terms of the members with the least remaining time to serve from the constituent districts which lose membership by reason of the reapportionment of membership pursuant to section two of this act; but members shall continue in office for the terms for which they were elected or appointed. Whenever it shall be necessary to designate terms for more than one new constituent district at the same time, such designation of terms shall be made according to the alphabetical order of the new districts.

4. The county superintendent or county superintendents shall appoint to represent each new district the number of board members to which such district is entitled by the reapportionment of membership pursuant to section two of this act, and each such member shall serve until the first Monday in March succeeding the next annual election for board members. At such annual election, a member or members shall be elected for the term or terms designated by the county superintendent or county superintendents pursuant to section three of this act.

5. This act shall take effect immediately.

Approved June 11, 1953.

CHAPTER 273, LAWS OF 1953

AN ACT concerning education, relating to the furnishing of education to high school pupils of one school district by the board of education of another school district, and supplementing chapter fourteen of Title 18 of the Revised Statutes.

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

1. Whenever a board of education, now or hereafter furnishing high school education for the pupils of another school district pursuant to section 18:14-7 of the Revised Statutes, finds it necessary to provide additional facilities for the furnishing of education to high school pupils, it may, as a condition precedent to the provision of such additional facilities, enter into an agreement with the board of education of such other district for a term not exceeding ten years whereby it agrees to provide such education to the pupils of such other district during the term of such agreement, in consideration of the agreement by the board of education of such other district that it will not withdraw its pupils and provide high school facilities for them in its own district during the term of said agreement, except as provided in this act.

2. Any board of education which shall have entered into such an agreement may apply to the Commissioner of Education for consent to terminate the same, and to cease providing high school education to the pupils of the other contracting district on the ground that it is no longer able to provide facilities for the pupils of the other district, or to withdraw its high school pupils from the schools of the other contracting district and provide high school education facilities for them in its own district on the ground that the board of education of the receiving district is not providing school facilities and an educational program suitable to the needs of the pupils of the sending district or that the board of education of the receiving district will not be seriously affected educationally or financially by their withdrawal.

3. Upon the making of any such application, an opportunity to be heard before the commissioner shall be given to the board of education of the other district before any determination is made by the commissioner, and if the commissioner finds that there are good grounds for the application, as provided in this act, he shall give his consent, and the applying board of education shall thereupon be entitled to terminate the agreement in accordance therewith.

4. Any determination made by the commissioner on any such application may be appealed from to the State Board of Education.

5. This act shall take effect immediately.

Approved July 25, 1953.

CHAPTER 360, LAWS OF 1953

AN ACT relating to the Teachers' Pension and Annuity Fund, and supplementing chapter thirteen of Title 18 of the Revised Statutes.

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

1. The total retirement allowance to be paid to a member now retired, who retired for disability, or on or after attaining age sixty-two with twenty or more years of service, consisting of service to his credit in the New Jersey Teachers' Pension and Annuity Fund and service in New Jersey prior to April tenth, one thousand nine hundred and nineteen, shall be not less than eight hundred dollars (\$800.00) per annum. Eligible members must apply within one year from the effective date of this act to the Board of Trustees of the Teachers' Pension and Annuity Fund, and provide satisfactory evidence as to service to the Board of Trustees.

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

Approved August 11, 1953.

CHAPTER 373, LAWS OF 1953

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

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

1. The board of education in any school district coming within the provisions of section 18:7-108 of this Title shall, upon delivery of the statement mentioned in section 18:7-117 of this Title, fix a date, place and time for the holding of a public hearing by the board of school estimate with respect to the amount of money to be raised for the purpose or purposes mentioned in said section 18:7-117, which date shall be not less than fifteen nor more than thirty days after the date of delivery of said statement and which date shall be not less than seven days after the publication of said statement as herein provided, and shall cause notice of such public hearing and said statement to be published at least once in at least one newspaper published in the municipalities comprised in said school district or if no newspaper is published therein then in at least one newspaper circulating in said municipalities, not less than seven days prior to the date fixed for such public hearing, and said notice shall also set forth that said statement will be on file and open to the examination of the public, between reasonable hours to be fixed therein, and at a place to be named therein, from the date of said publication until the date of holding of said public hearing and said board of education shall cause said statement to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

2. On the date and at the time and place so fixed for such public hearing the board of school estimate, in school districts coming within the provi-

sions of section 18:7-108 of this Title, shall at a public hearing grant the taxpayers and other interested persons an opportunity to present objections and to be heard with respect to said statement and the amount of money necessary to be raised for any of the purposes mentioned in said section 18:7-117 of this Title and with respect to the various items and purposes for which the same is to be raised and at or after said hearing, such board of school estimate shall fix and determine the amount necessary for said purposes as provided in section 18:7-118 of this Title.

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

Approved August 13, 1953.

#### CHAPTER 401, LAWS OF 1953

AN ACT concerning education and granting tenure in office to district clerks of boards of education in certain cases.

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

1. Any person who has acquired, or shall hereafter acquire, tenure in any secretarial or clerical office, position or employment under the board of education of a school district, and who has been or shall hereafter be appointed district clerk or secretary of said school district shall have tenure in and shall hold said office, position or employment as secretary and may not be removed therefrom except in accordance with the procedure set forth in section 18:5-51 of the Revised Statutes.

2. This act shall take effect immediately.

Approved September 16, 1953.

#### CHAPTER 417, LAWS OF 1953

AN ACT concerning the creation of new school districts, and supplementing chapter five of Title 18 of the Revised Statutes, and repealing sections 18:5-1 to 18:5-10, inclusive, of the Revised Statutes and "An act concerning education, and supplementing chapter five of Title 18 of the Revised Statutes," approved June thirteenth, one thousand nine hundred and fifty (P. L. 1950, c. 230).

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

1. Each township, city, incorporated town and borough shall be a separate school district, except as hereinafter provided, but each incorporated village shall remain and be a part of the school district in which it is situated at the time of its incorporation.

Whenever a new municipality other than a city is created from parts of two or more municipalities, such municipality shall be a separate school district and shall be governed by chapter seven of Title 18 of the Revised Stat-

utes, except as otherwise provided. The several parts of the new municipality shall remain and constitute parts of the several school districts until a board of education shall have been appointed for the new school district. Such board of education shall consist of nine persons who are legal residents of the district. They shall be appointed by the county superintendent of schools immediately upon the creation of the new municipality or as soon thereafter as possible. The qualifications of the members so appointed shall be the same as those required for members of the boards of education in other school districts, except that the three years' residence requirement pursuant to section 18:7-11 of the Revised Statutes shall be waived and be of no effect in such school district until the fourth annual school meeting of the newly created school district. The appointed members of the board of education shall continue in office until the ensuing annual school meeting, at which time the legal voters shall elect members of the board of education in the manner provided in chapter seven of Title 18 of the Revised Statutes.

2. Whenever a municipality is divided into two or more municipalities, such municipalities shall remain and constitute but one school district until such time as the legal voters of one of such municipalities shall have determined by an election conducted, as provided in this act, that such municipality shall be constituted a separate school district.

3. Any one of the municipalities constituting a school district under section two of this act may by resolution request the county superintendent of schools to make a study and investigation as to the advisability of constituting the municipality a separate school district. The county superintendent shall within thirty days of the request for the study and investigation file with the governing bodies of the municipalities within the school district and with the board of education a report setting forth the amount of indebtedness, if any, to be assumed by each school district in the event of constituting the municipality a separate school district, which amount shall be calculated pursuant to section twelve of this act. He shall also include in his report such financial, educational and other information as he may deem necessary to enable the governing bodies and the board of education to form an intelligent judgment as to the advisability of the proposed separation and the effect thereof upon the educational and financial situation of the proposed new district and the remaining district.

4. The governing body of the municipality which requested the study and investigation may, within thirty days of the filing of the report required by section three of this act, petition the Commissioner of Education for permission to submit to the legal voters of the municipality the question whether the municipality shall be constituted a separate school district. The petition shall be accompanied with proof of service of a copy of the petition upon the other municipality or municipalities in the school district, the board of education of the district, and the county superintendent of schools.

5. The remaining municipality or municipalities in the school district or the board of education shall, within fifteen days of the acknowledgment of the proof of service, file an answer to the petition wherein it may either (a) consent to the granting of the application; (b) oppose the same for the reason that (1) an excessive debt burden will be imposed upon the remaining district, that (2) an efficient school system cannot be maintained in the remaining district without excessive cost, that (3) there will be insufficient pupils in the remaining district to maintain a properly graded school system or (4) other



good cause; or (c) request that if the petition is granted, the amount of debt which the remaining district would be required to assume according to the formula prescribed in section twelve of this act be reduced for the reason that (1) such an amount of indebtedness together with other indebtedness of the municipality will be excessive, or that (2) it will require so great an expenditure for debt service that sufficient funds will not be available for current expenses without excessive taxation, or that (3) the amount of indebtedness to be assumed under the proposed separation will materially impair the credit of the municipality or the remaining school district to pay punctually the principal and interest of its debt and to supply essential educational facilities and public improvements and services the need for which may be reasonably anticipated, and that (4) the amount of indebtedness to be assumed by the district is inequitable taking into account the value of the property to be acquired by the district. A copy of the answer shall be filed with the municipality originating the request, the board of education, and the county superintendent of schools. The petitioning municipality may likewise request in its original petition a specific reduction in the amount of indebtedness to be assumed by the proposed new district or may offer to assume a specific increase in the amount of indebtedness.

6. Within fifteen days of the filing of the answers to the petition, the Commissioner of Education shall submit the petitions and answers to a board of review to consist of the Commissioner of Education as chairman, the Commissioner of the Department of Conservation and Economic Development, and the Director of the Division of Local Government in the Department of the Treasury. Any interested parties shall be entitled to a hearing before the board of review. The board of review shall consider the effect of the proposed separation upon the educational and financial situations of both the new and the remaining districts in the light of the considerations referred to in section five of this act. Within sixty days of the receipt of petitions and answers, the board of review shall, by a majority vote of its members, grant or deny the petitions, and, if the petitions are granted, the board's determination shall include the amount of indebtedness, if any, to be assumed by the remaining and the new district, respectively.

7. If the application shall be granted, the county superintendent shall fix, within thirty days, the day and time for holding a special election, at which the question shall be submitted to the legal voters of the municipality whether the municipality shall be constituted a separate school district. The posted notices of the special election, newspaper advertisement, and the ballot required by law shall each disclose the amount of indebtedness to be assumed by the proposed new district and the effect of such indebtedness upon the borrowing margin of the municipality and the proposed new district. The special election shall be conducted by the board of education of the school district in the manner provided for the conduct of school elections by chapter seven of Title 18 of the Revised Statutes. If the county superintendent of schools shall ascertain from the statement received by him that the number of votes cast at the election in favor of constituting the municipality a separate school district exceeds the number of votes cast against the proposition, he shall immediately notify the board of education of the results of the election, and thereafter the municipality shall be a separate district.

8. When a new district is created, the children residing therein shall continue to attend the schools in which they are enrolled until the end of the then current school year.

9. The board of education of the district from which the newly-created district was set off, hereinafter referred to as the original district, shall have control of all the schools and schoolhouses in both the newly-created district and in the remaining district and shall, out of the appropriations theretofore granted the board of education of the original district, pay the salaries of all the teachers, janitors and other persons employed therein until the end of the then current school year. The members of the board of education of the original district shall continue in that office until the end of the then current school year as members of that board whether they reside in the remaining district or in the newly-created district. At the end of the current school year, all books, documents and records shall be turned over to the board of education of the new district or the remaining district, whichever has the larger or largest amounts of taxable property as ascertained from the last published report of the Director, Division of Taxation in the Department of the Treasury.

10. Whenever a new district is created under section seven of this act, the members of the board of education of the original district who reside in the area of the newly-created district shall be members of the board of education of the newly-created district and the members of the board of education of the original district who reside in the area not set off to the newly-created district shall be members of the board of education of the remaining district. In each case such members shall continue in office as members of the respective boards until the date or dates when their respective terms of office would have expired as members of the board of education of the original district. The county superintendent of schools shall appoint such additional members of the board of education of the newly-created district as shall be required to complete the full membership of the board of education for that district, and shall likewise appoint such additional members of the board of education of the remaining district as shall be required to complete the full membership of the board of education for that district. In each case such appointees shall serve only until the next election in the district for members of the board of education.

11. The name of the newly-created district shall be "The Board of Education of the (township, town, borough or city, as the case may be, wherein the school district is situate) of (here insert the name of the municipality) in the county of \_\_\_\_\_" and the name of the remaining district shall be "The Board of Education of the (township, town, borough or city, as the case may be, wherein the school district is situate) of (here insert the name of the municipality) in the county of \_\_\_\_\_."

12. The board of education of the new district shall become vested, in its corporate capacity, with the title to all school grounds and buildings, including the furnishings and equipment thereof, in the district. Except as the liability is modified by the action of the Board of Review, pursuant to section six of this act, it shall assume the liability for the amount of indebtedness of the original school district in the ratio which the original cost of the buildings, including grounds, furnishings and equipment, plus any additions thereto, in the newly-created district, bears to the original cost of the school buildings, including grounds, furnishings and equipment, plus any additions thereto, in the whole original district.

Any indebtedness which has been incurred, or authorized but not yet incurred, for the purchase of land or improvement of land or for the erection,

alteration, repair or furnishing of a schoolhouse shall be treated as if the bonds or notes had actually been issued. In fixing the amount of indebtedness to be assumed the amount of indebtedness authorized shall be deemed to be the original cost. The original cost shall be determined according to rules and regulations which shall be prescribed by the Commissioner of Education with the approval of the State Board of Education, and shall be in accordance with recognized accounting practices.

13. The board of education of the original district shall continue to pay the principal and interest of the indebtedness to be assumed by the newly-created district and shall bill the new district as the same becomes due. The board of education of the original district may, if necessary, maintain an action therefor against the board of education of the new district.

14. Whenever a new school district is created, the county superintendent of schools of the county in which it is situated, at the end of the then current school year, shall make between the new district and the remaining district a division of the assets, (excepting school buildings, grounds, furnishings and equipment), and of the liabilities (other than the bonded indebtedness) of the original district, from which the new district was created. In determining the amount of assets to be divided, the county superintendent shall take into account the present value of school books, supplies, fuel, motor vehicles, and all personal property other than furnishings and equipment; *provided*, that, in the case of any vehicle used for the transportation of school children, the original cost of the vehicle, minus any State aid apportioned therefor shall be deemed to be the present value.

15. The division of assets and liabilities provided for in this act shall be made on the basis of the ratables in the respective district on which the last school tax was levied and shall be made as directed by the county superintendent in a written report signed by him.

16. Sections 18:5-1 to 18:5-10, inclusive, of the Revised Statutes, and "An act concerning education, and supplementing chapter five of Title 18 of the Revised Statutes," approved June thirteenth, one thousand nine hundred and fifty, are repealed.

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

Approved September 18, 1953.



## ACTS AND RELATED LAWS, 1953

### CHAPTER 173, LAWS OF 1953

AN ACT concerning certain pensioners, and amending section 43:3-5 of the Revised Statutes.

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

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

43:3-5. The provisions of this chapter shall not apply to any appointment of a temporary nature made or created by any rule or order of procedure of any court of this State, so as to interfere with any rule or order of procedure in such courts for the proper administration of justice therein; nor shall the provisions of this chapter apply to any person appointed to the office of court crier in any court where the term of such office is indefinite, or to any person who is appointed to the office of magistrate of any municipal court in a municipality having a population of less than five thousand, where the salary paid to such municipal magistrate is less than the amount of his pension; nor to the appointment and employment of any pensioned former municipal manager as an engineer or consultant or member of any commission or board by any municipality, county or by the State, or as a teacher or lecturer in any school or educational institution in the State; *nor to the employment, by the State or by any county, municipality or school district in any position or employment, at a salary or compensation of not more than seven hundred fifty dollars (\$750.00) per year, of any person who retires or has retired under the Teachers' Pension and Annuity System created pursuant to article three of chapter thirteen of Title 18 of the Revised Statutes*; nor to any person who has or who may hereafter receive permanent disability in the performance of his duty while serving as a member of the Armed Forces of the United States, the New Jersey State Police, or the police department of any county or municipality in this State.

2. This act shall take effect immediately.

Approved May 29, 1953.

CHAPTER 211, LAWS OF 1953

AN ACT concerning elections, providing for absentee voting, repealing "An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing training under Army or Navy direction at places other than those of such persons' respective residences, and persons having served as soldiers, sailors, marines or nurses in the Armed Forces of the United States in any war, who are patients in veterans' hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing 'An act to afford certain voters of this State, who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans' hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes,' approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes," approved February eighteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 1), repealing "A supplement to 'An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing training under Army or Navy direction at places other than those of such persons' respective residences, and persons having served as soldiers, sailors, marines, or nurses in the Armed Forces of the United States in any war, who are patients in veterans' hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing 'An act to afford certain voters of this State, who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans' hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes,' approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes,' approved February

eighteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 1),” approved April twenty-eighth, one thousand nine hundred and forty-nine (P. L. 1949, c. 54), and repealing all acts amendatory of either of said acts (P. L. 1949, c. 53), (P. L. 1950, c. 146), and supplementing Title 19 of the Revised Statutes.

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

1. This act shall be known as and may be cited as the “Absentee Voting Law (1953).”

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

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

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

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

“Civilian absentee voter” means any qualified and registered voter of the State who expects to be absent from the State on the day of any election and any qualified and registered voter who will be within the State on the day of any election but because of illness or physical disability will be unable to cast his ballot at the polling place in his election district on the day of the election.

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

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

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

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

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

A military service voter who may be absent on the day on which such election is held from the election district in which he resides, whether such person is within or without this State, or within or without the United States,

provided he has resided in this State at least one year and in the county in which he claims the right to vote at least five months counting the time he has been in the military service or a patient in a veterans' hospital in said periods of residence;

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

This act shall be liberally construed to effectuate these purposes.

4. At any time not less than eight days prior to an election in which he desires to vote, a civilian absentee voter may apply to the person designated in section six of this act, for a civilian absentee ballot. Such application or request shall be made in writing, shall be signed by the applicant and shall state his or her place of voting residence and the address to which said ballot shall be sent, and the reason for which the ballot is requested.

Any person in military service or patient in a veterans' hospital desiring to vote in any election or any relative or friend of a person in military service or patient in a veterans' hospital who believes that such person will desire to vote in any election, may apply to the person designated in section six of this act for a military service ballot to be sent to such person.

5. The form of application to be used by a relative or friend of a person in the military service or in a veterans' hospital shall be substantially as follows:

APPLICATION BY RELATIVE OR FRIEND FOR A MILITARY SERVICE BALLOT

The undersigned, residing at \_\_\_\_\_  
(street and number or R. D. route)  
in \_\_\_\_\_ in the county of \_\_\_\_\_  
(name of city or other municipality)  
\_\_\_\_\_ in the State of \_\_\_\_\_, does hereby make  
application for a military service ballot to be voted at the election to be held  
on \_\_\_\_\_  
(date of election)  
for \_\_\_\_\_  
(name of person in military service or veterans' hospital)  
whose serial number is \_\_\_\_\_, whose home address is at \_\_\_\_\_  
(street and number or R. D. route)  
in \_\_\_\_\_ in the county of \_\_\_\_\_  
(name of city or other municipality)  
\_\_\_\_\_ in the State of New Jersey and who is stationed or  
can be found at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

He is of the age of twenty-one years, has resided in the State of New Jersey at least one year and in said county at least five months counting the time that he has been in the military service or a patient in a veterans' hos-

pital or both, and I verily believe that he is qualified to vote as a military service voter in said election.

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

The undersigned, being duly sworn on his oath according to law, says that the contents of the foregoing application are true.

Sworn and subscribed to }  
before me this \_\_\_\_\_ day }  
of \_\_\_\_\_ A. D. \_\_\_\_\_ }

\_\_\_\_\_  
(name and title of officer taking affidavit)

Such affidavit shall be subscribed and sworn to before a person authorized to administer oaths.

6. In the case of any State-wide or county-wide election, the application or request shall be made to the county clerk of the county.

In the case of any municipal election, the application or request shall be made to the clerk of the municipality; in the case of any school election, the application or request shall be made to the district clerk of the school district and in the case of any election to be held in any fire district, road district, sewerage district, street lighting district, water supply district or other special district, other than a municipality, created for specified public purposes within one or more municipalities, the application or request shall be made to the commissioners or other governing or administrative body of the district, or to the clerk of any municipality in, or forming part of, the district, in which such election district is situated, and in case such application or request is made to any such officer other than the county clerk, such officer shall forward the same to the county clerk forthwith.

In the case of applications for civilian absentee ballots, the county clerk shall stamp thereon the date on which said application was received in his office.

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

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

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

(municipal, primary, general or other)  
to be held on \_\_\_\_\_, kindly write to the  
(date of election)

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

Forms of application can be obtained from the undersigned.

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

#### NOTICE TO PERSONS DESIRING ABSENTEE BALLOTS

If you are a qualified and registered voter of the State who expects to be absent outside the State on \_\_\_\_\_ or a qualified and registered voter who will be within the State on \_\_\_\_\_  
(date of election)  
(date of election)  
but because of illness or physical disability will be unable to cast your ballot at the polling place in your district on said date, and you desire to vote in the \_\_\_\_\_ election to be held on \_\_\_\_\_  
(municipal, primary, general or other)  
\_\_\_\_\_ kindly write or apply in person to the undersigned at \_\_\_\_\_  
(date of election)  
once requesting that a civilian absentee ballot be forwarded to you. Such request must state your home address, and the address to which said ballot should be sent, and must be signed with your signature, and state the reason why you will not be able to vote at your usual polling place. No civilian absentee ballot will be furnished or forwarded to any applicant unless request therefor is received not less than eight days prior to the election, and contains the foregoing information.

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



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

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

8. Each county clerk shall cause to be printed sufficient military service ballots and civilian absentee ballots for each primary election for the general election, and for the general election, and there shall be furnished to the said county clerk of the county, as expeditiously as possible before the day fixed for holding any other election within the county, by the officer whose duty it shall be to provide the official ballots for such election, sufficient military service ballots and civilian absentee ballots. Along with all such ballots for all elections there shall also be furnished by such county clerk or other official, inner and outer envelopes and printed directions for the preparation and transmitting of such ballots, for use in such election within the county and all expenses of mailing such ballots shall be paid in the same manner as other expenses of said election are paid.

The form of absentee ballots shall be prescribed by the county clerk and shall conform with the provisions of this act.

9. Each county clerk, upon receipt of applications for military service ballots, shall make a list of them and shall file them alphabetically, according to the municipalities of the home addresses of the military service voters appearing thereon, which list and file shall be open to examination at all times by the county board of elections of the county, commissioner of registration and the superintendent of elections in counties in which a superintendent of elections is in office.

Such lists shall be available at all times for examination and use by the county board of elections, commissioner of registration and superintendent of elections of the county for comparison with the military records of the State for purposes of verification of the qualifications as military voters of the persons whose names appear thereon.

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

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

11. Each county clerk shall forward a military service ballot or a civilian absentee ballot, as the case may be, for use under this act by first-class mail to each military service voter who applies therefor or on whose behalf application is made therefor, and to each civilian absentee voter whose request therefor has been approved, and to whom a ballot has not been delivered by said clerk in person, addressed to the absentee voter at the forwarding address given in the application or request, and all ballots to be forwarded to persons at an address located without the limits of the forty-eight States and the District of Columbia shall be forwarded by air mail.

Such ballots shall be so forwarded as soon as practicable after the twenty-fifth day preceding the day upon which any election is to be held.

12. Each county clerk, after processing the requests for civilian absentee ballots and furnishing the applicant with a civilian absentee ballot in the manner prescribed by this act, shall forward such requests, including those disapproved, to the county board of elections. Each county clerk shall also keep a list of such requests received by him showing the disposition of each request, which list shall be made available to the public and all election officials charged with the duty of administering this act.

13. Each absentee ballot to be used at any election shall conform generally to the ballot to be used at said election in the absentee voter's district but the ballots shall be plainly marked "Military Service Ballot" or "Civilian Absentee Ballot," as the case may be.

14. Each absentee ballot to be used at any election to be held while this act is in effect shall conform generally to the ballot to be used at said election in the absentee voter's election district and shall be so prepared that the absentee voter may indicate thereon his choice of such of the candidates for the offices to be filled, and as to such public questions to be voted upon, at said election by the voters of the entire State or of the county in which such absentee voter's election district is situated, as shall be ascertained and known on the thirty-fourth day preceding such election and sufficient space shall be provided thereon for such absentee voter to write in the name of and vote for any candidate for, or his personal choice for, any public office to be voted for at such election in such election district. A list of the candidates for the offices to be filled in each election district in the county, whose names are known and ascertained on said thirty-fourth day but do not appear upon said ballot, with a statement of the office for which each is a candidate, shall be forwarded with such ballot.

In the preparation of absentee ballots the name of any candidate who has been nominated for any office shall be placed upon the absentee ballot or list of candidates, as the case may be, to be used in the general election to be held in said year in each election district in which he is a candidate, whether or not such candidate has accepted such nomination prior to said date; *provided*, that he has not prior to said date declined the same.

15. Each absentee ballot to be used at any primary election for the general election to be held while this act is in effect shall conform to the ballot to be used at said election in the absentee voter's election district and to the form herein prescribed for absentee ballots to be used in such general elections except that it shall be so prepared that the absentee voter may indicate thereon his choice of the candidates of one political party for each of the officers to be voted upon at said election by the voters of said election district



and shall be separated into party ballots, which shall all be printed upon one sheet. If the county clerk through investigating the voter's voting record has ascertained that under the laws of this State such voter is qualified to vote only in a certain party primary he shall so indicate upon the primary ballot the party primary in which such voter is so entitled to vote.

Each such absentee ballot shall be plainly marked to indicate that but one party ballot is to be voted by each absentee voter and that the party ballot voted by him must conform to the name of the political party indicated on the certificate on the flap of the inner envelope in which the absentee ballot is to be enclosed and there shall also be indicated upon said ballot the qualifying statement appearing in said certificate and governing such absentee voter's choice of the party ballot.

16. Each county clerk shall send, with each absentee ballot, printed directions for the preparation and transmitting of absentee ballots as required by this act (which may be printed upon the inner envelope) together with two envelopes of such sizes that one will contain the other.

The outer envelope shall be addressed to the county board of elections of the county in which is located the home address of the person to whom the absentee ballot is sent, as certified by the county clerk.

The inner envelope shall be so designed that it can be sealed after the absentee ballot has been placed therein and the flap thereof shall be of such length and size as to leave sufficient margin, after sealing, for the printing thereon of the certificate hereinafter described. The flap shall be so arranged, that the margin containing the certificate can be so folded, after the inner envelope has been sealed, that the certificate can be contained, with the said inner envelope, in the outer envelope, and that the margin containing the certificate can be detached without unsealing the inner envelope.

On the outside of each envelope in which an absentee ballot is sent to an absentee voter and of each inner and outer envelope for the return of such ballot, there shall be printed or stamped the words "Official Military Service Ballot" or "Official Civilian Absentee Ballot" as the case may be.

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

I hereby certify that

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

(print your name clearly above)

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

(signature and rank of commanding officer)

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

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

I, \_\_\_\_\_, do solemnly swear that I am a registered voter of the State of New Jersey, and that I have resided in the county of \_\_\_\_\_ continuously since \_\_\_\_\_

(month, date and year)

My address in said county is \_\_\_\_\_ (street and number, if any, or rural route)

where I have resided since \_\_\_\_\_ (month, date and year)

I will be a resident of the State of New Jersey at the above address on \_\_\_\_\_

(date of election)

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

\_\_\_\_\_  
(county clerk insert date of fortieth day before election)

AND BEFORE THE ELECTION

I moved or will move to the above address from my previous home  
address at \_\_\_\_\_ in the  
(street and number, if any, or rural route)  
\_\_\_\_\_, county of \_\_\_\_\_  
(city, borough, town, township or village)  
State of \_\_\_\_\_ on \_\_\_\_\_  
(give date)

Place a cross (X) in the box preceding the applicable statement  
below.

My reason for voting this absentee ballot is:

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

☐ I am unable to leave my place of confinement at \_\_\_\_\_

(home address, hospital address or other place of confinement)

because of \_\_\_\_\_  
(name of sickness or physical disability)  
and will, therefore, be unable to cast my ballot at the polling place in my  
election district on the date of the election.

I marked the enclosed ballot in secret.

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

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

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

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

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

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_\_, and I hereby certify that the affiant  
exhibited the enclosed ballot to me unmarked, and that he then in my  
presence and in the presence of no other person and in such manner that  
I could not see his vote, marked such ballot and enclosed and sealed the  
same in this envelope without my seeing or knowing his vote, and that the  
affiant was not solicited or advised by me to vote for or against any candi-  
date or proposition.

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

\_\_\_\_\_  
(title of officer)

18. In the case of any civilian absentee voter who claims the right to vote by absentee ballot by reason of disability, the voter shall include within the outer envelope a certificate of a duly licensed physician certifying that the voter is confined by reason of sickness or physical disability and will be unable to cast his ballot at the polling place in the absentee voter's election district on the date of the election.

19. In addition to the foregoing, the certificate to be used on the margin of the flap of the inner envelope forwarded with any absentee ballot intended to be voted in any primary election for the general election shall contain the following statement similarly signed and sworn to:

I intend to vote at the next ensuing general election for the nominees of the \_\_\_\_\_ political party, whose ballot is  
(name of party)

marked herein, and I am not a member of, or identified with, any other political party or any political organization espousing the cause of candidates of any other political party. I have not voted in a primary election of any other political party in the last two primary elections or contributed to the campaign funds of any other political party within one year prior to the primary election at which this ballot is to be voted.

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

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

\_\_\_\_\_  
(signature and rank of commanding officer) or

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

\_\_\_\_\_  
(title of officer)

20. The military service ballots, together with the printed directions for the preparing and transmitting of the same and the inner envelopes with their certificates and the outer envelopes to be used therewith, shall conform as nearly as may be practicable to any specifications as to weight and size, which may be made by the defense and post-office departments of the United States, in connection with transporting the same.

The several county clerks shall take advantage of any provision for transmission, free of postage, of ballots and the envelopes containing the same provided by the Acts of the Congress of the United States but if no such provision is made, proper first-class postage and air-mail postage, as required by this act, shall be prepaid thereon.

21. Each county clerk shall, from time to time, prior to each election, certify in writing, under oath, to the commissioner of registration of the county, the names, serial numbers, if any, and home addresses of the persons to whom military service and civilian absentee ballots to be voted at such election have been delivered or forwarded pursuant to this act.

22. The commissioner of registration upon receipt of such information from the county clerk shall, in the case of a military service voter, remove the permanent registration form of each such voter from the permanent registration binders, if it appears therein, and file such forms in a special file designated "Military File" and in the case of civilian absentee voters shall mark the applicant's duplicate voting record appearing on the signature copy registers as follows:

In the proper column provided for the recording of the number of the voter's ballot at the election in which the applicant wishes to vote, the commissioner of registration shall record therein in red ink the initial "A," which shall mean that a civilian absentee ballot was delivered or mailed to the applicant by the county clerk.

Whenever the commissioner of registration receives from the county clerk notice that a civilian absentee ballot has been forwarded to a voter, during the time when the signature copy registers are in the custody of other election officials pursuant to this Title, or are in transit to or from such officials, the said commissioner shall, prior to the opening of the polls on election day, forward to each district board of elections a list of all civilian absentee voters to whom ballots have been sent but whose duplicate voting record has not been marked in the manner herein prescribed. Such lists may be prepared in the same manner as a challenge sheet and may be included therein together with other causes for challenge. No district board of elections shall permit any person to vote whose registration record shall be marked with the initial A in red ink or whose name shall appear on any list or notice furnished by the commissioner of registration to the effect that such voter has received an absentee ballot.

23. Any absentee voter shall be entitled to mark any absentee ballot, so forwarded to him, for voting at any election by indicating his choice of candidates for the offices named, and as to public questions, if any, stated, thereon in accordance with election laws of this State, except that in such ballots to be voted in any primary election for the general election his choice shall be limited to the candidates of his political party or to any person or persons whose names are written thereon by him. When so marked, such ballot shall be placed in said inner envelope, which shall then be sealed, and the voter shall then fill in the form of certificate attached to said inner envelope, at the end of which he shall sign and print his name in his own handwriting, and the certificate shall be sworn to in the case of a military service voter before a commissioned officer, noncommissioned officer, or petty officer in the Armed Forces of the United States or the superintendent of the veterans' hospital in which the military service voter is a patient or some person authorized to take an oath; and in the case of a civilian absentee voter before an official authorized by law to administer oaths in the place where the oath is administered. The inner envelope with the certificate shall then be placed in said outer envelope, which shall then be sealed.

Said sealed outer envelope with the inner envelope and the ballot enclosed therein shall then be mailed with sufficient postage to the county board of elections to which it is addressed.

24. The county board of elections shall, promptly after receiving each civilian absentee ballot, remove the inner envelope, containing the ballot, from the outer envelope and shall compare the signature and the information contained on the flap of the inner envelope with the signature and information

contained in the respective requests for civilian absentee ballots. The county board shall reject any such ballot unless the board is satisfied as a result of such comparison or by reference to the permanent registration books that the voter is legally entitled to vote and that the ballot conforms with the requirements of this act.

The county board of elections shall, promptly after receiving each military service ballot, remove the inner envelope, containing the ballot, from the outer envelope and ascertain through the commissioner of registration whether or not the name of the person, whose name appears following the certificate on the flap of said inner envelope, has been certified by the county clerk to the commissioner of registration of the county as a person to whom a military service ballot, to be voted at the election at which it is intended to be voted, has been forwarded pursuant to this act.

The county board shall investigate the qualifications of a military service voter under this act by comparison of the contents of said certificate with the information appearing upon the application for said military service ballot, including the signatures thereon when the military service voter's signature appears upon said application, and by comparison with the military records of the State when deemed desirable.

In the case of a military service or civilian absentee ballot to be voted at a primary election for the general election, whether or not the military service or civilian absentee voter has indicated in said certificate his intention to vote it in the primary election of any political party in which he is not entitled to vote it according to the registration records of the county, and if it shall appear from said record that he is not entitled to vote said ballot in the primary election of the political party which has been so indicated, such ballot shall be rejected.

Disputes as to the qualifications of military service or civilian absentee voters to vote or as to whether or not or how any such military or civilian absentee ballot shall be counted in such election shall be referred to the County Court of the county for determination.

After such investigation the county board of elections shall detach or separate the certificate from the inner envelope containing the military service or civilian absentee ballot, unless it has been rejected by it or by the County Court, marking the envelope so as to identify the election district in which the ballot contained therein is to be voted as indicated by the absentee voter's home address appearing on the certificate attached to or accompanying said inner envelope and, in the case of ballots to be voted at a primary election for a general election, so as to identify the political party in the primary election of which it is to be voted.

25. It shall not be necessary to qualify any military service voter to vote by a military service ballot in any county, that he shall be or shall have been registered to vote in any election district of this State at the time of any election or at any other time, if his name has been certified by the county clerk of the county to the commissioner of registration of the county as hereinbefore provided. Any military service ballot returned to any county board of elections in the envelopes required by this act shall be counted in determining the result of any election in which it is to be voted in the election district indicated by the military service voter's home address appearing on the certificate or certificates attached to or accompanying the inner envelope, containing such military service ballot, if such certificate or certificates contain in-



formation which would qualify the military service voter to vote in said election district if he were registered to vote therein, and if said certificate or certificates have been filled in and purport to have been executed and sworn to in the manner required by this act and if such military service ballot has been so marked as to comply with the requirements of the election laws of this State and in computing the length of residence, in the county and State, of any military service voter the time which shall have elapsed during his military service or while a patient in any such veterans' hospital shall be counted.

26. All valid military service ballots and valid civilian absentee ballots received by the county boards prior to the time designated for the closing of the polls for each election shall be counted.

27. No absentee ballot shall be rejected or declared invalid because it does not contain all of the names of the candidates or all of the public questions to be voted for or upon in the election district in the election in which it is to be counted, and any absentee ballot shall be counted in determining the result of said election as to any office or public question, if the designation of the office and the name of the candidate for election to said office or the answer to such public question are written thereon so as to indicate the voter's choice, and notwithstanding that such designation, name or question may be or should have been printed or such choice indicated upon such military service ballot in the regular manner.

28. No person who has applied for a civilian absentee ballot and to whom a civilian absentee ballot has been either delivered in person or forwarded by mail by a county clerk, shall be permitted to vote in person at the polling place in his election district on the day of the election, but such person may execute such ballot in the manner provided by this act even though he is in the State on the day of the election.

29. Any military service voter who returns to his place of residence within this State, within ten days before such election, and who has not received a military service ballot, may appear in person before, and apply in writing to, the proper county clerk for a military service ballot, and shall be entitled to receive a military service ballot upon being properly identified and to cast the same by presenting it in person to the proper county board of elections, properly marked, enclosed and sealed in the inner envelope provided for that purpose, with the certificate or certificates on the flap of the inner envelope duly filled in and signed and sworn to before a person qualified to take an oath, upon being properly identified, at any time before the closing of the polls on the day of such election, and if the ballot is properly marked, it shall be counted at the election.

30. Whenever it shall be made to appear by due proof to the county board that an absentee voter who has marked and forwarded an absentee civilian voter's ballot or military service ballot as provided in this act has died prior to the opening of the polls on the day of the election such ballot shall be rejected by the county board and retained by the county board in the same manner as provided herein in cases of other rejected ballots.

31. On the day of each election each county board of elections shall open in the presence of the commissioner of registration or his assistant or assistants the inner envelopes in which the absentee ballots, returned to it, to be voted in such election, are contained, except those containing the ballots which the board or the County Court of the county has rejected, and shall remove

from said inner envelopes the absentee ballots and shall then proceed to count and canvass the votes cast on such absentee ballots, but no absentee ballot shall be counted in any primary election for the general election if the ballot of the political party marked for voting thereon differs from the designation of the political party in the primary election of which such ballot is intended to be voted as marked on said envelope by the county board of elections. Immediately after the canvass is completed, the respective county boards of election shall certify the result of such canvass to the county clerk or the municipal or district clerk or other appropriate officer as the case may be showing the result of the canvass by ward and district, and the votes so counted and canvassed shall be counted in determining the result of said election.

32. As soon as practicable after each election, the commissioner of registration shall cause to be marked all duplicate voting records which have not been marked with a red "A" in accordance with this act, to show that a civilian absentee ballot was delivered or forwarded to the respective registered voters. For each civilian absentee ballot that has been voted, received and counted, the commissioner of registration shall also, by reference to the certificates removed from the inner envelopes of such ballots, cause to be written or stamped the word "Voted" in the space provided in the duplicate voting record for recording the ballot number of the voter's ballot in such election, and in the case of a primary election for the general election he shall also cause to be written or stamped in the proper space of the record of voting form the first three letters of the name of the political party primary in which such ballot was voted. The record of voting forms in the original permanent registration binders shall be conformed to the foregoing entries in the duplicate forms.

33. The county board of elections shall keep, for a period of one year, all of the requests and applications for absentee ballots, all voted absentee ballots, and all of the certificates which have been detached or separated by them from said inner envelopes, and all inner envelopes together with their certificates, and together with their contents, which have not been opened because the county board or the County Court rejected them.

34. Any elector who has been in the military service or a patient in any such veterans' hospital, but who has been discharged or released from such service or discharged from said hospital too late to register at the last registration day before any election, may obtain an emergency voting form at the office of the proper commissioner of registration if he has been previously permanently registered, and upon presentation of such emergency voting form to the proper district board he shall be permitted to vote. In the event that he has not been permanently registered, upon exhibiting his discharge or certificate of service to such commissioner of registration such commissioner shall require such discharged or released elector to register notwithstanding any provisions of law prohibiting the taking of registrations at such time, before issuing such emergency voting form.

35. The county board of elections, the superintendent of elections and the commissioner of registration shall exercise the same powers over absentee voting as over other voting in elections except as otherwise provided in this act.

36. No election shall be held to be invalid by reason of any irregularity or failure in the preparation or forwarding of any absentee ballots pursuant to the provisions of this act.

37. Any person who violates any of the provisions of this act to vote fraudulently or to enable another person to vote fraudulently or to prevent by fraud the voting of any person legally entitled to vote, or who shall knowingly certify falsely in any paper required under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject, in addition to such other penalties as are authorized by law, to disenfranchisement unless and until pardoned or restored by law to the right of suffrage.

38. The following acts are hereby repealed:

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

“A supplement to ‘An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing training under Army or Navy direction at places other than those of such persons’ respective residences, and persons having served as soldiers, sailors, marines or nurses in the Armed Forces of the United States in any war, who are patients in veterans’ hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing ‘An act to afford certain voters of this State, who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans’ hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes,’ approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes,’ approved February eighteenth, one

thousand nine hundred and forty-eight (P. L. 1948, c. 1)," approved April twenty-eighth, one thousand nine hundred and forty-nine (P. L. 1949, c. 54) ;

"An act to amend 'An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing training under Army or Navy direction at places other than those of such persons' respective residences, and persons having served as soldiers, sailors, marines or nurses in the Armed Forces of the United States in any war, who are patients in veterans' hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing 'An act to afford certain voters of this State, who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans' hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes,' approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes,' approved February eighteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 1)," approved April twenty-eighth, one thousand nine hundred and forty-nine (P. L. 1949, c. 53) ;

"An act to amend 'A supplement to "An act to provide for voting by persons in active service, as members of any branch or department of the United States Army, Navy or Marine Corps, or as reservists, absent from their respective places of residence and undergoing training under Army or Navy direction at places other than those of such persons' respective residences, and persons having served as soldiers, sailors, marines or nurses in the Armed Forces of the United States in any war, who are patients in veterans' hospitals located in places other than those of their respective residences, who prior to entering such service or being admitted as such patients were residents of this State and who possess the constitutional qualifications of legal voters of this State and are not otherwise disqualified to vote in this State, and repealing 'An act to afford certain voters of this State, who are in the military service and in certain services auxiliary to and associated therewith, and in certain veterans' hospitals, in time of war, an opportunity to vote in certain elections to be held in this State notwithstanding that such voters may be absent on election day from the respective election districts in which they reside, and supplementing Title 19 of the Revised Statutes,' approved February twelfth, one thousand nine hundred and forty-five (P. L. 1945, c. 11), and supplementing Title 19 of the Revised Statutes," approved February eighteenth, one thousand nine hundred and forty-eight (P. L. 1948, c. 1),' approved April twenty-eighth, one thousand nine hundred and forty-nine (P. L. 1949, c. 54)," approved May twenty-sixth, one thousand nine hundred and fifty (P. L. 1950, c. 146).

The repeal of the foregoing acts shall not be construed to revive any act or acts repealed by such acts.

39. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be con-

fined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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

Approved July 1, 1953.

#### CHAPTER 259, LAWS OF 1953

AN ACT providing for the forfeiture of office, position or employment, tenure and pension rights of persons holding public office, position or employment in certain cases.

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

1. Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State.

2. If any person shall have forfeited his office by reason of the provisions of section one of this act a proceeding may be instituted hereunder in the Superior Court by any citizen who is a resident of this State by proceeding in lieu of prerogative writ. The court shall hear and determine the same without a jury unless such person shall within ten days after the institution of such proceedings demand a trial by jury.

3. This act shall take effect immediately.

Approved July 21, 1953.



CHAPTER 294, LAWS OF 1953

AN ACT concerning traffic regulation, amending section 39:4-128 of the Revised Statutes, and repealing section seventy of "An act concerning traffic regulations, and amending and supplementing chapter four of Title 39 of the Revised Statutes and certain other statutes relating thereto," approved April fifth, one thousand nine hundred and fifty-one (P. L. 1951, c. 23), and chapter sixty-eight of the laws of one thousand nine hundred and fifty-two amendatory thereof.

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

1. Section 39:4-128 of the Revised Statutes is amended to read as follows:

39:4-128. (a) *The driver of any omnibus, designed for carrying more than six passengers, or of any school bus carrying any school child or children, or of any vehicle carrying explosive substance or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped listen and look in both directions along such track or tracks, for any approaching train, and for signals indicating the approach of a train. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while transversing such crossing and the driver shall not shift gears while crossing the track or tracks.*

(b) *No person shall operate or move any crawler-type tractor, wheel tractor, tractor engine with or without trailer or trailers attached, steam shovel, derrick, roller, self-propelled concrete mixer, or any self-propelled vehicle, equipment, machinery, apparatus or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any track or tracks at a railroad grade crossing without first complying with the following requirements.*

*Notice of any such intended crossing shall be given to the nearest superintendent, station agent, station attendant, or track supervisor of such railroad. Such notice shall specify the approximate time of crossing and a reasonable time shall be given to such railroad to provide proper protection at such crossing.*

*After concluding satisfactory arrangements with the proper officer of the railroad and before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along such track or tracks for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.*



*No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be made under his jurisdiction.*

*(c) Any person violating the provisions of this section shall be punished by a fine of not more than fifty dollars (\$50.00) for the first offense and for the second offense a fine of not more than one hundred dollars (\$100.00), or by imprisonment for not more than thirty days, or by both such fine and imprisonment.*

*(d) This section shall not be construed as limiting the authority of any municipality to adopt police regulations governing the operation of omnibuses and to provide penalties for their violation, or to relieve the owner or operator of such omnibus subject to the jurisdiction of the Board of Public Utility Commissioners from any penalty prescribed by the laws of this State for violation of orders of such board.*

2. Section seventy of chapter twenty-three of the laws of one thousand nine hundred and fifty-one is repealed.

3. Chapter sixty-eight of the laws of one thousand nine hundred and fifty-two is repealed.

4. This act shall take effect immediately.

Approved July 27, 1953.

#### CHAPTER 328, LAWS OF 1953

AN ACT concerning the purchase by counties, municipalities and school districts of war savings bonds and other obligations of the United States of America or bonds or other obligations of such counties, municipalities or school districts.

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

1. It shall be lawful for the board of chosen freeholders of any county, the governing body of any municipality or the board of education of any school district to use moneys, which may be in hand, for the purchase of war savings bonds or other obligations of the United States of America or bonds or other obligations of the county, municipality or school district. Said bonds or other obligations, if suitable for registry, may be registered in the name of the county, municipality or school district and the authorization to purchase these bonds or other obligations shall be by resolution adopted by a majority vote of all of the members of any such board of chosen freeholders, governing body, or board of education, as the case may be.

2. When said bonds or other obligations are received by the county, municipality or school district, the treasurer or chief financial officer shall duly record the receiving thereof in an appropriate manner and at the next regular or special meeting after the receipt of such bonds or other obligations, said treasurer or chief financial officer shall transmit a written report to the board of chosen freeholders, the governing body or board of education, setting forth the amount of bonds or other obligations so received, the series, date and the numbers thereof. He shall, at the same time, trans-

mit said bonds or other obligations to such depository, person or persons as the board of chosen freeholders, the governing body or board of education shall direct, for safekeeping. Full information setting forth the amount of bonds or other obligations, the series, date, numbers and interest periods, if any, shall be recorded in the minutes at such regular or special meeting, and a certified duplicate copy of such minute record shall forthwith be filed with the Director of the Division of Local Government in the Department of the Treasury.

3. Whenever the board of chosen freeholders of any county, the governing body of any municipality or the board of education of any school district shall purchase any bonds or other obligations of said county, municipality or school district, pursuant to this act, the said bonds or other obligations shall not be cancelled but may be sold as and when directed by resolution adopted by a majority vote of all the members of such board of chosen freeholders, governing body or board of education.

4. This act shall take effect immediately.

Approved July 29, 1953.

#### CHAPTER 351, LAWS OF 1953

AN ACT concerning leave of absence for field training in the Armed Forces of the United States, and amending section 38:23-1 of the Revised Statutes.

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

1. Section 38:23-1 of the Revised Statutes is amended to read as follows:

38:23-1. An officer or employee of the State or a county, *school district* or municipality, who is a member of the organized reserve of the Army of the United States, United States Naval Reserve, *United States Air Force Reserve* or United States *Marine* Corps Reserve, or other organization affiliated therewith, shall be entitled to leave of absence from his respective duty without loss of pay or time on all days on which he shall be engaged in field training. Such leave of absence shall be in addition to the regular vacation allowed such employee.

2. This act shall take effect immediately.

Approved August 8, 1953.

## RESOLUTION OF 1953

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### CHAPTER J. R. 7, LAWS OF 1953

A JOINT RESOLUTION to congratulate the New Jersey Education Association upon its Centennial Year and for its service to public education in New Jersey since its founding in the year one thousand eight hundred and fifty-three.

WHEREAS, The New Jersey Education Association was founded in the year of our Lord one thousand eight hundred and fifty-three; and

WHEREAS, The New Jersey Education Association has, since its founding, rendered a high standard of performance on behalf of the children in the public schools of this State; and

WHEREAS, The New Jersey Education Association has provided leadership over the years to effect great educational progress in New Jersey and to help make possible in this State one of the very best systems of public schools in the Nation; therefore

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

1. That congratulations and commendation are herewith offered to the New Jersey Education Association and to its twenty-nine thousand members on the completion of one hundred years of outstanding service to public education in New Jersey.

2. This joint resolution shall take effect immediately.

Approved April 24, 1953.



## SCHOOL LAW DECISIONS

1952-1953

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OF THE COMMISSIONER OF EDUCATION PRINTED IN 1951-1952 BULLETIN

FRIGIOLA, NANCY, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROSE FRIGIOLA, <i>vs.</i> BOARD OF TRUSTEES OF THE TEACHERS' PENSION AND ANNUITY FUND (PURSUANT TO R. S. 18:13-58) .....	79
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## SCHOOL LAW DECISIONS

1952 - 1953

### I

IN THE MATTER OF THE APPLICATION FOR A RECOUNT OF THE BALLOTS CAST  
AT THE SPECIAL SCHOOL ELECTION HELD IN THE SCHOOL DISTRICT OF THE  
TOWNSHIP OF MAHWAH, BERGEN COUNTY

For the Petitioners, Walter W. Weber, Jr.

For the Board of Education, John J. Sullivan.

### DECISION OF THE COMMISSIONER OF EDUCATION

A recount of the ballots cast at the Special Meeting of the legal voters of the School District of the Township of Mahwah in the County of Bergen held on Tuesday, June 17, 1952, was conducted by the Acting Commissioner of Education in the Bergen County Administration Building on Friday, July 18, 1952, at 10:00 A. M.

At the conclusion of the counting of the uncontested ballots, the results were:

For the Proposal .....	557 votes
Against the Proposal .....	490 votes

Ballots set aside for later determination were then examined. It was agreed by counsel that 30 ballots for the proposal and 58 ballots against the proposal should be counted. This brought the total to 587 votes for the proposal and 548 against. It was agreed that 46 ballots were void for the reason that there was no cross (X) plus (+) or check (✓) in the square. An examination of these ballots revealed that even if these had been legal ballots, the result of the election would not have been changed.

It is determined that the proposal submitted to the legal voters of the School District of the Township of Mahwah in the County of Bergen on Tuesday, June 17, 1952, was duly carried.  
July 22, 1952.

II

VERBAL INFORMATION CANNOT BE USED IN LIEU OF WRITTEN  
SPECIFICATIONS AS THE BASIS OF BIDDING FOR  
TRANSPORTATION CONTRACTS

WILLIAM JACQMEIN,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF CLINTON, HUNTERDON COUNTY,  
AND GEORGE POLT AND JOHN POLT,

*Respondents.*

For the Petitioner, Hauck & Herrigel.

For the Respondents, Wesley L. Lance.

FRED DILLEY,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF CLINTON, HUNTERDON COUNTY,  
AND GEORGE POLT AND JOHN POLT,

*Respondents.*

For the Petitioner, Italo Tarantola.

For the Respondents, Lloyd Fisher.

RALPH BAKER,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE TOWNSHIP OF CLINTON, HUNTERDON COUNTY,  
AND GEORGE POLT AND JOHN POLT,

*Respondents.*

For the Petitioner, Italo Tarantola.

For the Respondents, Lloyd Fisher.

DECISION OF THE COMMISSIONER OF EDUCATION

Petitioners in this case ask the Commissioner to set aside the award of transportation bids on contracts to George Polt and John Polt by the Board of Education of the Township of Clinton in the County of Hunterdon for transporting pupils of the school district.

The newspaper advertisement giving notice that bids would be received on the fifth day of August, 1952, at 7:45 P. M. at the Annandale Brick School House, included, among other things, the following statement: "Specifications and bid forms for the routes and a standard form of questionnaire to be answered by the bidder may be secured from Harry Mitchell, Clerk."

At a conference held in the State Department of Education Building, Trenton, at 10:00 A. M. on Friday, August 22, 1952, it was stipulated by the attorneys for the petitioning and respondent bidders that the cases be sub-

mitted to the Commissioner on petitions and answers and upon the following stipulated facts:

"1. It is hereby stipulated and agreed by and between the parties hereto that there were no written specifications submitted by the board of education to any of the bidders in accordance with the rules and regulations prescribing written specifications. The attorneys are in agreement that the failure to provide written specifications represents fatal error and that, therefore, the bids should all be rejected and the Board of Education should be required to readvertise and rebid in accordance with the rules in such cases made and provided,"

The attorney for the respondent board of education agreed:

"That the matter be submitted to the Commissioner of Education on the basis of the material submitted and the arguments presented at the conference before the Assistant Commissioner on Friday, August 22, 1952."

It is the opinion of the Commissioner that the award of the bids to the respondent bidders must be set aside.

On page 23 of the bulletin of the State Department of Education containing the rules governing pupil transportation, adopted June 4, 1948, are prescribed, pursuant to statutory authority, the items of the specification upon which transportation bids are to be made. According to the transportation rules, boards of education may, subject to the approval of the County Superintendent of Schools, supplement these prescribed specifications and prescribe additional requirements for the greater safety, health and comfort of the pupils. Separate specifications are prepared for each route requiring a separate bus.

The only written information furnished to the bidders concerned the routes and the number of pupils to be transported. There was no written information furnished regarding seven other items of the prescribed specifications. All other information supplied was given verbally by the District Clerk.

In the opinion of the Commissioner, verbal information given by the District Clerk cannot be held to be a specification as required by the State Board of Education. The following is quoted from "Words and Phrases" (Permanent Edition 39) at page 746:

"Specifications refer to *written or printed description* of work to be done."

In Webster's New International Dictionary (2d Edition) is found the same definition. Furthermore, verbal specifications fall short of the requirements for specifications laid down in court decisions. Courts have held that common standards must be set up and that in order that all bidders may be on an equal basis, the same information must be furnished to all prospective bidders. (See *Tice vs. Long Branch*, 98 N. J. L. 214; *Rankin vs. Board of Education of Egg Harbor Township*, 135 N. J. L. 299 at page 302; *Waszen vs. Atlantic City*, 1 N. J. 272 at page 283.) It is the opinion of the Commissioner that these requirements cannot be met by giving verbal information in lieu of furnishing written specifications for the items required by the rules of the State Board of Education.

The award of the transportation bids on contracts to John Polt and George Polt by the respondent board of education will be set aside. The Board of Education of the Township of Clinton in the County of Hunterdon is directed to readvertise for bids in accordance with law and the rules and regulations of the State Board of Education.  
August 22, 1952.

### III

#### SPECIAL MEETINGS OF BOARDS OF EDUCATION MUST BE CALLED IN STRICT CONFORMANCE TO THE REQUIREMENTS FOR CALLING SUCH MEETINGS

JOHN E. CULLUM,

*Petitioner,*

*vs.*

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

*Respondent.*

For the Petitioner, Morton Isaacs.

For the Respondent, Isadore Glauberman.

#### DECISION OF THE COMMISSIONER OF EDUCATION

Petitioner, among other things, says that on January 31, 1952, the Respondent Board of Education, by resolution duly adopted at a special meeting, notice for which meeting was duly served upon all members of the Board, appointed him to the superintendency of the School District of North Bergen for the term of five years commencing January 31, 1952, which office he formally and publicly accepted at this meeting. He says further that on February 1, 1952, at its reorganization meeting, the Respondent adopted a resolution vacating his appointment as Superintendent, despite the protest made by his counsel to the effect that the vacating resolution was illegal. The Commissioner is asked to issue an order:

1. Directing the Respondent to carry out the terms of the resolution of January 31, 1952, appointing the Petitioner as Superintendent of Schools;
2. Compelling the Respondent to perform the agreement made between the Petitioner and the Respondent on January 31, 1952;
3. Directing the Respondent to pay to the Petitioner his retroactive annual salary as Superintendent of Schools, in accordance with the salary schedule set forth in the resolution of January 31, 1952;
4. Enjoining the Respondent from appointing another Superintendent of Schools.

Respondent in answering the petition says, among other things, that the resolution allegedly adopted to appoint Petitioner to the superintendency was illegal and invalid and that any alleged acceptance by the Petitioner was of no validity. Among the defenses in the answer are the following:

1. The alleged special meeting set forth in paragraph 7 of the petition was not called by the Secretary of the Respondent as required by the resolution of the Board of Education of the Township of N. Bergen adopted on February 1, 1951.
2. The alleged notice calling for a special meeting to be held on January 31, 1952, signed by Messrs. John J. Halligan, Edward H. Marck and Mrs. Edith P. Beck, members of the former Board, was in violation of the understanding by all the members of the former Board that no action would be taken by the former Board to fill the vacancy for the appointment of a Superintendent of Schools until the thirty-day period of mourning for the late Superintendent had been completed.
3. The alleged notice calling for a special meeting to be held on January 31, 1952, the night when the term of Mr. Edward H. Marck, as a member of the former Board, expired was given in bad faith, in an attempt to thwart and prevent the succeeding Board, which was to be organized on the next day—February 1, 1952—from making a conscientious selection of the best qualified candidate for the position of Superintendent of Schools of North Bergen.

Testimony was taken by the Assistant Commissioner of Education in the Office of the Hudson County Superintendent of Schools in Jersey City, on Tuesday, May 27, 1952, and on Thursday, May 29, 1952. Briefs have been submitted by counsel.

The first question to be determined is the legality of the special meeting at which Petitioner was appointed on January 31, 1952. The following is the notice of that meeting:

“PLEASE TAKE NOTICE that there will be a meeting of the Board of Education of the Township of North Bergen in the County of Hudson at the Assembly Chambers, Town Hall, Hudson Boulevard and 43rd Street, North Bergen, N. J., on Thursday, January 31, 1952, at 8 P. M. for the purpose of considering the appointment of a Superintendent of Schools and for such other business as may come before said meeting.

Very truly yours,

E. H. MARCK  
JOHN J. HALLIGAN  
EDITH P. BECK.”

The resolution adopted by the North Bergen Board of Education on February 1, 1951, relating to the call of special meetings, reads as follows:

"*Resolved*, That Special Meetings shall be called on not less than twenty-four hours of notice by the Secretary, in writing, upon the order of the President or on the written request of three members of the Board.

"All notices of Special Meetings shall state the object for which such meetings are called."

Rule 136 of the State Board of Education reads as follows:

#### "BOARD OF EDUCATION—CALL OF SPECIAL MEETINGS

"In every school district of the State, it shall be the duty of the Secretary or District Clerk of the Board of Education to call a special meeting of the Board *whenever he is requested* by the President to do so or *whenever there shall be presented* to such Secretary or District Clerk a petition signed by a majority of the whole number of members of the Board of Education requesting the calling of such special meeting."

The record shows that the Secretary was absent from the district at the time of the call of the meeting and did not sign the above-quoted notice of a special meeting. Two members refused to attend the meeting because they considered it illegal.

The answer to the question raised above seems to turn on whether three members of the Board, in the absence of the Secretary and in view of the foregoing resolution of the local Board and the rule of the State Board, may call and hold a special meeting, after giving timely notice to the other two members of the time, place and purpose of said meeting.

Rule 136 of the State Board, which is similar to the resolution of the North Bergen Board, has never been construed by the Commissioner, the State Board of Education, or the Courts of this State. The Courts of this State have held, however, that a school district meeting must be called and notice thereof given by the officers or persons authorized by law to do so, and the proceedings of a meeting called or notice thereof given by unauthorized officers or persons are invalid. See 56 *Corpus Juris* 355, *Apgar vs. VanSyckel*, 46 N. J. L. 492, *Bogert vs. Bergen County School District No. 30*, 43 N. J. L. 358. The weight of authority in texts and in cases cited in other jurisdictions is preponderantly to the effect that where a statute or by-law governs the calling of a special meeting, such statute or by-law must be strictly followed, and that a meeting held at the call of an officer other than the one authorized to make the call by the controlling statute or by-law is in general illegal and of no effect. See 56 *Corpus Juris* 338, 353, 355, 19 *Corpus Juris Secundum*, 90, *McQuillin, Municipal Corporations*, 2d Ed. Rev. Vol. 2, sec. 631, at page 578, *Thompson on Corporations* (3d Ed.) Vol. 2, page 663.

In the case of *Riggs vs. Polk County*, 51 Ore. 509, it was held that where the power to call a special meeting was given to some person or persons, the implied existence of the same power in some other person or body is necessarily excluded. In *Johnson vs. Dye*, 127 South Western Reporter 444, it was held that the statute which provides the method by which notice of a special



meeting of the school board shall be given must be obeyed. *There is no authority for anyone else to call a meeting.* In *Wood vs. School District*, 162 N. W. 1081, it was held that notice must be given by the person authorized by the proper authority. The Court held in *Gelinas vs. Fugere*, 55 Rhode Island Reports at 232, that members who do not receive a notice of a meeting from any person with authority to give it are warranted in disregarding the notice as received by them. It is settled that the absence of proper notice to any member will render a meeting illegal. In *Smith vs. Dorn*, 30 Pacific Reporter 1024, the by-law of a corporation relating to the manner of calling special meetings of the board of directors, and *Civil Code 320* provided that notices calling such meetings shall be given on the order of the President, or, if there be none, on the order of two Directors. It was held that, while there was a President of the Board competent to act, a special meeting thereof called by two directors, on the refusal of the President to make the call, was illegal.

Counsel for Petitioner in his brief calls the Commissioner's attention to the case of *L. H. Whipple and Others vs. John Christie and Others*, 122 Minnesota, 73, where the Court took a different view. This case involved a Fraternal Benefit Association and not a Board of Education. According to the constitution of the Order, the President was empowered to call a special meeting and the scribe was given the duty of mailing out the notices. The scribe refused to mail the notices. Thereupon the President mailed the notices and the Court upheld the legality of the meeting. There was a strong dissenting opinion in the case which took the view of the cases and texts above cited.

A study of the above-cited cases and texts leads the Commissioner to the conclusion that the Secretary of the North Bergen Board was the only person empowered to give notice of a special meeting. There seem to the Commissioner to be sound reasons why there should be strict conformance to the requirements for calling special meetings. Any other course can result only in confusion. A Board member should not have to heed a notice given improperly because he fears the meeting may later be held to be legal. Important business, such as calling district meetings for bond issues, is sometimes transacted at special meetings. Bond issues should not be jeopardized by failure to comply strictly with requirements for calling a special meeting. Endless litigation can result if requirements are not followed strictly.

Under litigation in this case is the appointment of a Superintendent of Schools for a five-year term. No more important action can be taken by a Board of Education than the appointment of the person who is to give the school system educational leadership for years to come. There should be absolutely no question as to the legality of the meeting at which such an appointment is made. The Superintendent's usefulness to the school system should not be impaired by any question about his title to the office.

Petitioner argues that the State Board Rule and the local Board's resolution imposing upon the Secretary the duty of calling a special Board meeting were never intended to be mandatory. They do not mean, he contends, that only the Secretary can call a meeting. They simply make it one of the duties of the Secretary for the convenience of the Board members to relieve them of the work. He maintains that they are simply regulations for the purpose of securing order and dispatching the ordinary conduct of the Board's busi-

ness. It seems to the Commissioner that all these contentions are answered in the cited texts and decisions.

Petitioner further argues that a master can always do that which he can delegate to a servant. The difficulty with this argument is that a Secretary is more than an employee whose duties are prescribed by the Board of Education; he is also a public officer who derives certain powers and duties from the law and the Rules of the State Board of Education which the local Board cannot change. The three members who attempted to call the meeting were not competent to substitute themselves for the Secretary who had been given the duty to perform by both the local and State Board of Education.

It is argued by the Petitioner that there must be some substitute for the Secretary; otherwise, a Board of Education might be helpless to act in some emergency if the Secretary were absent, disabled, deceased, or recalcitrant. The Commissioner would point out that there is nothing in the record of this case to indicate that the Board of Education was faced with an emergency when the attempt was made to call the special meeting under litigation. The appointment of a Superintendent could wait until the next regular meeting of the Board. Nor, in the opinion of the Commissioner, would a Board of Education be helpless in time of emergency. Authorities agree that a notice of a special meeting may be dispensed with, or its necessity waived, by the presence, consent and participation in the meeting of every one of those entitled to notice. *McQuillin, Municipal Corporations, supra*, at 581. In the case of great emergency, Board members would doubtless waive notice and attend a special meeting. Most Boards of Education meet monthly and the School Law requires at least bi-monthly meetings. It may be that in a case of extreme emergency, where immediate action is necessary, some person could act for the Secretary. (See *Gelinas vs. Fugere, supra*.) However this may be, the Commissioner is not called upon to so decide in the instant case because there is no proof in the record of an extreme emergency.

No notice of a regular meeting is required. *Leuly et al. vs. Ritter, et al.*, 1938 S. L. D. 89. If the most unfavorable situation is considered, a Board would be unable to act because of the absence, death, disability, or recalcitrance of the Secretary only until the next regular meeting. In the rare chance that such a situation should develop, it would be much the lesser evil to suffer the inconvenience of waiting until the next regular meeting than to increase the risk of confusion and litigation latent in calling a special meeting without strict conformance to the requirements for calling such meetings.

A Board would not be helpless in dealing with a recalcitrant Secretary. While an action in lieu of the prerogative writ of mandamus, if available, might not be practicable, a Secretary would be subject to disciplinary action for recalcitrance. If not under tenure, he may be removed pursuant to Section 18:6-30, after a hearing upon written charges proved. If under tenure, charges may be brought pursuant to Section 18:5-51 and, if proved, he may be dismissed. It is hardly likely that a Secretary would risk a refusal to give notice required by law. It is interesting to note that no such refusal has come to the attention of the Commissioner.

Neither the local Board nor the State Board made any provision for a substitute for the Secretary to call a meeting. The Legislature did consider such a substitute in Chapter 163, Laws of 1950, but specifically provided that the Assistant Secretary could act only when designated by the Board by resolution. The Legislature was careful not to permit the Assistant Secretary to

determine when he could act as Secretary. In the Commissioner's opinion, this shows that it was the intention of the Legislature not to permit any person to substitute for the Secretary without previous authorization. If the Legislature or the State Board of Education had thought it necessary to provide a method of calling a special meeting in the case of the disability, death, or recalcitrance of the Secretary, it could have done so by law or regulation. The Commissioner, by interpretation, will not provide for an omission by the Legislature and the State Board. This conclusion having been reached, it is not necessary to answer any other questions raised and argued.

For the foregoing reasons, the Commissioner must conclude that the meeting on January 31, 1952, was not legally called and, therefore, the appointment of the Petitioner was invalid. The petition is dismissed. In dismissing this petition, the Commissioner would make it clear that this decision deals purely with a legal question and has no relation to, and should not be taken to reflect in any way upon, the character, the qualifications, and the fitness of the Petitioner to be a Superintendent of Schools.  
November 14, 1952.

#### DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed for the reasons stated in the opinion filed by the Commissioner of Education.  
March 6, 1953.

#### IV

IN THE ABSENCE OF BIAS AND PREJUDICE THE COMMISSIONER  
WILL NOT SET ASIDE THE DISMISSAL OF A TEACHER IF  
THERE IS SUFFICIENT EVIDENCE TO SUPPORT  
THE ACTION OF THE BOARD

WARREN H. OGDEN,

*Appellant,*

*vs.*

BOARD OF EDUCATION OF THE PENNS GROVE-UPPER PENNS NECK SCHOOL  
DISTRICT,

*Respondent.*

For the Appellant, Thomas L. Smith, Esq.

For the Respondent, Alvin R. Featherer, Esq.

#### DECISION OF THE COMMISSIONER OF EDUCATION

Appellant, who is protected in his position by the Teachers' Tenure Act (R. S. 18:13-16 to 20) appeals from the action of the Board of Education of the Penns Grove-Upper Penns Neck School District in dismissing him as a teacher in the district on June 27, 1952. He was charged by the Supervising Principal and the High School Principal with inefficiency, incapacity, insubordination, lack of cooperation and conduct unbecoming a teacher. There were fourteen specific charges submitted and the Board of Education after a

hearing found that charges 1, 2, 7, 8, 10 and 13 had been proved in fact, and that charges 3, 4, 5, 6, 9, 11, 12 and 14 had not been proved in fact. The charges found proved by the Board are as follows:

- "1. On numerous occasions during the school years of 1950-1951 and 1951-1952, he has consistently disobeyed, ignored and attempted to avoid compliance with the rules and policies of the Board of Education and of the Supervising Principal, as promulgated for the government of the school district, and as contained within the Teachers' Handbook distributed to all teachers of the school district, after approval of the Board of Education, and more specifically Items Nos. 2 and 6 thereof.
- "2. He has on numerous occasions during the school years of 1950-1951 and 1951-1952 exhibited an attitude of attempting to circumvent and avoid the specific orders, policies and will of the Board of Education and his superior officers as set forth in the aforesaid Teachers' Handbook, and especially Items Nos. 2 and 6.
- "7. He has on several occasions since May 10, 1949, refused to co-operate with Howard D. Brooks, Principal of the High School, and his superior officer, in an effort to improve the courses of study in General Science and Biology, and has failed and neglected to make requisitions for apparatus which he stated was necessary for demonstrative experiments, altho requisition forms were sent to him for this purpose.
- "8. He did, in the month of October, 1950, contrary to the provisions of Item No. 3 of the Teachers' Handbook, conduct himself in a manner unbecoming a teacher, in that he participated in the furtherance of an organization consisting mostly of high school students, identified as the 'Double-Cross Club,' the apparent purpose and object of which was to inflict harmful and embarrassing bodily injury upon other students in the high school, and create mental anguish by the use of verbal threats and threatening notes.
- "10. He disobeyed and failed to enforce the provisions of the laws of the State of New Jersey prohibiting the administering of corporal punishment to pupils in that he did, on January 15, 1952, hit and strike one Wayne Fisher, a student in the high school, on the side of the face with his closed fist.
- "13. He has consistently and over a period of years disrespectfully ignored and attempted to avoid compliance with the rules, policies, and orders of the Board of Education, the Principal of the High School and the Supervising Principal, with an attitude of absolute disregard for administration authority, this despite the fact that in his last contract of employment he agreed 'to faithfully do and perform the duties under the employment aforesaid, and to observe and enforce the rules prescribed for the government of the school by the Board of Education.'"

Appellant attacks his dismissal on the grounds that the charges are trivial, that bias and prejudice rather than the fair consideration of legal evidence was the cause of his dismissal, and that the guilt of the Appellant was not established by the greater weight of the credible legal evidence.

He prays that an order be issued directing his reinstatement and payment of back salary from the date of his dismissal.

The pertinent statute is:

"18:13-17. No teacher, principal, or supervising Principal 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."

The Commissioner in determining appeals has been guided by the following excerpts from decisions of the Commissioner and State Board of Education:

*Fitch vs. Board of Education of South Amboy*, 1928 Compilation of School Law Decisions 173, cited in *W. Clifford Cook vs. Board of Education of the City of Plainfield*, 1939-1949 School Law Decisions 177, at 179:

"Mr. Fitch now urges that we should be convinced 'beyond the preponderance of evidence' that he was inefficient and incapable. As we have today indicated in another case, it is our opinion that we should not interfere with the determination of a local board of education unless it appears that its conclusion was the result, not of honest judgment, but of passion or prejudice. The Tenure of Service Act provides that all charges shall be examined into by the local board of education, and that if such board finds they are true in fact, the teacher may be dismissed. The Legislature has imposed the duty of determining if the charges are true in fact upon the local board. Where evidence against a teacher is clear, or where, if not entirely clear, there is room for an honest difference of opinion, we should not interfere with the determination of the local board. To do so would mean that we could substitute our judgment in place of its judgment, a substitution which, in our opinion, would be unauthorized and contrary to the intention of the Legislature."

The Supreme Court in *Reilly vs. Jersey City*, 64 N. J. L. 508, cited in the Cook case, *supra*, said:

"In reviewing the action of a board of police commissioners this court will not weigh the evidence taken before them, for the purpose of reaching an independent conclusion on the question of the guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational basis for the judgment against him. If it does, then no matter whether the evidence be weak or strong, this court will not interfere. *Dodd vs. Camden*, 27 Vroom 258. Tested by this rule, the evidence produced before the board, and



sent up with the writ in this case, supports the conviction which rests upon it, and the order of removal must therefore be affirmed."

The Supreme Court in *Martin vs. Smith*, 100 N. J. L. 50, cited in the Cook case, *supra*, held:

"If the court were not circumscribed and limited in its duty in this instance by the well-settled rule of law applicable to cases of this character, it might properly be urged to weigh the testimony, and, if possible, reach a conclusion different from that which has been reached by the trial tribunals. But the settled rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusion of guilt or innocence, this court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment. If the judgment of the trial court can be fairly supported by the record, the duty of this court is at an end so far as further investigation is concerned."

In *Conrow vs. Lumberton Township*, 1928 S. L. D. 186, cited in *Wallace vs. Greenwich Township Board of Education*, 1938 S. L. D. 495, the State Board said:

"As the procedure prescribed by the statutes was followed, but two questions arise: first, was the charge such as, if found true in fact, would justify dismissal; and second, was the finding that the charge was true in fact so clearly against the weight of evidence as to lead to the conclusion that it was the result, not of honest judgment, but of passion or prejudice."

In *Cheesman vs. Gloucester City*, 1928 S. L. D. 159, cited in the Wallace case, *supra*, it was said:

"This Board will not disturb the findings of a local board on a question of this kind, provided it has reached its decision after giving a fair hearing and there is no showing of passion or prejudice on its part."  
Affirmed by the Supreme Court, Id. 159.

In *Wallace vs. Board of Education of Greenwich Township*, 1938 S. L. D. 491, at 495, the State Board said:

"In the present case, the county superintendent of education and the county helping teacher who had observed Mrs. Wallace's work, both appeared before the Board of Education and testified in support of the charges. It is true that, as pointed out in the Commissioner's opinion, their testimony does not establish an absolute failure on the part of the teacher, but we cannot say that it is not sufficient in connection with the other testimony which was before the Board, to warrant it in holding that there was sufficient evidence to justify them in sustaining the charges of inefficiency and dismissing the teacher. Nor, judging of their conduct by the record made before the Commissioner, can we say that they did not act in good faith, or that they were swayed by bias or prejudice. It might be that if the case were presented to us for our opinion on the evidence alone, we might disagree with their conclusion, but the power and duty of passing upon the charges was theirs under the law and we cannot say that there was no justification for the finding which they made."



The Supreme Court in the case of *Redcay vs. State Board of Education*, 130 N. J. L. at 371, cited in *Palmer vs. Board of Education of the Borough of Audubon*, 1939-1949 S. L. D. 183, at 186, said:

"An inefficient and incapable principal may do great injury to both pupils and teachers. When the charges of such conduct have been clearly proved, the removal should be easy and prompt. *Devault vs. Mayor of Camden*, 48 N. J. L. 433. Nor are we concerned in searching for more than to find that there was a rational basis for such determination, if the proceedings were regular. *Alcutt vs. Police Commissioners*, 66 Id. 173. . . . Unfitness for a task is best shown by numerous incidents. Unfitness for a position under the school system is best shown by a series of incidents. Unfitness to hold a post might be shown by one incident, if sufficiently flagrant, but it might also be shown by many incidents. Fitness may be shown either way."

The first question to be determined is whether the charges, if proved, are sufficient to warrant dismissal. It may be that some of the charges, taken alone, would not be sufficient, but, taken together, it is the opinion of the Commissioner that according to *Redcay vs. State Board of Education*, *supra*, they are sufficient. Some of the charges involve a failure to co-operate with superior officers. In the case of *Cook vs. Plainfield*, 1939-1949 S. L. D. 177, the Commissioner said, at page 179:

"The success of a school depends in large measure upon good organization and hearty cooperation. When a teacher finds it impossible to work harmoniously with his immediate superior officer and cannot convince the superintendent of schools and other administrative or supervisory officers that he, rather than his immediate superior, is right, then such person should either change his attitude or seek a position elsewhere. If he does neither, there appears only one course left to the board of education which is to conduct a full hearing and determine the action which in its opinion is best for the welfare of the school."

The seriousness of a charge of striking a pupil need not be argued.

Next, it must be considered whether the Petitioner had a fair trial. The law requiring a hearing was obeyed. The hearing extended over a period of four days and the record includes 552 pages of testimony. The Board retained a member of the Board, Joseph Narrow, Esq. to conduct the hearing and rule on questions of evidence. His rulings were fair and impartial. One member of the Board, who testified, disqualified himself from further participation in the trial. The other eight members attended all sessions of the hearing and were unanimous in adopting the resolution of dismissal. The members of the Education Committee were not disqualified from participation because of their meetings with the Appellant concerning complaints prior to the filing of the charges. The following excerpt from the case of *Reimer vs. Board of Chosen Freeholders of the County of Essex*, 96 N. J. L. 371, seems in point:

"The opinion expressed in their report was based on facts ascertained by them which might be changed by the evidence to be taken on a formal hearing, and, as they had no interest but the public welfare, we must

assume that such considerations would influence them on final hearing. Most, if not all, of our cases holding voidable any action by a public body because not impartially constituted rests upon the fact that the participating judge had an interest in the result. It is not an uncommon proceeding for a public body to refer charges of this character to a committee to ascertain the facts and report, on the coming in of which the whole body may take action, but such a report is not a judicial finding and has no finality. To disqualify every member of a committee serving to ascertain facts for the Board which appoints it would seriously interfere with the administration of its public duties. That a superior officer who has expressed dissatisfaction with the conduct of an inferior may sit as his judge on the trial of charges against him, there being no statutory prohibition, was held in *Crane vs. Jersey City*, 90 N. J. L. 109; affirmed by the Court of Errors and Appeals, 92 *Id.* 248, and the reasons there given are applicable to this case."

It is the opinion of the Commissioner that the Appellant had a fair trial.

The final question to be considered is whether the record contains evidence which supports the charges, or whether the lack of evidence indicates that passion, prejudice, or unfairness on the part of the Board members influenced them in dismissing the Appellant. As indicated in the principles set forth above for guiding the Commissioner in determining appeals of this kind, the Commissioner does not weigh the evidence to form an independent judgment. The Commissioner, without expressing any personal opinion as to the guilt or innocence of the Appellant, is of the opinion that the record contains evidence to support the findings of the Board of Education and that the dismissal was not the result of bias and prejudice. Therefore, the Commissioner has no grounds to reverse the Board of Education in dismissing the Appellant.

This conclusion having been reached, it is not necessary to decide whether Appellant, by withdrawing his contributions to the Teachers' Pension and Annuity Fund, resigned as a teacher in the Penns Grove-Upper Penns Neck School District.

The appeal is dismissed.  
January 23, 1953.

#### DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed for the reasons stated in the opinion filed by the Commissioner of Education.  
June 19, 1953.

#### V

IN RE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN  
THE SCHOOL DISTRICT OF THE TOWNSHIP OF MONTGOMERY, SOMERSET  
COUNTY, ON FEBRUARY 10, 1953.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual school election held on February 10, 1953, for membership on the Board of Education of the Township of Montgomery, Somerset County, for the following candidates:

*Three-Year Term*

Norval Hoagland .....	260 votes
Theodore J. Luhas .....	242 votes
Charles W. Grayson .....	233 votes
Nancy H. VanZandt .....	233 votes
N. Stewart Payton .....	216 votes

A recount of the votes cast for Charles W. Grayson and Nancy H. VanZandt was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Somerset County at 2:15 P. M. on Wednesday, February 25, 1953. There were five ballots which could not be counted, four of which showed votes for more than three candidates and one wherein there was no mark in the square to the left of the names of the candidates. The results of the recount show 233 votes for Charles W. Grayson and 232 votes for Nancy H. VanZandt.

The Commissioner finds and determines that Charles W. Grayson was elected to membership on the Board of Education of the School District of the Township of Montgomery for a term of three years.  
March 9, 1953.

VI

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

DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 10, 1953, for the election of members of the Board of Education of the Borough of Wanaque in the County of Passaic:

Stephen McGirr .....	255 votes
J. Iragan Anderson .....	225 votes
James J. Bailey .....	185 votes
Byron W. Sloat .....	184 votes
Ernest E. Euester .....	178 votes
Vincent C. Travato .....	115 votes

Byron W. Sloat petitioned the Commissioner for a recount of the votes cast for him and for James J. Bailey, which recount was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the office of the County Superintendent of Schools of Passaic County in Paterson on Tuesday, March 17, 1953, beginning at 10:30 A. M.

At the end of the recount, the votes stood as follows:

James J. Bailey .....	185 votes
Byron W. Sloat .....	181 votes

Four ballots could not be counted because they were marked for four candidates. Four ballots had no marks in the squares but had marks to the right of the candidates' names. Three of these ballots were marked for Byron W. Sloat and one for James J. Bailey. In previous decisions of the Commissioner it has been held that a ballot cannot be counted unless there is a plus, cross or check mark in the square before the candidate's name. This is also in accord with the General Election Law. (See Section 19:16-3c of the Revised Statutes.) Even if these ballots had been counted for Byron W. Sloat, he could not have been elected.

The Commissioner finds and determines that James J. Bailey was duly elected a member of the Board of Education of the Borough of Wanaque, in the County of Passaic, for a term of three years. March 20, 1953.

## VII

### IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF COMMERCIAL IN THE COUNTY OF CUMBERLAND.

Mr. Harry Adler, Counsel for Emily F. Riggin.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 10, 1953, for the election of members of the Board of Education of the Township of Commercial in the County of Cumberland:

#### *Three-Year Term*

John Lore .....	162 votes
Robert C. Reeves, Sr. ....	148 votes
Emily F. Riggin .....	117 votes
Elwood Branin .....	117 votes

A recount of the ballots for Emily F. Riggin and Elwood Branin was conducted by the Assistant Commissioner of Education in Charge of Controversies and Disputes in the Cumberland County Court House in Bridgeton on Thursday, March 12, 1953, beginning at 2:00 P. M.

At the end of the recount in Bridgeton, the vote stood as follows:

Emily F. Riggin .....	117 votes
Elwood Branin .....	116 votes

Two ballots were referred to the Commissioner for determination and were marked Exhibits A and B for identification.

EXHIBIT A. This ballot has a vote for Elwood Branin and two other candidates. An erasure was made in the square before the name of Emily F. Riggin. Counsel for Mrs. Riggin contends that the voter actually voted for Mrs. Riggin, constituting votes for four candidates. Therefore, he maintains that this ballot

cannot be counted. He further contends that if it is determined that the erasure is such that the voter voted for only three candidates, the ballot still is void because the erasure was made for the purpose of identifying the ballot.

It is the opinion of the Commissioner that the voter erased the mark in the square in front of the name of Emily F. Riffin and, therefore, the voter did not vote for four candidates. The Commissioner is further of the opinion that the erasure was not made for the purpose of identifying the ballot. In previous decisions, the Commissioner of Education has held that ballots with erasures will be counted unless in his opinion the erasure was used as a device to distinguish the ballots with the intention of making them other than secret ballots. (See *In re Annual School Election in the Borough of Middlesex*, 1938 School Law Decisions, at 162; *In re Annual School Election in the Borough of East Rutherford*, 1938 School Law Decisions, at 186; *In re Annual School Election in the Township of Union*, 1939-1949 School Law Decisions, at 94; *In re Annual School Election in the Borough of Sayreville*, 1951-1952 School Law Decisions at 47.) This is in accord with the General Election Law to which Commissioners of Education have looked for guidance. N. J. S. A. 19:16-4 is applicable and reads in part as follows:

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

Having reached the conclusion that the erasure was not intended to identify or distinguish the ballot, it will be counted for Elwood Branin.

EXHIBIT B. This ballot has no mark in the square before the name of Emily F. Riffin, but has a cross (X) in the space after her name. The Commissioner has held in a number of cases that a ballot cannot be counted unless it is properly marked in the square before the name because this is explicitly required by statute. (See *In re Annual School Election in the Township of Tabernacle*, 1938 School Law Decisions, at 190; *In re Annual School Election in the Township of Clementon*, 1938 School Law Decisions, at 181; *In re Annual School Election in the Borough of East Rutherford*, 1938 School Law Decisions, at 186; *In re Annual School Election in the Township of Union*, 1939-1949 School Law Decisions, at 95.) This is also in accord with the General Election Law. N. J. S. A. 19:16-3c reads in part as follows:

"In canvassing the ballots the district board shall count the votes as follows: . . . c. If no marks are made in the squares to the left of the names of any candidates in any column, but are made to the right of said names, a vote shall not be counted for the candidates so marked, but shall be counted for such other candidates as are properly marked; but if the district board canvassing the ballot or the county board, justice of the Supreme Court or other judge or officer conducting a recount thereof, shall be satisfied that the placing of the marks to the right of the names was intended to identify or distinguish the ballot, the ballot shall be declared null and void."



Accordingly, this ballot cannot be counted for Emily F. Riggin.  
The final result of the recount is:

Emily F. Riggin .....	117 votes
Elwood Branin .....	117 votes

The Commissioner finds and determines that the Annual School Election in the Township of Commercial, County of Cumberland, resulted in a tie and, hence, there was a failure to elect one board member for the three-year term. March 25, 1953.

#### VIII

IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE TOWNSHIP OF BERKELEY HEIGHTS IN THE COUNTY OF UNION.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 10, 1953, for the election of two members of the Board of Education of the Township of Berkeley Heights in the County of Union for the three-year term:

Salvatore DelDuca .....	331 votes
Mark Townsend .....	334 votes
Alfred C. Linkletter .....	392 votes

A recount of the ballots for Salvatore DelDuca and Mark Townsend was conducted by the Assistant Commissioner in Charge of Controversies and Disputes in the Union County Court House in Elizabeth on Friday, March 20, 1953, at 2:00 P. M.

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

Salvatore DelDuca .....	334 votes
Mark Townsend .....	333 votes

Two ballots were referred to the Commissioner for determination and were marked Exhibits A and B for identification.

EXHIBIT A. The question for determination on this ballot is whether the mark in the square at the left of the name of Mark Townsend is a diagonal (/) or a check (✓) mark. It is the opinion of the Commissioner that the mark is a diagonal (/) and hence this ballot cannot be counted for the reason that there is no cross (×), plus (+) or check (✓) mark in the square at the left of the name of the candidate. *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Union, Union County, 1939-1949 School Law Decisions at 95*, the Commissioner held that a diagonal mark in the square at the left of the candidate's name cannot be counted as a vote for him. Furthermore, the Commissioner has held in a number of cases that a ballot cannot be counted unless it is properly marked in the square before the name because this is explicitly required by statute. (See *In re Annual School Election in the Township of Tabernacle*, 1938 School Law Decisions, at 190; *In re Annual School Election in the Township of Clementon*,



1938 School Law Decisions, at 181; *In re Annual School Election in the Borough of East Rutherford*, 1938 School Law Decisions, at 186; *In re Annual School Election in the Township of Union*, 1939-1949 School Law Decisions, at 95.) This is also in accord with section 19:16-3g of the General Election Law, to which Commissioners of Education have looked for guidance.

EXHIBIT B. The question for determination is whether the mark in the square at the left of the name of Salvatore DelDuca was scratched out. It is the opinion of the Commissioner that the mark was scratched out. Therefore, the ballot cannot be counted for the reason that there is no cross (X), plus (+) or check (✓) mark in the square at the left of the candidate's name. (See authorities quoted above.)

Since Exhibits A and B cannot be counted, the final result of the recount is:

Salvatore DelDuca .....	334 votes
Mark Townsend .....	333 votes

The Commissioner finds and determines that Salvatore DelDuca was duly elected a member of the Board of Education of the Township of Berkeley Heights in the County of Union for the three-year term.  
April 2, 1953.

## IX

### IN THE MATTER OF THE RECOUNT OF BALLOTS CAST AT THE ANNUAL SCHOOL ELECTION IN THE BOROUGH OF CARTERET IN THE COUNTY OF MIDDLESEX.

For Stephen E. Kovacs, David Jacoby, Esq.  
For Alys B. Sheridan, Benedict W. Harrington, Esq.  
For Anne McLeod, J. Randolph Appleby, III, Esq.

#### DECISION OF THE COMMISSIONER OF EDUCATION

The following are the announced results of the annual meeting of the legal voters held on February 10, 1953, for the election of three members of the Board of Education of the Borough of Carteret in the County of Middlesex for the three-year term:

Kovacs, Stephen E. ....	963 votes
Richert, Herman .....	833 votes
Szymborski, Adam .....	1063 votes
Kish, Julius .....	332 votes
Sheridan, Alys B. ....	962 votes
Haroski, Anthony A. ....	327 votes
Such, Alexander .....	1063 votes
McLeod, Anne .....	971 votes

A recount of the ballots cast for Stephen E. Kovacs, Alys B. Sheridan and Anne McLeod was conducted by the Assistant Commissioner in Charge of Controversies and Disputes in the Middlesex County Court House in New Brunswick on Friday, May 8, 1953, at 9:30 A. M.

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

Kovacs, Stephen E. ....	942 votes
McLeod, Anne .....	955 votes
Sheridan, Alys B. ....	950 votes

At the close of the recount ten ballots were set aside for determination by the Commissioner. An inspection of these ballots indicated that even if all the ballots were counted most favorable to Stephen E. Kovacs and Alys B. Sheridan, they could not overcome the lead of Anne McLeod. Therefore, it was not necessary to determine these ballots.

The Commissioner finds and determines that Anne McLeod was elected a member of the Board of Education of the Borough of Carteret in the County of Middlesex for the three-year term.

May 18, 1953.

DECIDED BY THE STATE BOARD OF EDUCATION APRIL 15, 1952

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

*Petitioner-Appellant,*

*vs.*

STATE BOARD OF EDUCATION AND THE BOARD OF TRUSTEES OF THE TEACHERS'  
PENSION AND ANNUITY FUND,

*Respondents.*

DECISION OF THE SUPERIOR COURT APPELLATE DIVISION No. A-549-51  
SEPTEMBER TERM, 1952

Argued January 19, 1953.

Decided before Judges Eastwood, Bigelow and Jayne.

Mr. Nicholas S. Schloeder argued the cause for Appellant (Mr. Alfred M. Cozzi, attorney).

Mr. Joseph A. Murphy, Assistant Deputy Attorney General, argued the cause for Respondents (Mr. Theodore D. Parsons, Attorney General of New Jersey).

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

We acquire the following pertinent information from the stipulation of facts to which counsel for the Appellant and Respondent have subscribed. One Rose Frigiola was born on July 12, 1895. She attained the qualifications of a teacher and latterly pursued her vocation in the public school of Fairview, New Jersey, until she became physically incapacitated on June 30, 1948. She died on July 15, 1949.

She had, however, on September 14, 1929, applied for enrollment in the Teachers' Pension and Annuity Fund and received her certificate of membership on October 1, 1929. On December 12, 1929, a certificate of prior service was issued to her crediting her with ten years of service as a teacher in the public schools of New Jersey, in consideration of which she thereafter made the requisite contributions to the fund.

The "general administration and responsibility for the proper operation of the retirement system" (R. S. 18:13-24, et seq.) is delegated by the Legislature to a board of trustees. At a meeting of the Board on March 8, 1929, it appears from the minutes that:

"The Board approved the text of a 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 application form so approved contained, *inter alia*, the following:

"... 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 on which their salary is to stop."

It may be explained that prior to March 8, 1929, all pensions for service and disability became effective upon the approval of the Board.

In the present case the chronology of the sequential occurrences is significant. On June 16, 1949, Rose Frigiola presented the formal application for the allowance to her of a total disability pension (Option I) with the Supervising Principal of the Fairview Public Schools, which after its augmentation was mailed to the office of the Pension Fund on June 20, 1949, and its receipt on June 22, 1949, acknowledged. 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.

The circumstances that the applicant died after the approval of her application but before the expiration of the thirty-day period succeeding the receipt of the application has occasioned this litigation.

It seems evident that if the retirement pension under Option I accrued immediately upon its approval by the Board the Appellant as the present beneficiary is entitled to \$9,575, and that if the pension did not accrue until the expiration of the thirty-day period the Appellant is entitled only to the accumulated contributions of the decedent to the Fund amounting to \$2,724 plus interest.

The Board of Trustees adhered to the thirty-day rule and concluded that the beneficiary was entitled only to the return of the accumulated contributions. On appeal (R. S. 18:13-68) the State Board of Education expressed a concordant conclusion which we are requested to review.

Upon an analysis of all the circumstances the State Board of Education in its decision stated: "The decision in the case under litigation would seem to turn on whether the rule requiring a thirty-day waiting period before the vesting of the pension is administrative or legislative." We also regard that to be the fundamental and basic question.

The auxiliary insistence of the Appellant that the thirty-day provision should not be recognized as a duly adopted "rule" is not impressive. True, the provision is not embodied verbatim in the minutes of the meeting of the Board of Trustees on March 8, 1929. We feel, however, that the express reference in the minutes to the textual composition of the new form of the application in which the provision is fully set forth evidences the action of the Board which in effect constituted a promulgation of the rule. The form and substance of the proposed application were fused into a unity. Moreover in the decision in *Morgan vs. Board of Trustees, Teachers', &c., Fund*, 120 N. J. L. 567 (Sup. Ct., 1938), affirmed, 122 N. J. L. 382 (E. & A., 1939), the provision is spoken of as a "rule" of the Board. Our attention is also invited to *Article 5, section IV, paragraph 6 of the Constitution of 1947*. We need only say that we deem that provision to be prospective in its application. *Cf.*

*Article II, section 1, paragraph 3*, by which all former rules and regulations of administrative bodies are continued in effect.

Another point advocated by counsel for the Appellant is that if the provision is to be recognized as an adequately promulgated rule it operates only to postpone the date of the retirement and not the origin of the approved pension. Such a construction of the rule seems to be unjustified. No such intent inheres implicitly in it. The rationale of the decision in the *Morgan* case, *supra*, is more syllogistic wherein it was stated: "The purpose of the rule is to minimize 'death bed' applications from being *effective*." (Emphasis supplied.)

Now comes the pivotal question. Preliminarily we may remark that we are not unaware of or insensible to the general principle that administrative regulations have in their support the presumption, although rebuttable, of validity and that the administrative agency has acted lawfully, regularly and not oppressively. Then, if the measures adopted are within the lawfully delegated authority of the agency, and tend to serve a legitimate interest of society, the wisdom, need, and appropriateness of the course pursued is not ordinarily a justiciable question. *Welsh Farms, Inc. vs. Bergsma*, 16 N. J. Super. 295 (App. Div. 1951).

In such inquiries the distinction must be fresh in mind between the making of a law and the execution of it. "Administrative implementation cannot deviate from the principle and policy of the statute." *Abelson's Inc. vs. N. J. State Board of Optometrists*, 5 N. J. 412, 424 (1950).

And so, the specific question which is propounded to us is whether or not the adoption of the rule with which we are here concerned surpassed the administrative authority delegated to the Board of Trustees by the Legislature.

There is reason to doubt that the opinion rendered by the Supreme Court in the *Morgan* case, *supra*, is precedential in the dissimilar circumstances of the present case. There the application related to a superannuation retirement. R. S. 18:13-50. That section of the statute expressly confers upon the Board of Trustees in dealing with such an application the authority to "retire the member at the time specified or at such other time within thirty days thereafter as it may find advisable." Moreover in the *Morgan* case the applicant died before the application was acted upon by the Board of Trustees and it was held that a "retirement within the meaning of the statute never occurred."

The application of the present interest was filed for a disability retirement in pursuance of R. S. 18:13-57 which, perhaps significantly and maybe purposefully, omits any reference whatever to a postponement of the retirement by the Board.

To the contrary, the statute relative to retirements for disability declares that:

"A teacher who is a member shall be retired for disability by the board of trustees upon the application of his employer or upon his own application or that of a person acting in his behalf, on a disability allowance if he is under the age of sixty-two years, if:

a. The board of trustees shall determine, after a medical examination of the member, at the place of his residence within the state or other place mutually agreed upon, by a physician or physicians designated by the board, upon the basis of a report submitted by such physician or physicians, that the member is physically or mentally incapacitated for the performance of duty and ought to be retired; and"

This section of the statute seems to us to be explicitly declaratory of the legislative intention that a teacher who is a member of the fund *shall* be retired for disability when the Board of Trustees determines after a reported medical examination of the member by a physician or physicians selected by the Board that the member is physically or mentally incapacitated for the performance of duty and ought to be retired. Here, the Board made that determination on July 7, 1949, during the lifetime of the member.

Recognizing the manifest declaration of the legislative intent, the rule adopted by the Board constitutes an endeavor to attach a material qualification to the mandate of the statute. Such an endeavor, however wisely exerted, oversteps the boundaries of administration and trespasses upon the field of the Legislature. An administrative rule is not necessarily valid because it is useful.

Our conclusions are that the thirty-day rule in its application to disability retirement under R. S. 18:13-57 is invalid; that the retirement in the instant case became effective under the statute on July 7, 1949; and that the decision of the State Board of Education here under review is reversed.

Judgment accordingly.



DECIDED BY COMMISSIONER OF EDUCATION JUNE 12, 1952

MARY E. LANGE,

*Petitioner,*

*vs.*

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

*Respondent.*

DECISION OF THE STATE BOARD OF EDUCATION

The decision appealed from is affirmed for the reasons stated in the opinion filed by the Commissioner of Education.  
November 7, 1952.

DECISION OF THE SUPERIOR COURT OF NEW JERSEY  
A-170-52

Argued April 20, 1953. Decided May 15, 1953.

Before Eastwood, Bigelow and Jayne, JJ.

Mr. Charles A. Cohen argued the cause for the Petitioner-Appellant.

Messrs. Finnegan and Mohrfeld, Attorneys.

Mr. Edward T. Curry argued the cause for the Respondent.

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

The issue is whether the Appellant had tenure entitling her to priority in the filling of a vacancy in the principalship in the Audubon School District.

The appeal is submitted on a stipulation of facts. Mary E. Lange is a teacher in the Audubon School District where she has been employed since 1912. From 1912 to 1914, she served as a teacher. In 1914, she was appointed principal of the grade schools in the district and continued in that capacity until 1927. In June of 1927, she was assigned by the Board of Education to the position of "Supervisor to Supervise Grade Schools," and served in that capacity until the position was abolished in June, 1944, for reasons of economy and diminution in the number of pupils. Thereafter, she served as a teaching principal in one of the grade schools until September 18, 1944, when it was ascertained that there had been no vacancy in such position and Miss Lange was returned to a teaching position. Thereafter, she has continuously performed her teaching duties.

In 1951, a vacancy arose in the position of principal, for which Miss Lange submitted her application. No applicant had tenure or seniority as a principal. The Board disaffirmed Miss Lange's claim of right to the position by reason of former service as principal and appointed one George R. Oldham, a teacher, to fill the vacancy. Miss Lange appealed from this ruling of the Board to the State Commissioner of Education, who decided against her. Miss Lange's appeal to the State Board of Education resulted in an affirmance of the Commissioner's ruling, from which decision Miss Lange appeals to this Court.

The Appellant contends that under the provisions of the Teachers Tenure Law (R. S. 18:13-16, 17, 19), she did not lose the tenure acquired by her previous service when she accepted the position of "Supervisor to Supervise Grade Schools"; that when the position was abolished in 1944, she was entitled to appointment to fill the next available principalship.

The defendant Board of Education contends that plaintiff lost any tenure she may have had as a principal under the Teachers Tenure Law by accepting the position of Supervisor and that neither in 1944 nor 1951, was she on a preferred eligibility list entitled to appointment as principal; and that the 1935, 1942 and 1951 amendments to the School Laws (R. S. 18:13-19), granting certain extensions as to tenure, were prospective, and not retrospective, in effect.

The original Teachers Tenure Law was enacted in 1909 (L. 1909, c. 243, p. 398; now R. S. 18:13-16, 17, 19, 20). The first amendment thereto providing for preferential treatment of teachers, principals and supervising principals by virtue of service of years in those capacities, was enacted in 1935 (P. L. 1935, c. 126, p. 331). It was thereafter amended by P. L. 1942, c. 269, p. 713 and P. L. 1951, c. 292, p. 1070. In construing the amendments our courts have held that the Legislature did not intend that they should have a retrospective effect and that the enactments were prospectively effective only. *Downs vs. Board of Education, Hoboken*, 126 N. J. L. 11, 13, (Sup. Ct., 1940); *affd. in Schlank vs. Board of Education of Hoboken*, on the opinion of Mr. Justice Heher in the Supreme Court, 127 Id. 602 (E. & A. 1942); *Werlock vs. Woodbridge*, 1939-1949 Comp. School Law Decisions, p. 107 (1948); *affd. by the State Board of Education and by the Superior Court on other grounds*, 5 N. J. Super. 140 (App. Div. 1949).

The position of "Supervisor to Supervise Grade Schools" is not recognized by the School Laws of this State as extending to the holder thereof tenure other than as a teacher. In the case of *Werlock, supra*, the Commissioner of Education, in a similar situation, held that the position of "Supervisor of Elementary Education," not being mentioned specifically in the tenure statute, did not give to the holder of that position tenure of supervising principal or principal, but that the tenure protection enjoyed by the Petitioner was only that of a "teacher," and that Petitioner was not entitled to any seniority rights to appointment to a principalship when her tenure protection was only that of a "teacher." Cf. *Wythes vs. Camden*, 1939-1949 School Law Decisions, p. 131; *Davis vs. Board of Education of the Township of Overpeck*, 1938 Comp. School Law Decisions, p. 464 (1913); *MacNeal vs. Board of Education of Ocean City*, 1938 Comp. School Law Decisions, p. 374 (1926); *affd. by the State Board of Education*, 1938 Comp. School Law Decisions, p. 377, and *affd. by the Supreme Court in 1928*, without written opinion.

The record is barren of any protest or expression of dissatisfaction by plaintiff respecting her change of status from principal to supervisor. Nor does it appear that any proceeding was initiated by her to test the local Board's action or that the Appellant at any time protested or took any action indicating dissatisfaction with the action of the local Board voiding the principalship held by her for a brief period of time in 1944. We think, therefore, it is a reasonable inference that she surrendered her principalship in 1927 voluntarily. The Appellant concedes that one may voluntarily relinquish a position, citing *Kelly vs. Lawnside*, 1938 School Law Decisions, p. 320, but asserts that tenure rights may not be waived while keeping the

position. Cf. *Vander Burgh vs. County of Bergen*, 120 N. J. L. 444, 453 (E. & A. 1938); *Kriser vs. Board of Education of Trenton*, 122 Id. 323 (Sup. Ct., 1939); *Board of Education, Trenton vs. State Board of Education*, 125 Id. 611 (Sup. Ct., 1941).

This appeal might well be disposed of on the ground of laches. Notwithstanding the fact that by accepting the position of supervisor, she surrendered her position as principal, thereby constituting a dismissal as such principal and thereafter limiting her tenure rights to the classification of a teacher, the Appellant sat idly by since 1927, during which time she failed to institute any action to test the legality of the local Board's action. "While laches, in its legal signification, ordinarily connotes delay that works detriment to another, the public interest requires that the protection accorded by statutes of this class be invoked with reasonable promptitude. Inexcusable delay operates as an estoppel against the assertion of the right. It justifies the conclusion of acquiescence in the challenged action." *Marjon vs. Altman*, 120 N. J. L. 16 (Sup. Ct., 1938). Cf. *Atlantic City vs. Civil Service Com.*, 3 N. J. Super. 57, 61 (App. Div. 1949). However, in view of the fact that counsel have argued the matter on other grounds, we proceed to a discussion and determination thereof.

We are of the opinion that the plaintiff, having accepted the unprotected position of supervisor, waived whatever rights she may have acquired to the position of principal and that the 1935 statute, as amended, having a prospective effect only, the Appellant was ineligible for any preferential treatment upon the occurrence of the principalship vacancy. The language employed by Mr. Justice Heher, speaking for the Supreme Court in the *Schlank* case, *supra*, is appropos to the case sub judice:

"Moreover, the right now asserted by prosecutrices must be found in the statute, or it does not exist; and we are not cited to any enactment prior to the act of 1935, *supra*, which bestows the right . . . Whether a teacher so dismissed shall have such preferment as respects an after-occurring vacancy, and, if so, the conditions upon which the right is exercisable, e.g., whether it shall subsist indefinitely or for a limited period, the qualifications of the teacher asserting the right as regards the standards then obtaining, and so on, are legislative and not judicial questions; and here the legislature did not exercise its authority in the premises until the adoption of the act of 1935, *supra*, and then gave it a prospective view only. This enactment evidences the legislature's comprehension of the sense of the pre-existing law—i.e., that such preference was not implicit in the prior statutes . . ."

It clearly appears from the decided cases that the transfer in 1927 of Miss Lange as principal to the position of supervisor constituted a dismissal as principal and thereafter her status was that of a teacher only and the ensuing tenure rights that accrued to her were a teacher's tenure rights only. *Werlock vs. Woodbridge*, *supra*; *Wythes vs. Camden*, *supra*; *Davis vs. Board of Education of the Township of Overpeck*, *supra*; *MacNeal vs. Board of Education of Ocean City*, *supra*. In the *MacNeal* case, it was held that when a principal is reduced to the rank of a teacher, he is dismissed as a principal. *Vie-meister vs. Bd. of Education of Prospect Park*, 5 N. J. Super. 215, 217, 218 (App. Div. 1949).

The tenure laws provide not only for the creation of rights of tenure, but also how they may be lost. One may voluntarily relinquish his position (R. S. 18:13-20), but may not waive his tenure rights while keeping his position. *Viemeister vs. Board of Education of Prospect Park*, supra. It seems clear to us that the appointment or transfer of Miss Lange to the position of supervisor from the position of principal, constituted a dismissal as such principal and having voluntarily assumed and performed the duties of supervisor for a period of approximately 17 years thereafter, and subsequently as a teacher (except for the brief period in 1944), she did not acquire any preferential right to appointment to the principalship vacancy in question. At the time of the severance of her position as principal, the tenure act gave her no tenure protection in her position as principal and our courts having construed the later amendments giving such tenure protection as prospective in effect, she is in no position to assert any such preferential right to the position that she now seeks. *Nichols vs. Board of Education, Jersey City*, 9 N. J. 241 (1952).

The decision of the State Board of Education is affirmed.