

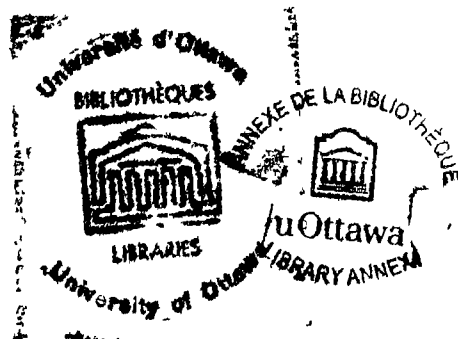
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HISTORICAL DEVELOPMENT AND PRESENT LEGAL STATUS  
OF THE OFFICE OF SECRETARY OF THE BOARD OF EDUCATION  
IN NEW JERSEY

by Harry J. Donovan

Thesis presented to the School of  
Psychology and Education of the  
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## CURRICULUM STUDIORUM

The writer was born in Bridgeport, Connecticut, on February 24, 1917, and received a Bachelor of Science degree from the School of Education, University of Alabama, in 1941, and the degree of Master of Arts from Teachers College, Columbia University, in 1943.

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## INTRODUCTION

Today's local board of education with its officially designated secretary as contrasted with the three duly elected men who, under the permissive act of 1693, had the right to "levy a rate for the maintenance of a school-master"<sup>1</sup>, clearly indicates how far New Jersey has come in education. Worth<sup>2</sup> points out that district clerks are responsible for the proper financial accounting of one of the largest enterprises in the State of New Jersey, that of public education.

Responsibilities of the secretary expanded with the growth of the state school system; this change was largely reflected in the local district. Since this writing concerns itself with the work of the secretary, reference to the aforementioned agencies is made only to clarify points dealing with the officer in question.

The object of this investigation is to review the legal basis of the duties of the secretary of the board of education in New Jersey.

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<sup>1</sup> Thomas F. Gordon, Gazetteer of the State of New Jersey, published by Daniel Fenton, Trenton, N.J., 1834, p. 49.

<sup>2</sup> Charles L. Worth, "The District Clerk in the State of New Jersey", in American School Board Journal, April 1946, p. 28.

"The Secretary is the pivot around which a board of education functions and dependent upon his ability, integrity and efficiency, a board is often considered an asset or a liability to the community"<sup>3</sup>. New Jersey schools are big business in many ways, and the business functions of a school system are an integral part of its existence. The importance of the duties of the secretary is growing rapidly, and is being more keenly appraised than ever by educators and the general public. Should this research more clearly define his legal status, and his relationships with other school officials and the community be improved thereby, it will have met a need.

This study is circumscribed by the number and types of records which are accessible in order to determine the legal aspects and practices; all records of pertinent decisions of the State Department of Education and the Appellate Division of the Superior Court, and the records and bulletins of the New Jersey Association of School Business Officials have been utilized.

There are several classifications of school districts to be found in New Jersey. Discussion will be limited to the

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<sup>3</sup> Charles A. Brown, "The Board of Education and Its Secretary or District Clerk", in School Business Affairs, Vol. 12, No. 6, June 1946, p. 1.

typical Article VI and Article VII districts<sup>4</sup>. Since the study refers to both of these districts, responsibilities in each of the general categories will be noted. A comprehensive analysis of these differences is not appropriate to this writing.

The duties of the secretary tend to fall into four general categories. As far as possible, the writer will consider only the more important functions in each of these areas. Following the suggestion of Father Shevenell, a listing of these duties, taken from New Jersey Statutes Annotated, 1940, Title 18, Education, cumulative to date, is included in the Appendix, arranged in categories rather than listed chronologically.

This research contains six chapters, the first of which presents the historical background of the position under consideration. Local initiative inspired the Town Meeting, the hub of all community activity. The change from democratic town-meeting consideration of school problems to school-committee control is reviewed. Creation of this committee brought about the need for greater centralization of responsibility, which gradually fell into the hands of one member of the committee. Thus emerged the clerk of the committee who was destined to do the lion share of the work of the school committee.

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<sup>4</sup> See Appendix , p.

A discussion of the permissive appearance of the clerk leads to an examination of the legal basis of the office of district clerk in the second chapter. Review of the legislation bearing directly on this subject, with notation of all pertinent decisions limiting the clerk's responsibilities, together with a consideration of the qualifications and tenure privileges enjoyed, go to make up the balance of this chapter.

The four general categories of duties (legal basis of functions as secretary and legal agent, responsibilities concerned with preparation and presentation of reports, responsibilities related to general business and fiscal accounting, activities dealing with elections and school referendums, all as related to Article VII districts) are to be found successively in Chapters III, IV, V, and VI.

Education is recognized as being a large business enterprise; therefore, it is imperative that those interested in the district secretary's activities become aware of some of the legal principles applicable to the public school administration. The recognition of the importance of this knowledge is reflected by the substantial increase in school law course offerings now available in colleges and universities. Perusal of such publications as Research

Studies in Education<sup>5</sup>, the Wilson List<sup>6</sup>, and the Encyclopedia of Educational Research<sup>7</sup> indicates the interest taken in this area by students of educational research.

As far as can be determined, despite the apparent importance of the secretary's position, comparatively little has been published on the subject. In The Clerk of the Board of Education<sup>8</sup>, an unpublished doctoral dissertation written in 1936, Drake urges lengthy tenure of district clerks. This author recommends agitation for raising standards of appointment to a high level of training in the September 1937 issue of the American School Board Journal<sup>9</sup>. In an article found in this same magazine, written in April 1946, Worth<sup>10</sup> states that boards of education should specify

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5 Research Studies in Education, Phi Delta Kappa Fraternity, Bloomington, Indiana, 1954.

6 Doctoral Dissertations Accepted by American Universities, New York, Wilson, 1954.

7 Encyclopedia of Educational Research, New York, Macmillan, 1950.

8 Leland N. Drake, The Clerk of the Board of Education, unpublished doctoral thesis, Ohio State University, Ohio, 1936.

9 -----, "Improved Standards for the School Board Clerkship", in American School Board Journal, September 1937.

10 Charles L. Worth, "The District Clerk in the State of New Jersey", in American School Board Journal, April, 1946, p. 30.

definite spheres of influence and duties for the district clerk. Gee<sup>11</sup>, in his study of 1946, remarks that next to the superintendent, the clerk of the board of education has the most important job in the control and management of the public schools; legislative clarification is needed concerning the title, authority, and responsibility of the office. In 1951, Faust<sup>12</sup> undertook an investigation of the administrative functions of the district clerk in New Jersey. He showed that in eighty-nine per cent of the districts surveyed the district clerk directed the business affairs of the system as a coordinate administrator. Faust's findings are pertinent to this study in that future legislation is likely to affect the sphere of authority of the district clerk.

Material on the subject at hand was so inadequate that it became necessary to turn to sources such as School Law<sup>13</sup>, and The Law of Local Public School Administration<sup>14</sup>.

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11 John E. Gee, The Clerk of the Board of Education of the City School District of Ohio, unpublished doctoral thesis, University of Pittsburgh, Penna., 1946.

12 Alfred S. Faust, Educational Administrative Functions of the District Clerk, unpublished doctoral thesis, New York University, New York, 1951.

13 Madeline K. Remmlin, School Law, New York, McGraw-Hill, 1950, vii-376 p.

14 -----, The Law of Local Public School Administration, New York, McGraw-Hill, 1953, ix-271 p.

Dr. Remmler, the author of both books, treats of teacher and pupil personnel matters in the former. Its value was in its description of how to find school law and in its broad section of legal terms. In the latter work, the author gave a general picture of local school administration from a legal point of view by stating principles of law and their application in legal theory.

Although the work is not up-to-date or directly related to this thesis, The Constitutional and Legal Basis of Education in New Jersey<sup>15</sup> is perhaps one of the most comprehensive studies ever made of education in this state. Dr. Leech, retired county superintendent of schools, Delaware County, Pennsylvania, with whom the writer is acquainted, set out to determine the constitutional and legal provisions upon which education in the state of New Jersey is based, and to bring forth the legal principles present at the foundation of these provisions, to the degree that they are expressed or implied in the constitution or state statutes, and in the findings or rulings of the Courts or of other recognized authority. Reference to the Leech work revealed the existence and location of some of the widely scattered material necessary to the development of the study of the office of board secretary.

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<sup>15</sup> Carl Graydon Leech, The Constitutional and Legal Basis of Education in New Jersey, Lancaster, Penna., Science Press Printing Co., 1932, iii-462 p.

Establishing the background of the office under investigation required that much historical data be reviewed. Of all the material examined related to New Jersey, in general, three sources presented the most information: The History of Education in New Jersey<sup>16</sup>, by David Murray, the Outline History of New Jersey<sup>17</sup>, by the New Jersey History Committee, and Education in New Jersey, 1630-1871<sup>18</sup>, by Nelson R. Burr.

Dr. Murray is perhaps the most widely known of the authors referred to in the study. He gave considerable emphasis to historical development of education within the state. Early references that he used were well documented from original sources. Extensive detail was presented in describing movements in the interest of the public schools. The Outline is, as the name implies, simply an outline of the history of the state from its origin. The section devoted to education refers the reader to Burr, Murray and Gordon whose book was an excellent source of historical

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<sup>16</sup> David Murray, The History of Education in New Jersey, Government Printing Office, Washington, D.C., 1899, 344 p.

<sup>17</sup> New Jersey History Committee, Outline History of New Jersey, New Brunswick, N.J., Rutgers University Press, 1950, v-392 p.

<sup>18</sup> Nelson R. Burr, Education in New Jersey, 1630-1871, Princeton, N.J., Princeton University Press, 1942, viii-355 p.

information for the writer. Burr's book had a great deal to offer since it was devoted primarily to the subject of the development of education as affected by frontier, racial, and religious influences.

In a general way, where controversies have been cited to illustrate or verify conclusions reached, a modified version of the "case method" was employed. For consistency and ease of reading, it seemed desirable to rewrite many of the cases reviewed in simpler language. It is hoped that this procedure did not alter the meanings of the decisions intended, for any deviation from verbatim text is inexcusable in law work. Whenever possible, except to lend emphasis, litigation discussed in this study was confined to that which was passed upon by the Commissioner and State Board of Education, the Attorney General, and the state Courts.

Primary sources from which the major portion of this study was composed were as follows: Annual Reports of the Trustees of the State School Fund, 1838-1845; Annual Reports of State Superintendent of Public Schools, 1846-1865; Annual Reports of State Board of Education with Reports of State Superintendent of Public Instruction, 1866-1910; Annual Reports of State Board of Education with Reports of Commissioner of Education, 1911-1955; Federal Constitution, amendment X; National Reporter System, in the main Atlantic Reporter; New Jersey Equity Reports (decided in Court of

Chancery); New Jersey Law Reports (argued and determined in Supreme Court); New Jersey Miscellaneous Reports (cases not reported in Law or Equity); New Jersey Revised Statutes, 1937, and supplements, 1938-1954; New Jersey, State Constitution, as amended 1844, 1875; United States Reports (official decisions of Supreme Court); and the Votes and Proceedings of the General Assembly, 1816-1852.

The starting point of this investigation and a constant source of reference, was New Jersey Statutes Annotated, Title 18, Education, which is an unofficial duplication of the Revised Statutes of New Jersey, 1937. Since Title 18 is confined to education, it suggests primary sources for the project at hand.

For the convenience of the reader, it would be advisable to define several of the terms commonly used throughout the writing. For the purposes of this study, the titles "secretary" or "district secretary" include both district clerks and secretaries of boards of education; and "state superintendent" and "commissioner" are used interchangeably where ever referred to.

The purpose of this study has been to describe the recorded background and progress of the official agent of the local board of education in New Jersey, and the basis of his present legal status as determined by the statutes and the state board of education.

## CHAPTER I

### EARLY BACKGROUND OF THE OFFICE

It is indeed unfortunate that New Jersey developed so little colonial educational policy, other than to be content to let private and parochial interests provide any schools that they felt necessary. Even after New Jersey became a state, for some time she chose not to recognize that the state owed its citizenry an adequate education. Free public education received its initial impetus from the state legislature in "An Act to incorporate Societies for the promotion of Learning"<sup>1</sup>, passed on November 24, 1794. Although it may not have appeared so, this action encouraged considerable effort on behalf of education.

This chapter will devote itself to early functions of local school control and to the evolution of pertinent legislation.

#### 1. Town Meeting School Management.

An investigation<sup>2</sup> of the early settlement of New Jersey provided reasons why the state progressed slowly in

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<sup>1</sup> Laws of New Jersey, 1794, p. 154.

<sup>2</sup> Nelson R. Burr, Education in New Jersey, 1639-1871, Princeton, University Press, 1942, p. 304.

establishing its modern educational program. Within the confines of a comparatively small area, entrenched tradition and strong localism provided imposing barriers to creation of a unified system of education. The Anglicans felt education of the poor was a form of charity rather than a civic right; the Quakers were concerned with vocational training; while the Swedes, Dutch, and Germans were satisfied with their parochial schools. It took the New England townships, with their ideal of education for service to church and state, to lead the way toward the inevitable public school system, with its local financial support and the district system.

The New Haven Colony brought Puritan educational practices to New Jersey, contributing the original town meeting and the common school<sup>3</sup>. The first governor and these Puritan settlers agreed to set apart land for religion and education. As a result, the town meeting and the common school progressed under township rule.

Throughout the seventeenth Century the town of Newark turned over special school problems to the "town's men"<sup>4</sup>. In 1676, Newark received a warrant to lay out enough land

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3 Supra, p. 226.

4 David Murray, History of Education in New Jersey, Vol. 16, 1899, Washington, D.C., Government Printing Office.

from the common to erect a school. The town meeting charged the "town's men" with the task of securing pupils and accommodations for a schoolmaster for one year. In 1680 the town meeting voted to seek a teacher, but made no arrangements to pay his salary. A townsman was appointed to seek a schoolmaster in 1691, who to be paid through town funds. Three years later, two men were appointed to hire a teacher for one year, provision for salary having been voted on by the meeting. The following year a tax was placed on the community to pay the teacher.

As outlined above, prior to 1700, town meetings controlled school land, raised local funds for the building and maintenance of school, and hired and released teachers.

Records indicate that the first board of education came into existence in New Jersey in 1693 through a law<sup>5</sup> permitting each town to appoint three men to fix the tax rate and to hire teachers. Later, the law was modified to require each town to choose three men to hire teachers and to locate where school would be held.

In 1754, legislation was passed to house and educate poor children. Societies for the advancement of learning

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<sup>5</sup> Hubert R. Cornish, New Jersey. A Story of Progress, New York, Scribner's, 1931, p. 174.

were recognized in 1794, and under this law<sup>6</sup> a number of academies were formed to educate many children during the next fifty years. The village of South Orange took advantage of this legislation:

At a special meeting of the Proprietors and Associates of the school in South Orange, so the old record in the fine handwriting of Isaac Combs begins, held at their school house on Wednesday evening, July 22, 1814, it was agreed that the said associates should exercise the privilege allowed them by law, and use the means to become an incorporated body.

Agreeable to the preceding resolution of said meeting of July 22, 1814, an advertisement was set up by one of the said proprietors on Saturday the 25th day of July, the following is a correct copy thereof, viz.

Notice is hereby given to whom it may concern, a meeting of the proprietors of the school in South Orange will be held in their school house on Wednesday the 3rd day of August next for the purpose of choosing Trustees, in order that they become an incorporate body agreeable to a law of the Legislature of this state entitled "An Act to incorporate Societies for the promotion of Learning": passed Nov. 24, 1794.

South Orange, July 25, 1814. NATHAN SQUIER,  
one of the proprietors.<sup>7</sup>

The records go on to state that the planned meeting was held, and at a subsequent meeting that the Association chose its Trustees and became an incorporated body.

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<sup>6</sup> Laws of New Jersey, 1794, supra.

<sup>7</sup> Henry W. Foster, The Evolution of Public Education in a New Jersey School District, New York, Humphrey, 1930, p. 45-46.

Through statutory enactment the Legislature created the State School Fund in 1817<sup>8</sup>, and it was safeguarded by the acts of 1819, 1821, 1824, and 1828. No provision was made for distribution of the Fund's income, but trustees were appointed "for the security and management of the Fund"<sup>9</sup>. Townships were authorized in 1820 to raise money for school purposes at the town meeting, but only "for the education of such children as are paupers"<sup>10</sup>. This forward step had been recommended much earlier, but to no avail.

As the beginning of local taxation for schools, authority was given townships to vote funds at town meetings to build and repair school houses in 1828 and/or to establish and support free schools.

In the act of 1829 was contained the first law in New Jersey establishing a system of free public schools<sup>11</sup>. Also, the initial distribution of Fund monies was made to local districts. The Freeholders of the several counties were to distribute money to the townships proportionate to the state taxes paid. Unfortunately, in order to be eligible

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<sup>8</sup> Votes and Proceedings of the General Assembly of the State of New Jersey, 1817, p. 11.

<sup>9</sup> Votes and Proceedings of the General Assembly of the State of New Jersey, 1817, Second Sitting, p. 10.

<sup>10</sup> Ibid., 1820, p. 155.

<sup>11</sup> Ibid., 1829, p. 97.

for this state aid, the township was obliged to contribute an equal amount for local school support.

By 1832, it was quite obvious to the Governor of New Jersey that the state school system was very inefficient. In his message<sup>12</sup> to the legislature of that year, he gave a strong recommendation that a commissioner of education be appointed.

In 1834, mention was made of the vital need for an adequate system to account for the public funds expended for schools. Governor Vroom stated:

The whole goes to show that our common school system is radically defective. It must be corrected if we hope to reap benefit from the money we are constantly expending . . . There must be more order and arrangement in the system - more life and energy must be infused into it - there must be more accountability on the part of those who receive the public funds, or the whole will become worthless, and our money spent in vain.<sup>13</sup>

Conditions were such by 1836 that the committee reporting to the legislature on schools urged the creation of a state board of education:

In accordance with one of the foregoing suggestions, your Committee would recommend that authority be vested in the Governor to appoint a Board of Education, who shall be charged with the investigation of the subjects; and that they, at as early a period as is practicable, mature such a plan as may be adapted to the actual condition of

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<sup>12</sup> Votes of the Assembly, 1832, p. 104.

<sup>13</sup> Ibid., 1834, p. 15-16.

the State. This measure should unquestionably be adopted without delay. Until the Legislature provide a mode of enlisting a number of our most intelligent citizens well informed as to the progress of this cause in other states and countries, who will devote their time and talents to the subject, we cannot expect to have an efficient system, or effectually to correct the evils which it is universally admitted spring from the operation of the present law . . . Public policy demands that the early attention of the enlightened should be directed to this matter; that there shall be no further neglect or omission on the part of her state representatives to insure a permanent foundation for a more comprehensive system of schools.<sup>14</sup>

and the appointment of a commissioner for the schools:

It cannot, however, be expected that the proposed Board would be able to devote so much time as to visit and inspect the Common Schools throughout this state. Their duty will in other respects be laborious and responsible. To collect the necessary information, some well qualified person should be appointed to confer with the friends of education in every section of the state as to their peculiar views upon the subject; acquaint himself with the present operation of the respective Schools, and to report at large to the Board of Education within a reasonable time, in order that a wise and liberal system may be recommended at an early period to the next Legislature. Few persons could do justice to this department. The Board of Education, with whom it is proposed to leave the appointment of this officer, would doubtless, in the enlightened exercise of their duty, select a superintendent having regard to his experience and efficiency . . .

The services of such an officer employed in the investigation of our Common Schools would be invaluable. It could not be otherwise, that than much necessary and indispensable information would be derived from his enquiries . . .<sup>15</sup>

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14 Votes of the Assembly, 1836, p. 447.

15 Ibid., 1836, p. 448.

It was rapidly becoming evident that an enterprise such as the state system of schools could not operate without a plan of organization.

The law<sup>16</sup> of 1838, to the degree that it restored some of the ground lost in the repeals of 1830 and 1831, was helpful. This new act overwhelmed legislative conservatism. Previously, the problem was confined to merely the supervision of the distribution of the state fund, but now it encompassed general school improvement. Through information accumulated from the township reports, the Trustees of the state school fund began to press for new legislation, condemning the current program.

The most obvious and prominent observation on the facts herein set forth is: that . . . the whole system of public instruction, as at present administered . . . is almost paralyzed by apathy and want of interest in all its departments . . . Incompetent teachers are too often employed . . . School houses are badly constructed and poorly furnished. The instruction is imperfect.<sup>17</sup>

This action was an important step in the direction of central control of schools, despite strong sentiment still existing that education belonged exclusively to the local school district.

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<sup>16</sup> Lucius Q. C. Elmer, A Digest of the Laws of New Jersey, published by James M. Newell, Bridgeton, N.J., 1838, p. 500.

<sup>17</sup> Votes of the Assembly, 1842, p. 61.

Not until after 1840 did state consciousness in educational matters truly come forth. The influence of conservatism had made New Jersey the symbol of educational backwardness. "The adjoining state of New Jersey presents little that is gratifying on the subject of common schools"<sup>18</sup>. Andrew Jackson democracy opened the way to free, public education in tax-supported schools. In state by state, during the first half of the nineteenth century, new constitutions were being written, for the need of an educated electorate was now becoming appreciated. The legislatures were instructed to provide for education and for proper officials to oversee the interests of the schools and their financing. In 1844, the new Constitution for New Jersey stated clearly, "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools . . ."<sup>19</sup>. This provided for the permanence and security of the Fund.

Following many years of effort, a state superintendent of public instruction was appointed in 1845, with his authority limited to Essex and Passaic counties unless others requested assistance. Along with this, school taxes on a local basis became mandatory. Town superintendents were

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<sup>18</sup> American Annals of Education, August, 1831, p. 362.

<sup>19</sup> New Jersey Laws, 1845, Section VII, Art. 6, p. 12.

elected, and their duties were largely in handling finances and in licensing teachers. Thus the town superintendent replaced township committee in the administration of local school affairs.

More and more, the school district became the prevailing type of local school unit, with some incorporated and others unincorporated. In 1851, the school districts<sup>20</sup> were granted permission to collect taxes for the purchase, support, and maintenance of all school property. The function of the town in relation to education now was primarily for the distribution of state school money and to receive census and attendance statistics.

## 2. Emergence of the School Committee.

Private education had long been in control in the commonwealth, therefore the state moved cautiously in taking over the general administration of education. The act<sup>21</sup> of 1794 incorporating learning societies paved the way for the creation of the free school fund<sup>22</sup> in 1817. As the Legislature was soon to discover, public education needed adequate guidance and considerable supervision. The trustees of the

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20 New Jersey Laws, 1851, p. 267.

21 Ibid., 1794, supra.

22 Ibid., 1817, p. 26.

state school fund became the first public school officials in the state. With the creation of a state public school system<sup>23</sup> in 1829, new problems arose. The system described by this law of 1829 was specifically for the distribution of the school fund, but it came to be recognized as the agency for administration of all public school activities.

The units of school administration were the state, the county, the township, and the school district. The first three had existed previously, with the school district being new, owing its formation to the purpose of caring for school functions. School districts made up the towns; the towns were subdivisions of the county; and the counties combined made up the state. Each of these units governed itself. The Trustees of the school fund represented the state, the Chosen Frecholders the county, the School Committee, selected by the town meeting, the township, and the District Trustees, the school district. Trustees for the state, township school committees, and district trustees all came into being to serve as directors of school activities.

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23 Laws of New Jersey, 1829, p. 105.

The "Act for the incorporation of the town of Princeton"<sup>24</sup>, passed in 1822, implied that the state had a proper interest in the administration of education. Its preamble defined the purpose of the act was to "further the interests of those institutions of learning and piety established within the town". The city of Burlington<sup>25</sup> in 1824 became the first public corporation in the state to include education in its activities, by incorporation of the board of managers of the school fund for the education of the youth of the city. Essentially this board was considered a school district, although school districts were not official until the act of 1829 established them in the state. As required by this law, the town meeting was to select a school committee whose responsibility was to establish school districts within its boundaries. The township school committee was also obliged to specify the time and location of holding district meetings for the election of district trustees<sup>26</sup>.

A supplementary act,<sup>27</sup> passed in 1830, revealed that school districts had actually been in existence prior to the

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24 Ibid., 1822, Private and Temporary Act, p. 93.

25 New Jersey Laws, 1824, p. 4.

26 Ibid., 1830, p. 119.

27 Ibid., 1830, p. 120.

enabling act of 1829, for the legislation of 1830 prohibited school committees from changing districts, without a majority vote of the district under consideration, that had previously existed. A new law<sup>28</sup> in 1831 directed the school committee to "ascertain and recognize the number of common schools within their respective townships", again acknowledging the prior existence of school districts. A committee reporting to the Assembly in 1835 remarked that in "the Act of 1831 . . . the division of townships into school districts; the election by the inhabitants of each district of trustees . . . are all abolished"<sup>29</sup>. It is rather likely that this directive was ignored since many districts had not even waited for the express sanction of the law to create their districts originally. In any event, this function was restored to the school committee<sup>30</sup> in 1838, a rather empty gesture since there appeared to be no appreciable lack of school districts between 1831 and 1838.

Local school boards came into being in 1829, the same year the first comprehensive school law was passed by the Legislature. School units of administration and the appropriate authority designated for each were created, as suggested on page ten.

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28 Ibid., 1831, p. 146.

29 Votes of the Assembly, 1835, p. 259-263.

30 New Jersey Laws, 1838, p. 247.

Administration of the local school unit by the law of 1829 was, through the school committee, made up of three or more persons chosen annually by the town meeting. These committee men were to divide the township into school districts and apportion school money to the districts, license teachers, inspect the schools, and report to the county board. These duties were taken over by the township superintendent as a result of the law<sup>31</sup> of 1846. From that time on the school committee ceased being an important school body.

A board of three trustees<sup>32</sup> served each of the school districts into which townships were divided by the school committees. At first, this board was elected annually by the taxable persons of the district in which they served, but in 1851 the practice<sup>33</sup> was revised. Each trustee was now to be elected for three years, with terms arranged so that one expired every year. Money received from the township went toward the maintenance of the school in the district. These trustees were obliged, by the law of 1829, to provide a school for the children of the district, employ teachers, set the length of the term, and take and submit

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31 New Jersey Laws, 1846, p. 169.

32 Ibid., 1828, p. 106.

33 Ibid., 1851, p. 269.

the school census to the township school committee. The committee, in turn, reported these facts to the County Board of Chosen Freeholders, and by the freeholders to the state school fund trustees, where the information was condensed and put before the Legislature. In 1831, the duty of inspecting the schools<sup>34</sup> was given over to the district trustees, but in 1838 responsibility for this function<sup>35</sup> was returned to the township school committee.

In the main, the township committee was to raise the money for maintaining schools while the district trustees were to expend the money and manage the local school.

To Camden Township and to Nottingham goes the distinction of being the first to provide for the office of school treasurer, by law, in 1844. The board in the city of Burlington, mentioned on page twelve, in 1848 was directed to choose a president secretary, and treasurer, thereby making the first systematic gesture in the state to give a board a complete set of officials<sup>36</sup>.

School officers at first served without financial remuneration, for their interest in local affairs and eagerness to assume positions of authority were usually sufficient

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<sup>34</sup> New Jersey Laws, 1831, p. 146.

<sup>35</sup> Ibid., 1838, p. 250.

<sup>36</sup> Ibid., 1848, p. 10.

incentives. The first reference to any compensation given school officers was in the law of 1838. Members of the boards of examiners for licensing teachers in the various counties, and school committeemen were allotted one dollar per day from local funds while actually performing their duties<sup>37</sup>.

Again in the law of 1846, compensation was allowed for the examiners, but not for the township committeemen, for by this time the newly created town superintendents had absorbed the responsibilities of the school committeemen<sup>38</sup>.

### 3. Permissive Appearance of the Clerk of the Committee.

Almost from the beginning of this study, it has been indicated that most school affairs were originally considered in the town meeting. As the difficulties became too numerous and more complex for settlement by the regular meetings, particular individuals were selected to look into these situations and report their findings to the town meeting. To these "town's men" fell the responsibility of investigating school problems, and thereby became the first officially designated persons to handle school matters authoritatively.

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<sup>37</sup> New Jersey Laws, 1838, p. 248-250.

<sup>38</sup> Ibid., 1846, p. 166.

At the town meeting, school sites were selected and buildings planned, teachers were chosen, and local assessments were agreed upon for maintaining the schools. Trustees, one of whom was designated to collect the taxes<sup>39</sup>, pay the schoolmaster, plus other duties such as keeping the school in repair, and the important task of keeping records of the school activities, were chosen year by year.

Problems pertinent to schools were discussed and settled in town meetings for many years. It seemed quite natural for the town clerk, who was serving as the recording secretary for the town meetings, to also make note of all educational proceedings to come before the town gathering. Thus, quite by coincidence, the town clerk by virtue of his duties was the predecessor of the clerk of the board of education<sup>40</sup>.

Growth in population brought about broad development in the schools. As a consequence, control of educational matters was delegated more and more to the school committee by the town meeting, although the committee was required to report its progress periodically. It is rather certain that

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<sup>39</sup> David Murray, History of Education in New Jersey, Vol. 16, 1899, Government Printing Office, Washington, D.C., p. 111.

<sup>40</sup> George H. Martin, The Evolution of the Massachusetts Public School System, New York, Appleton, 1894, p. 46-47.

the more ambitious and willing members assumed a large share of the duties incumbent upon the committee as a whole<sup>41</sup>. Lacking time or interest, or both, some members quite readily delegated their duties to some one of their number, simply reserving the right to pass upon this appointee's actions and decisions. A situation so described would constitute the making of one committee member the agent of the school committee, and ultimately lead to what later became the office of the clerk of the board of education<sup>42</sup>.

The district clerk is clearly mentioned as the next school officer to appear, in District No. 7, Pequannock Township, Morris County, his duties being set out in a law of 1851. Among the duties mentioned were "to keep records of proceedings, keep all reports on file, post notices of special meetings, and assist trustees in making out census lists of children"<sup>43</sup>. His was the first detailed list of duties of a school board officer in the laws of New Jersey.

It was rather obvious that the value of records and reports was not generally appreciated, for even in the early years of the state school fund, the trustees and the governors

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<sup>41</sup> David Murray, supra.

<sup>42</sup> Leland M. Drake, The Clerk of the Board of Education, unpublished doctoral thesis, Ohio State University, 1936, p. 16.

<sup>43</sup> Laws of New Jersey, 1851, p. 223.

frequently were distressed at the inadequacy of the response to requests for reports of expenditures of school funds in the local districts. The Trustees stated:

It is much to be regretted that there are so many townships in the State, in which the school committees have altogether failed to make reports. In presenting to the Legislature a statement of the condition of the public schools, these reports are the only sources of information to which the Trustees of the school fund can resort. It is manifest, therefore, that this statement can neither be full nor satisfactory, while the reports are so partial and imperfect. In fact, much of the efficiency and success of our whole system of popular education depends upon the manner in which the school committees of the several townships discharge their duties. They are the life of the system.<sup>44</sup>

Lack of reports from the townships was a constant source of irritation to the state officials. In some cases, failure to submit these records was deliberate and aroused much indignation, while with others it was somewhat unintentional. In any event, these conditions made it quite difficult to work for improvement of the schools.

#### Summary.

Early school management fell directly under the influence of the community meeting. Progressively, as the functions of local government became more varied and complex, responsibility for school control was delegated to a board

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<sup>44</sup> Votes of the Assembly, 1840, p. 152.

of trustees (later known as the board of education).

The school committee was charged with the administration of the local schools, by virtue of which it established districts, raised and distributed necessary funds, examined and licensed teachers, and inspected school buildings and property.

In turn, each district was more closely attended by a board of three citizens who were to maintain and manage the schools through funds provided by the school committee, establish the school year, hire and remove teachers, and collect and submit the school census to the committee.

Originally, the town clerk, by happenstance the predecessor of the school clerk, as part of his responsibilities took written note of all educational activities in the community. Eventually, as the school functions acquired more importance, one of the school trustees assumed this secretarial duty without legal sanction, which was to come in 1867.

Having described the early background of appearance of this district officer by way of a historical treatment, attention will now be focused, in the following chapter, on the legal basis for, and development of, the clerkship.

## CHAPTER II

### LEGAL BASIS FOR CREATION AND EXPANSION OF THE OFFICE

A review of school history in the state from earliest times would reflect difficulty in securing accurate information on any phase of school activity. It might be recalled that the state school fund trustees, the governors, and most legislative committees appointed for educational purposes had annoying and sometimes frustrating experiences when attempting to collect local school statistics.

Completely independent operation of the local school districts, with no form of central control, was certain to lead to undesirable results. For a considerable period of time, friends of education had urged the appointment of a state commissioner of education. Selection of Mr. T. F. King as the first state superintendent<sup>1</sup> in 1845 was a forward step, but New Jersey had a long way to go in order to achieve its ultimate goal.

As had been hoped, the commissioner's influence spread gradually from his initial responsibility of two counties to that of the entire state. Despite fear of the loss of precious home rule to centralization of authority, the

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<sup>1</sup> Laws of New Jersey, 1845, p. 242.

persuasive compulsion of state aid to the local taxpayer had the necessary effect.

1. The Office Assumes Legal Status.

Records imply that no substantial progress in the status of the state commissioner's office was made from its inception to 1867. The principal duty, in the main clerical in nature, was for the incumbent to collect, organize, and present a statistical summary, together with a report on the progress and needs of the several school districts.

Ellis A. Apgar, state superintendent of schools in New Jersey for nineteen years, starting in 1866, was responsible for the organization of the state public school system, for he had gathered together all the fragmentary acts concerned with schools to create a new educational code. Mr. Apgar had strong feelings concerning the need for certain school officers. Of the county superintendents he stated:

It is impossible for New Jersey ever to have a system of public instruction until she engages the services of county superintendents. These superintendents should receive salaries which will enable them to devote their whole time to the supervision of the schools . . . They (county superintendents), in every way (can) give such aid and counsel to trustees, teachers, parents and pupils, as will tend to elevate the standard of education and cause uniformity in the methods of instruction throughout the State.<sup>2</sup>

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<sup>2</sup> Annual Report of New Jersey State Board of Education, with the Report of State Superintendent of Public Instruction, 1866, p. 16.

The commissioner felt that the county superintendents could, and should, replace the town superintendents and county examiners, saying:

. . . Some of the reports of the Town Superintendents, from which the State Superintendent's report is necessarily compiled, are prepared with great care and can be relied upon as accurate, but the majority are mere approximations. From many of our Town Superintendents it seems almost impossible to obtain the statistical data required . . .<sup>3</sup>

Mr. Appgar was certain that twenty-one active county superintendents would improve all educational conditions; statistics would be reported accurately, and school finances of the state would be properly supervised.

With the revision of "An Act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof"<sup>4</sup>, in 1867, came the appearance of the acts concerning the secretary and district clerk. The secretary "shall be appointed by the majority vote of all the members of the board"<sup>5</sup>, and, in Article VII districts, "may be elected from among such members"<sup>6</sup>.

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<sup>3</sup> Ibid., p. 17.

<sup>4</sup> Laws of New Jersey, 1867, p. 360.

<sup>5</sup> Ibid., 1903, p. 22.

<sup>6</sup> Laws of New Jersey, 1867, p. 366.

Until 1953, the title "district clerk" always implied an Article VII school district, wherein the person so designated performed the principal clerical functions; in the Article VI district he was known as the secretary. Since the above-mentioned date, however, both district officers have been commonly titled "secretary"<sup>7</sup>. This office is a mandatory appointment that must be made by a majority vote of all members of the board<sup>8</sup>, who fix the compensation<sup>9</sup> and term of employment.

Being fully aware of the many shortcomings in the state system, Mr. Apgar soon turned his attention to the school trustees. He saw the weakness in this organization in that the clerk of the group held office on a purely permissive basis. He observed that:

. . . At present, these duties being assigned to no single person, one trustee waits for the others to act, and no one feels any individual responsibility.<sup>10</sup>

The superintendent's recommendation was that one trustee should be elected district clerk, with special duties as secretary, and district school treasurer with its attendant responsibilities.

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<sup>7</sup> New Jersey School Laws, School Law Decisions, 1952-1953, Laws of 1953, Chapter 255, p. 13.

<sup>8</sup> New Jersey Statutes Annotated, Title 18, Education, 18-7-68, p. 193.

<sup>9</sup> Ibid.

<sup>10</sup> Annual Report of the State Superintendent, 1866, p. 19.

Mr. King, state superintendent in 1846, had found it most difficult to reach the several local school officials.

It was stated:

The Superintendent has no means of ascertaining the names or residence of the different school officers, and consequently caused the books to be directed to the "school committee" of the several townships, with a request to the postmaster to hand them to the proper persons.<sup>11</sup>

Reporting in 1860, Superintendent King said:

There is a want of formality, and frequently a deplorable looseness, in the manner of conducting the business of district meetings. Proper records of their proceedings are not always kept; and it sometimes happens that a history of the most important transactions is only preserved by tradition. To guard against these evils it is desirable that the law should be so amended as to secure the permanent organization of every board of trustees, as well as of every district, and to require proper records of their proceedings to be kept in readiness for the inspection of the town superintendent, or the state superintendent, whenever the same may be required.<sup>12</sup>

There is little wonder that Superintendent Apgar set about revamping the educational structure shortly after assuming office.

The 1867 revision gave the state superintendent authorization to hear and decide all controversies and

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<sup>11</sup> Votes and Proceedings of the Assembly, 1846, Annual Report of the State Superintendent of Public Schools, p. 417.

<sup>12</sup> Annual Report of the State Superintendent of Public Schools, 1860, p. 58.

disputes concerned with School Law, or under the rules and regulations of the state board of education, at no cost to the parties involved, with appeal privileges to the State Board<sup>13</sup>.

A study of the available records for a 30-year period, beginning in July, 1912, shows that the Commissioner decided 767 cases, of which only 242 were appealed to the State Board of Education, resulting in 214 affirmances and 28 reversals. There were only 31 appeals to the Supreme Court from the State Board's decisions, of which 27 were affirmed and four reversed. Only nine cases reached the Court of Errors and Appeals, with no reversals.<sup>14</sup>

This procedure appears to have met a pressing need, for on the average the State Supreme Court receives about one appeal per year, and said Court has only reversed four decisions of the State Board of Education.

Often these controversies concerned with education lead the way to school system improvement, and sometimes tend to suggest, clarify, or eliminate school legislation.

Emphasis in this area has been on averting formal litigation, but the work increased to the degree that it became necessary to appoint someone to assist the superintendent by hearing cases under the School Law.

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13 Laws of New Jersey, 1867, p. 362.

14 Annual Report of State Board of Education and the Commissioner of Education, 1944, p. 30.

It (the law) . . . provides that one of the assistants (Commissioners) shall hear all controversies and disputes which may arise under the school law or the rules and regulations of the State Board of Education.<sup>15</sup>

In 1867 came the official appearance of the acts concerning the secretary and district clerk. As stated in the law:

. . . the secretary shall be appointed by the majority vote of all the members of the board of education . . .<sup>16</sup>

or, as provided for with the district clerk:

. . . the board shall, . . . by the majority vote of all the members of such board, appoint a district clerk, who may be elected from among such members . . .<sup>17</sup>

It will be noted that in both acts a "majority vote of all the members" was necessary for appointment. The importance of a majority vote rather than a quorum is expressed at page 568 of Tomlin v. Glassboro Board of Education<sup>18</sup>. The point of issue in the abolishment of the course of study and the teaching position centered about the legality of the vote taken by the board, which consisted of nine members. At the meeting, only five members were present; voting five

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<sup>15</sup> New Jersey School Report, 1912, p. 17.

<sup>16</sup> Compiled Statutes of New Jersey, 1709-1910, Vol. IV, Sec. 56, p. 4742.

<sup>17</sup> Ibid., Sec. 91, p. 4754.

<sup>18</sup> Tomlin v. Glassboro Board of Education, Decisions in Manuscript, decision of the Commissioner of Education, January 20, 1923.

to one for removal of the teacher, a majority was obtained. However, it was later determined that the majority required must be of the entire board, and the subsequent ruling was that the teacher could be removed only after charges were filed, and a proper hearing held, since said teacher was under tenure.

Appointment of secretary.- In a controversy concerning who was the officially recognized secretary of the board, at page forty in the dispute of Leuly et al. v. Ritter et al.<sup>19</sup> the majority rule again was most significant. One, Hurley had been appointed as secretary of the board of education in the township of Weehawken on January 9, 1914. Said board, on February 2, 1914, declared the office of secretary and district clerk vacant, and proceeded to appoint Arthur V. Briesen to the position.

Reference was made to the pertinent section of the general school law, in part:

A secretary shall be appointed by the majority  
 vote of all the members of the board of education  
 . . .<sup>20</sup>

By resolution, the office had been declared vacant, and in turn filled by the appointment of Briesen. The act

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<sup>19</sup> Leuly et al. v. Ritter et al., School Law Decisions, 1928, p. 40.

<sup>20</sup> School Laws of 1903, Sec. 56, p. 22.

affirmed by the state board of education resulted from the majority vote of all the members of the Board; the incumbent Hurley was removed, and Briesen was "regularly and legally elected as secretary" of the Weehawken Board of Education.

Refraining from voting does not count as a vote for the affirmative.- Need for an affirmative vote of the majority of all the members of the board of education is clearly demonstrated in King v. Board of Education of Asbury Park<sup>21</sup>. The board consisted of five members, with two voting for appointment of the petitioner as secretary-business manager, and two voting against, whereas the fifth vote was not cast. An affirmative vote of at least three members was necessary for election. The issue brought forth as evidence the case of Mount v. Parker<sup>22</sup> wherein no specified number of votes was required, but a majority of the board regularly convened were entitled to act; a person declining to vote was to be considered as assenting to the votes of those who did.

In the instant case, "the law specified a required number of votes", whereas in Mount v. Parker<sup>23</sup> "no specified number of votes was required". Secondly, in order to elect

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<sup>21</sup> King v. Board of Education of Asbury Park, School Law Decisions, 1939-1949, p. 20.

<sup>22</sup> Mount v. Parker, 32 New Jersey Law 341.

<sup>23</sup> Mount v. Parker, supra.

a secretary, "a majority of the whole membership" is necessary for legal action, while the actual vote was a tie. The case cited for the petitioner above required "a majority of the board regularly convened" in order to act.

The fifth vote was ruled to be in the negative, offering as evidence to prove the stand taken the decision of the Supreme Court in the matter of Kozusko v. Garretson<sup>24</sup>, "when a member dissents, his vote cannot properly be counted in the affirmative".

Further, the Court of Errors and Appeals in the case of the State of New Jersey v. Goodfellow<sup>25</sup> arrived at the same conclusion at pages 606 and 607. "Their refusal or failure to vote justified recording them in the negative".

Testimony disclosed in King v. Asbury Park<sup>26</sup> that the non-voter had dissented from the affirmative action prior to, and during, the actual voting. Since three affirmative votes were necessary, and only two had been cast, the petition was dismissed.

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<sup>24</sup> Kozusko v. Garretson, 102 New Jersey Law 508, see Appendix 6, p. 238.

<sup>25</sup> State of New Jersey v. Goodfellow, 111 New Jersey Law 604; also p. 606-607; see Appendix 2, p. 226.

<sup>26</sup> King v. Asbury Park, supra.

## 2. Pertinent Decisions Circumscribing the Jurisdiction of the Office.

The clerk's failure to file a bond not essential to validity of board meeting.- Although the secretary or district clerk must be under bond, whose failure to meet this demand does not invalidate any of their functions as officers, as discussed at page 239 of Hulmes et al. v. Board of Education of Jefferson Township<sup>27</sup>.

The appellants contended that all of the school board meetings from their organizational date, and until such time as the district clerk had filed a bond, were illegal because of the school officer's failure to file said document.

While the School Law does require the district clerk to file with the board of education a bond in such amount as the board shall fix and with sureties approved by such board, such statutory provisions is in the Commissioner's opinion entirely for the board's protection and in no way invalidates business transacted at meetings which may have been held prior to the date of the actual filing of the bond, upon which date the clerk became a de jure instead of a de facto officer of the board.<sup>28</sup>

As indicated by the quotation, the Commissioner did not concur with the appellants' pleas concerning any adverse effect created by non-performance on the part of the clerk of this bonding act.

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<sup>27</sup> Hulmes et al. v. Board of Education of Jefferson Township, New Jersey School Report, 1924, p. 239.

<sup>28</sup> Ibid., supra.

Board of education unable to remove clerks in the secretary's office.- An illustration of the bounds of power of the local board secretary is described in Rochford v. Bayonne Board of Education et al.<sup>29</sup>. A clerk, titled as bookkeeper in the office of the secretary, was discharged by board resolution. From this action, the appellant prayed for assistance. In a hearing before the Assistant Commissioner of Education, it was determined that the law provided as follows:

The secretary may appoint and remove clerks in his office, but the number and salaries of such clerks shall be determined by the board of education.<sup>30</sup>

The respondents claimed that the bookkeeper had been appointed by the board of education, contending that the law gave the secretary only permissive power of appointment, that should the board fail to perform this duty, the secretary could make such appointments. The facts in the matter indicated that the board "in accordance with the statutory provisions" established the position, and that the secretary made the actual appointment, such power having been conferred upon the secretary by the Legislature.

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<sup>29</sup> Rochford v. Bayonne Board of Education et al., New Jersey School Report, 1929, p. 75.

<sup>30</sup> School Law Compilation, 1925, Sec. 71, p. 40.

In the Commissioner's judgment, as long as the number of clerks in the secretary's office remained unchanged, only the secretary could remove the appellant. He could remain in his position as long as he continued to be employed by the secretary.

Legality of dismissal of clerical employee by the secretary of the board.- Subsequent to the ruling mentioned immediately above, the secretary took the necessary steps to discharge the appellant, who appealed this action, titled Rochford v. Board of Education of Bayonne et al.<sup>31</sup>, claiming that the secretary was powerless to remove him. Since the appellant had already been illegally discharged and not reinstated in conformance with the Commissioner's previous decision, he contended that no other action could be performed until he (the appellant) was returned to his position.

Referring to his earlier opinion:

. . . the sole function of the Board of Education in relation to the clerks in the Secretary's office was to determine their number, and . . . the appointment and removal . . . within that number was the prerogative of the Secretary.<sup>32</sup>

the Commissioner again stated that "the appointment and removal was the prerogative of the secretary".

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<sup>31</sup> Rochford v. Board of Education of Bayonne et al., Education Bulletin, May 1932, Special, Vol. XVIII, Supplement to School Law Decisions of 1928, p. 942.

<sup>32</sup> New Jersey School Report, 1930, p. 54.

Fixing of the School Custodian's bond and designation of bank account.- It was the Commissioner's thinking that the secretary's privileges must not be encroached upon through rules of a local board of education. The Bayonne board had established a rule that the secretary "shall recommend through the Superintendent the employment and dismissal of all subordinates". In Bayonne v. Ryan<sup>33</sup> the board of education by resolution had designated a certain bank as the depository for all school moneys. The custodian of school funds was ordered by said body to place all board of education funds in his possession therein and to give a satisfactory bond. In refusing to comply, the custodian referred the appellant to the statute from which it had been decided that a board of education could not make rules or regulations inconsistent with statutory provisions<sup>34</sup>. Therefore, the board could not enlarge the duties of the superintendent so as to restrict the authority of the secretary conferred by statute to "appoint and remove clerks in his office".

An appeal from the Commissioner's decision was put before the State Board of Education. In its response, the

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33 Bayonne v. Ryan, supra.

34 Public Laws, 1915, Chapter 302, amendment to School Act of 1903, Sec. 276, School Law; see Appendix 6, p. 240.

State Board cited:

The secretary may appoint and remove clerks in his office, but the number and salaries of such clerks shall be determined by the board of education.<sup>35</sup>

agreeing with the Commissioner's opinion, and recommended that it be confirmed. In response to the appellant's plea that Chapter 287 of the Laws of 1926 was unconstitutional, the Board stated that it was without authority to declare acts of the Legislature unconstitutional.

Appointments of secretary null and void when board fails to appropriate for clerks in secretary's office.- Perhaps it might be in order to suggest another example of the breadth of this school district officer's authority as outlined in Biel et al. v. Bayonne Board of Education<sup>36</sup>. The secretary of the board had recommended the appointment of the appellants, but the board declined to fix their salaries. Shortly thereafter the secretary, in the interest of economy, suggested in writing to the board that these employees be discharged, subject to the board's affirmation. In response to this action, a resolution approving the dismissal of the appellants was adopted by the board of education.

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<sup>35</sup> School Law Compilation, 1925, Sec. 71, p. 40.

<sup>36</sup> Biel et al. v. Bayonne Board of Education, School Law Decisions, 1939, p. 84.

The Commissioner's decision in the appeal is significant in that he emphasized several pertinent facts. One, the secretary may appoint and remove clerks in his office, and the board determines the salary. Secondly, it was clearly understood that the secretary dismissed the appellants, and that they served at his pleasure. Moreover, since the board declined to fix salaries for the appellants, the secretary could offer no positions, thereby making his appointments null and void. Finally, even had the board fixed salaries for the appellants, the secretary's action of recommending their dismissal would have terminated their employment.

Secretary or assistant secretary may be removed by the board of education in accordance with terms of their employment.- A similar case in point, Nelson v. Bayonne Board of Education<sup>37</sup>, wherein the appellant was protected by tenure and claimed his dismissal was illegal, appeared. The secretary, in the interest of budget reduction, presented a recommendation to the board that Nelson, among others, be released as assistant secretary of the board, which action, by resolution, the board approved.

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<sup>37</sup> Nelson v. Board of Education of Bayonne, School Law Decisions, 1938, p. 91.

Nelson felt that the board resolution did not abolish his position, but merely created a vacancy. Also, he claimed that he had not been removed by the secretary, therefore the action was clearly illegal.

Acting in good faith, a board may eliminate a position. Nothing in the testimony indicated conditions to the contrary. The position of assistant secretary had been abolished, thereby eliminating Nelson's term of office.

As in the previous case, since there was no longer a position existing, "the number and salaries . . . determined by the board", the secretary would be unable to appoint someone in the appellant's place. Affirmation of the Commissioner's decision in dismissing Nelson's appeal was subsequently given at the State Board hearing.

Absence without leave good cause for dismissal of teacher.- The case of Garrison v. Board of Education of West Deptford Township<sup>38</sup> appears to go in the direction of enlarging the duties of the district clerk. The teacher was dismissed for being absent from the school without permission. The appellant claimed that she believed the district clerk could, and did, grant her permission for a leave of absence. As justification for her belief in the clerk's legal authority

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<sup>38</sup> Garrison v. Board of Education of West Deptford Township, New Jersey School Report, 1927, p. 110.

to give approval of her action, she stated that he had signed her contract when she was hired in the school system.

The respondents pointed out that the teaching agreement also carried the signature of the president of the board of education, and referred her to the findings of Slattery v. School et al.<sup>39</sup>, Wheeler v. Alton<sup>40</sup>, and The Law of Public Schools<sup>41</sup>. These citations revealed that those dealing with school officers should know the limits of their authority, which, as a consequence, left the Commissioner to declare that the appellant, in absenting herself from school without consent of the board of education, was guilty of a vital breach of contract and subject to dismissal for "good cause".

Although evidence indicated that the district clerk acted in good faith by referring the matter to the administration and the board of education, it is rather odd that the entire matter was not conducted by the teacher through the supervising principal from the beginning.

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<sup>39</sup> Slattery v. School et al., 86 Northeastern Reporter 860; see Appendix 6, p. 239.

<sup>40</sup> Wheeler v. Alton, 56 New Hampshire 540; see Appendix 6, p. 239.

<sup>41</sup> Harvey C. Voorhees, The Law of the Public School System of the United States, Boston, Little, Brown, 1916, Chapter IV, Sec. 57, p. 127.

Failure to notify clerk of contemplated absence for illness does not constitute grounds for dismissal of teacher.- Expansion of the district clerk's area of responsibility is again cited in Vetter v. Board of Education of Galloway Township<sup>42</sup>. The local board had adopted "Rules for the Teachers" which, in part, read:

If the teacher's absence is unavoidable, the clerk of the board of education or the local member of the board of education should be immediately informed. Qualified substitutes only are permitted to replace the teacher and then only by the consent of the clerk, president or local member of the board of education. The practice of placing a pupil as a substitute or of combining rooms during the absence of a teacher is not permitted.<sup>43</sup>

The appellant was not permitted to return to her teaching position after the birth of her child. This action of the board was declared illegal by the Commissioner of Education. A subsequent hearing revealed that the appellant had made several attempts to contact the district clerk before finally reaching him. At that time, he (the district clerk) was informed by the appellant why she had found it necessary to be absent from school, and the reason for a substitute taking her place. The Commissioner again ruled that the

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<sup>42</sup> Vetter v. Board of Education of Galloway Township, New Jersey School Report, 1930, p. 72.

<sup>43</sup> Ibid., p. 73.

dismissal of the appellant was without good cause, for her absence was due to

. . . illness which could not have been foreseen by her at the time she entered into her contract, . . . and was therefore an entirely justifiable one.<sup>44</sup>

The cases referred to immediately above bend in the direction of expanding the functions of the secretary, while limiting the duties of the administration.

Legality of transfer of teacher under tenure.- Illustrated herein in the controversy of Cheesman v. Gloucester City<sup>45</sup> is the case of where the secretary overstepped his bounds, if the facts presented were true.

Cheesman, the appellant, a principal teacher in the Gloucester school system for about nineteen years, had been moved from a combined seventh and eighth grade position in one school to a fifth and sixth grade situation in another building as principal teacher. The appellant protested the action and refused the transfer on the advice of counsel, claiming it was an illegal action and comparable to a dismissal.

At a board hearing which followed, the teacher was found guilty of insubordination and dismissed. The Commissioner

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<sup>44</sup> Vetter v. Galloway, supra, p. 72.

<sup>45</sup> Cheesman v. Gloucester City Board of Education, School Law Decisions, 1928, p. 156.

did not sustain the respondent in the dismissal on the grounds of insubordination, and ordered the teacher reinstated.

The State Board held, at its hearing, that the appellant should have followed the board's instructions, even though under protest. Policy or opinion of the Board in the case was established by *Fitch v. South Amboy*<sup>46</sup>, from which it held that it would not disturb a local board's decision in a matter of this type, if a fair hearing reflected no passion or prejudice on its part.

A writ of certiorari in the case was heard before the Supreme Court in order to review the findings of the local board. In this hearing it was revealed that the appellant claimed the secretary of the board had informed her when she signed her contract that she was made principal of the junior department of the high school.

Obviously, if the statement was true, the secretary was not acting within the scope of his authority in making such commitments. However, parol testimony could not alter a written contract. It was the Court's conclusion that the State Board's opinion was correct and affirmed it, dismissing the writ.

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<sup>46</sup> *Fitch v. Board of Education of South Amboy, New Jersey School Laws, 1921, p. 533-535.*

Dismissal of a principal under tenure.- Fountain v. Board of Education of Madison Township emphasized that:

. . . the duty of a supervising principal is primarily the supervision of instruction in the classroom. His other duties are of minor importance.<sup>47</sup>

The appellant had been supervising principal of the township for more than three years when he was dismissed by the local board of education, as the result of being found guilty of charges brought to the board by the citizens of the community. Said charges were that he was not diligent in his responsibilities as supervising principal.

An appeal was taken before the state commissioner of education, but only the respondent's counsel appeared. The Commissioner reviewed the testimony and concurred with the local board's findings.

In a review held before the State Board of Education, it was noted that with 125 possible school days involved, the appellant visited but one school per day. According to his own testimony, he spent from fifteen minutes to an hour and a half in supervision at each building. A section of the school law of 1914, cited in part, held:

. . . a supervising principal or city superintendent of schools . . . shall . . . devote his entire time to . . . supervision of the schools.<sup>48</sup>

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<sup>47</sup> Fountain v. Board of Education of Madison Township, New Jersey School Report, 1917, p. 301.

<sup>48</sup> New Jersey School Law, 1914, Art. XVIII, Sec. 223, I, a. p. 107.

This interpretation of the law completely disregarded facts as revealed from counsel's brief as quoted:

. . . In addition to visiting schools, a supervising principal has many other duties to perform, such as acting as truant officer, preparing and filing state reports, county superintendent reports, and united attendance reports for each month; he must inspect toilets, deliver necessary supplies, and pay persons employed on school work. It would therefore appear that with the number of school visits actually testified to he must have been an exceedingly busy man if he performed his other duties, and that he did perform them is apparent from the absence of charges on that score. The township in question is seven miles wide and fourteen miles long, and the schools are three or four miles apart.<sup>49</sup>

Unable to rule otherwise, the State Board charged the appellant with neglect of duty and approved his dismissal.

The decision reached in this case simply encouraged the arrogation, by the district clerk, of functions logically within the sphere of authority of the administration. Allocation of administrative duties to the secretary or to committees of the board of education resulted in divided responsibility as to school policy, which brought about considerable inefficiency.

Rule 133 of the State Board of Education's Rules and Regulations, 1943<sup>50</sup> improved this situation wherein all other

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<sup>49</sup> Fountain v. Board of Education of Madison Township, School Law Decisions, 1928, p. 181.

<sup>50</sup> Rules and Regulations, 1943, State Board of Education, Rule 133; see Appendix B, p. 240.

duties than supervisory were considered as of minor importance. A modification of this questionable condition came about in that the duties of the supervising principal were expanded to

. . . consult with and advise the principals and teachers in procedures, methods, and materials of instruction . . .<sup>51</sup>

This long-delayed broadening of the statute relieved the district clerk of considerable unwanted and unwarranted responsibility.

Special meetings of the board of education must be called in strict conformance with requirements.- The board of education had released the superintendent against his will in the case of Cullum v. North Bergen<sup>52</sup>. The petitioner, Cullum, had been appointed to a term of five years at a special meeting of the board. One month later the new superintendent was discharged at the reorganizational meeting of the board of education.

It was determined that the special meeting of the board, at which time Cullum had accepted his appointment, was not legally called, for a resolution of the board of

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<sup>51</sup> Ibid.,

<sup>52</sup> Cullum v. North Bergen Board of Education, New Jersey School Laws, Session of 1953, School Law Decisions, p. 624

education read:

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.<sup>53</sup>

and Rule 136 of the State Board of Education held:

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.<sup>54</sup>

Evidence disclosed that the secretary was not present in the district when the meeting was called, nor did he issue the notice of the meeting, which two members had refused to attend.

Although Rule 136 has never been adjudicated before the Commissioner, the State Board, or the Courts of the state, these same courts have decided that school district meetings may only be called by those officers authorized by law, that actions taken at meetings not so conforming were invalid,

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<sup>53</sup> Rules and Regulations, 1951-1952, Board of Education of North Bergen.

<sup>54</sup> Rules and Regulations, 1953, State Board of Education, New Jersey, Rule 136.

citing 56 Corpus Juris 355, Apgar v. Syckel<sup>55</sup>, and Bogert v. Bergen County School District No. 30<sup>56</sup>, and others.

Special meetings called must conform to statutes or by-laws covering these meetings, for unauthorized persons calling same render them illegal, as shown in 56 Corpus Juris 338, and 19 Corpus Juris Secundum 90.

In Gelinas v. Fugera<sup>57</sup> it was held that members not receiving notice of meetings from persons in authority may ignore such notices.

A review of the overwhelming cases and texts supported the Commissioner's opinion that only the secretary was empowered to issue notices of special meetings.

It was denied by the petitioner that only the secretary could call a meeting, for he argued that this duty was not a mandatory one, but simply a device to relieve the board members of the responsibility. "A master can always do that which he can delegate to a servant". Properly interpreted, the law defined the secretary to be more than just an employee whose duties were outlined by the local board. His powers and functions are derived from the law and from the State Board;

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55 Apgar v. Syckel, 46 New Jersey Law 492

56 Bogert v. Bergen County School District No. 30, 43 New Jersey Law 358.

57 Gelinas v. Fugera, 55 Rhode Island Reports 232.

and his duty, both by local and state board, could not be arbitrarily assumed by others. In an extreme emergency, as shown in Gelinas v. Fugera, a substitute may act for the secretary. The assistant secretary can act for him, but only when so designated by board resolution, as provided for in the Laws of 1950<sup>58</sup>.

The Commissioner concluded that the special meeting was not legally called, and any action taken was null and void, therefore he was obliged to dismiss the superintendent's petition.

Legality of the enlargement by the board of education of the statutory duties of the district clerk.- In the case of Gaskill et al v. Piscataway<sup>59</sup> considerable misunderstanding concerning the distinction between statutory and assumed functions of the office of secretary or district clerk was corrected. One, Marshall had been district clerk of the township of Piscataway on a part-time basis for a long period of time, with his largest stipend never in excess of one thousand dollars. Changing from this pattern, for two years Marshall was appointed in a full-time capacity as clerk with

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<sup>58</sup> Laws of 1950, Chapter 163, p. 351.

<sup>59</sup> Gaskill et al. v. Board of Education of Piscataway Township, New Jersey School Report, 1927, p. 80, in Appendix 6, p. 241.

a salary of three thousand dollars. During August of the second school year of this full-time work, the board of education by resolution limited the district clerk's duties to those actually defined by statute and reduced his salary to the one thousand dollar rate. In addition, the board created the post of business manager with its related duties, at a salary of fifteen hundred dollars per school year. Shortly thereafter, the business managership was abolished by the board, who then assigned the duties of the position, together with those of the attendance officer, to the district clerk. The salary of the clerk was increased to twenty-five hundred dollars.

Validity of the board's action in expanding the duties of the district clerk beyond those fixed by statute was challenged by a taxpayers' group of the local community. Also, the point of the clerk, who was also a board member, being employed and compensated, and with the authority to execute these functions was questioned.

Referring to 35 Cyclopaedia 900, it is held that:

Officers of school districts are public officers and like other public officers their authority and powers are generally determined by statute, and they can rightfully perform all those acts which the law expressly or impliedly authorizes . . . <sup>60</sup>

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<sup>60</sup> Cyclopaedia of Law and Procedure, 1910, Vol. XXXV, p. 899.

Powers of public officers are described in the case of Andrews Company v. Delight Special School District, in which it was felt by the Court that:

The rule respecting such powers is that in addition to the powers expressly given by statute to an officer or board of officers, he or it has by implication such additional powers as are necessary for the due and efficient exercise of the powers expressly granted or which may be fairly implied from the statute granting the express powers.<sup>61</sup>

The opinion of the Commissioner held that the office of district clerk is to be considered a public office, for it is covered by a statute with provision for specific permanent duties, as defined by law. In the quotation cited above, it is declared that the authority of public officials is "determined by statute", and confined to "those acts which the law expressly or impliedly authorizes", and having only "such additional powers as . . . necessary for . . . due . . . efficient exercise of . . . powers expressly granted or may be fairly implied from the statute granting the express powers". The powers of the district clerk stem from the statute, not from the local board. It follows then that since this officer is limited to exercise of expressed or implied statutory functions, the school board is not within legal bounds in attempting to enlarge the clerk's duties.

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<sup>61</sup> A.H. Andrews Company v. Delight Special School District, 95 Arkansas 26.

Apparently the Legislature felt that the duties of this office were clearly established, for the School Law provides that:

He (member of a board of education) shall not be interested directly or indirectly in any contract with nor claim against said board.<sup>62</sup>

but still permits the district clerk to hold membership on the board of education that employs him. If he were able to perform duties and be compensated for them, other than those covered by statute for the clerkship, then, through a subterfuge of the title of district clerk, he could accept employment and compensation in the very areas the Legislature intended to forbid him while acting as a board member.

In view of the fact that it was established that the Piscataway Township Board of Education's resolution to expand the duties of the district clerk was illegal, the board was ordered to confine the duties and compensation to those "expressly" or "impliedly" covered by the School Law for that position.

Misappropriation by board of education of funds apportioned for tuition and transportation of pupils.- Of some interest in connection with a district clerk's false certification and a board member's illegal reception of board funds would be the citation of Burlington County Superintendent of

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<sup>62</sup> School Laws of 1903, Art. 7, Sec. 83, p. 31.

Schools v. North Hanover Board of Education et al.<sup>63</sup> at page 187. The board of education was charged by the county superintendent of schools with making illegal payments for transportation and tuition to one of its members.

It was established that the district clerk had falsely certified to the county superintendent that the daughters of Harrison, a board member, were attending a receiving high school. The board member was reimbursed by the district clerk for the tuition and transportation expenses for two years for his children's alleged attendance, until it was discovered that the girls were neither registered at, nor ever attended, the receiving school.

Tuition payments are made to the custodian of school moneys of the receiving district by the custodian of the sending district. The law provides no means for tuition payments to parents or guardians; however, when transportation is supplied by the parents or guardians, as the result of a previously arranged agreement with the board, payment is permissible.

As a member of the board, Harrison could not, under the law, be interested "directly or indirectly" in any claim against or payments by the board of education to him. His

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<sup>63</sup> County Superintendent of Schools v. North Hanover Township Board of Education, New Jersey School Report, 1920, p. 187.

(Harrison) action was directly against the law in accepting payments, and the board clearly violated the provisions of the School Law of 1903<sup>64</sup> in paying him.

No consent had been given by the board for Harrison's children to attend any high school, therefore, even the money given for transportation was unauthorized. The Commissioner ordered that all moneys received by the board member as a result of the false certification of the district clerk be collected by the board of education. The full apportionment made by the county superintendent for the children in question was to be returned to the county collector.

Jurisdiction of the Commissioner.- Furrer v. Beachwood Borough<sup>65</sup> reveals where two board members had allegedly received compensation for services rendered in connection with the construction of a board of education garage. The appellant felt that the board should be removed from office, and the members charged with violation of their trusts as school officials.

The School Law<sup>66</sup>, in section 124, prohibits board members from being "interested, directly or indirectly, in any claim with or claim against said board". Where appeals have been placed before the Commissioner prior to performance of

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<sup>64</sup> School Laws of 1903, supra.

<sup>65</sup> Furrer v. Beachwood Borough Board of Education, New Jersey School Report, 1930, p. 56.

<sup>66</sup> New Jersey School Laws, 1928, Art. VI, Sec. 55, (41), p. 36.

planned illegal acts by board members, he has ordered that these acts not be consummated. In the instant case, since public funds had already been illegally expended, recourse could then be had only through criminal court action. In the Commissioner's opinion, removal of the board of education or any of its membership for the reasons cited was not within the scope of his authority under the School Law, but rather a more proper subject for the courts.

Obviously, the secretary of the board must have been a party to the irregularities mentioned above, but because of lack of jurisdiction in the matter, the Commissioner was obliged to dismiss the appeal.

### 3. Qualifications Necessary for Appointment.

Although for a long period of time the State Department has made recommendations that:

. . . every applicant for the position of secretary or district clerk be required to hold a certificate of qualification issued by the Commissioner of Education, based on education and fitness, before he or she can be selected by the board for the position.<sup>67</sup>

no specific qualifications for appointment have ever been set forth by statute. However, should the secretary or district

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<sup>67</sup> New Jersey School Report, 1929, p. 211.

clerk be selected from among the board members,

Every board shall by a majority vote of all its members appoint a district clerk, who may be elected from among such members, . . .<sup>68</sup>

or,

. . . no such appointee, . . . other than the secretary, shall be a member of the board.<sup>69</sup>

he must qualify as a member of that board of education. If this officer is not a member of the board he need not, of necessity, meet the residence requirement.

Since the secretary may also be serving as a board member in the district which he serves, it would be well to establish herein the eligibility for board membership. The Public Laws of 1903 in referring to board qualifications state as follows:

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

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<sup>68</sup> Laws of 1928, Chapter 164, Sec. 1, p. 326.

<sup>69</sup> New Jersey School Laws, 1928, Sec. 64 (50) p. 38.

Residence of member of board of education.- O'Brien v. Board of Education of West New York<sup>70</sup> offers as a problem the importance of residence as related to service as a board member. The appellant, O'Brien, elected for a three year term, was removed from office without notice by the board after having served about one year. He (O'Brien) was reputed to have moved from the community, but actually, because of poor health, had gone to New York to recuperate. Acting upon the assumption that he had left the district, the board appointed someone to fill the presumed vacancy.

The respondent argued that by law the residence of a board member is "not his legal domicile, but his actual residence". One ceases to be a resident of the school district even though he intends to return, it was claimed. Correctly interpreted, the word "resident" as applied in section 83 of the School Law of 1903, in People v. Platt<sup>71</sup>, and affirmed in 117 New York at page 159, meant "domicile". Therefore, the appellant was still to be considered a resident of the community.

Even if O'Brien had given up his residence and de jure membership, he would continue as a de facto board member until his office had been declared vacant as provided for by law. The local board could not decide the appellant's

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<sup>70</sup> O'Brien v. Board of Education of West New York, School Law Decisions, 1928, p. 28.

<sup>71</sup> People v. Platt, 50 Hun 454.

eligibility, for under the school law this was for the Commissioner to declare.

The Commissioner's decision that the action of the West New York board of education in the matter was illegal was upheld by the State Board of Education upon appeal by the respondents.

Citizens must be residents for three years prior to beginning of term of office.- Kimball v. Baxter<sup>72</sup> cites correct procedure in questioning qualifications for board membership. In an election for a one-year unexpired term, Baxter was declared the winner. The appellant challenged the results of the balloting on the grounds that Baxter did not qualify properly. Section 83, Chapter I, Public Laws of 1903 requires residence "for at least three years immediately preceding" becoming a member of the board.

Kimball, the appellant, claimed to be entitled to the contested office for the reason that he held the greatest number of votes cast for an eligible candidate. That Baxter was elected made him a de facto member. The voters had performed their function, but the winner had failed to qualify, thus creating a vacancy. In Frome v. Meyers it is reported

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<sup>72</sup> Kimball v. Baxter, New Jersey School Report, 1931, p. 151.

that:

Frome was elected a member of the Board of Education . . . he has not qualified and has declined to do so, and . . . at a meeting of said Board of Education . . . elected a Mr. Axman to fill the vacancy . . . this appointment is illegal and . . . the vacancy should have been filled by the County Superintendent of Schools. The County Superintendent is only authorized to fill a vacancy in the Board of Education in case there is a failure to elect a member. Vacancies in a Board . . . arising from other causes than failure to elect are to be filled by the Board . . .<sup>73</sup>

and the State Board of Education affirmed this decision by saying:

. . . it was assumed that Mr. Frome's refusal to qualify was substantially the same as if the resignation of a member who had qualified was accepted and a vacancy . . . created. . . . the vacancy was not caused by failure to elect, the Board . . . had authority to appoint some one to serve until the next election.<sup>74</sup>

Election to office of the appellant, Baxter, was found to be invalid, thereby creating a vacancy which the board of education had the privilege to fill. Thus, it can be seen that Kimball had no legal claim to the vacant position.

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73 Frome v. Meyers, School Law Decisions, 1938, p. 26.

74 Ibid.

Local board not authorized to pass upon qualifications of its members.- Qualifications played an important part in the decision of Krejci et al. v. Board of Education of South Hackensack et al.<sup>75</sup> to be read at page 38.

Krejci, although his name was not printed on the ballot, was a successful candidate for board membership, along with Scioli, the second petitioner. Both men experienced difficulty in having oaths administered since the district clerk advised them that she was not authorized to do so, although for some years previous it had been the custom. Upon arrival on the evening announced for the organizational and regular meetings, the petitioners found darkness and no one present.

The respondents testified that the meetings were held, that lack of sufficient attendance prevented organization at the first session, but at the regular meeting business was conducted.

Notification was given to the county superintendent by the board of education that it was unable to organize at the organizational meeting, since a quorum was not present. The county superintendent, by authority given under the law<sup>76</sup>,

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<sup>75</sup> Krejci et al. v. Board of Education of South Hackensack et al., School Law Decisions, 1938, p. 38.

<sup>76</sup> Public Laws of 1903, Chapter I, Sec. 85, p. 32.

appointed a president and vice president, and notified the district clerk that, since Krejci and Scioli had not filed their oaths properly, they were not to be recognized as board members. As a result, the board appointed two others to fill the assumed vacancies.

At the hearing it was determined that both petitioners were duly elected, illustrated through such citations as Shearn v. Middlesex Borough<sup>77</sup>, and Layton v. Bedminster<sup>78</sup>, even though they may have only enjoyed de facto status, which was not the case. It had not been legally determined that the petitioners were not de jure members.

The Commissioner declared that the board of education had no legal authority to determine the qualifications of its members or to declare vacancies and to fill these supposed vacancies. Said petitioners were to be duly recognized as members of the Board of Education of South Hackensack.

Eligibility of board members not affected by illegal action during previous term.- In Donaghy v. Baker<sup>79</sup> an attempt to disqualify the respondent, Baker, as a member of

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<sup>77</sup> Shearn v. Middlesex Borough, School Law Decisions, 1932, p. 971.

<sup>78</sup> Layton v. Bedminster, School Law Decisions, 1932, p. 968.

<sup>79</sup> Donaghy v. Baker, School Law Decisions, 1938, p. 36.

the Palmyra Board of Education was made by the appellant, Donaghy, on the grounds that the board had made purchases from the firm of which Baker was president. These business transactions were alleged to have violated "An Act for the punishment of crimes"<sup>80</sup>, and "An Act to establish a thorough and efficient system of free public schools . . ."<sup>81</sup>

The respondent admitted that his company had done business with the board of education during his preceding term of office, but had ceased so doing before his re-election to membership.

It was pointed out by way of the School Laws of 1903<sup>82</sup> that one might be removed from office who gains "pecuniarily" or "beneficially" from the sale of supplies and equipment to the school system with which he is officially connected. No statutory provision is made designating the individual who may have the power of removal, therefore this action against a public official may be only by the Supreme Court under quo warranto proceedings.

The Commissioner lacks jurisdiction over violations of the Crimes Act, nor has he the power of removal as indicated

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<sup>80</sup> Revision of 1898, Sections 29, 30, p. 802.

<sup>81</sup> School Laws of 1903, Chapter I, p. 51.

<sup>82</sup> School Laws of 1903, Section 83, p. 31; Section 152, p. 58.

above. But, as shown in the case of DuFour et als. v. State Superintendent of Public Instruction<sup>83</sup>, Justice Garretson said:

It was also held in that case (referring to Buren v. Albertson, 25 Vroom 72). Even though the right to the office of school trustee is to be ultimately determined by quo warranto, there is no impropriety in it being passed upon for immediate purposes by such instrumentalities as the Legislature may appoint . . .<sup>84</sup>

Consequently, the Commissioner was privileged to render an opinion on the status of the respondent.

Reference is made to Park v. Hearon<sup>85</sup>, in which it was held that Section 152 of Chapter I, of Public Laws of 1903, did not apply to the "type of purchase" set forth in the instant case. Further, the opinion of the Commissioner pointed out that the respondent was not removable from office for actions performed during a prior term, this opinion being supported by the case of State v. Jersey City<sup>86</sup>. The Court held that "The Council have no power to expel a member for acts committed previous to his election".

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<sup>83</sup> DuFour et als. v. State Superintendent of Public Instruction, 72 New Jersey Law 371.

<sup>84</sup> Ibid.

<sup>85</sup> Park v. Hearon, New Jersey School Report, 1916, p. 216.

<sup>86</sup> State v. Jersey City, 25 New Jersey Law 536.

Although the law where concerned with board members, requested, in part, provides:

He (board member) shall not be interested directly, or indirectly, in any contract with, nor claim against said board.<sup>87</sup>

undoubtedly, the law was violated by the respondent, but no evidence within the present term was offered to the Commissioner to show that the incumbent should be disqualified from serving.

Two claimants to an office. Title can be determined only by quo warranto.- Almost a companion case concerning the Commissioner's jurisdiction is found in Benz v. Teaneck<sup>88</sup>, wherein the petitioner's appeal was dismissed.

Benz, the appellant, was one of two claimants to the office of board member, despite the fact she had moved from the school district. The appellant, after having served the district for about nine months, took up residence in another community. The board of education met shortly thereafter to adopt a resolution acknowledging her removal from the district and declaring her position vacant for that reason.

Appellant was no longer permitted to participate in meetings, and the board proceeded to appoint her successor. Feeling the action was illegal, Benz appealed to the

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<sup>87</sup> Public Laws of 1903, Chapter I, Sec. 83, p. 31.

<sup>88</sup> Benz v. Board of Education of Teaneck, School Law Decisions, 1939-1949, p. 91.

Commissioner, who expressed the view that the only way to settle the issue was by quo warranto, and proceeded to dismiss the petition.

Although agreeing with the conclusion reached, the State Board felt that the Commissioner could have assumed jurisdiction, pointing to his authorization to "decide all controversies and disputes arising under the School Laws, or under the rules and regulations of the State Board or of the Commissioner". An illustration of this authority was outlined in O'Brien v. Board of Education of West New York<sup>89</sup>, as previously related. Superior Court Justice Swayze, at page 446 of Koven v. Stanley<sup>90</sup>, held that "it was discretionary with the court to issue a writ of quo warranto although the remedy under the School Laws had not been exhausted". The Koven case further revealed that the Commissioner's jurisdiction was not denied, but that his or the Board's action could not be "either final or effective", nor could the Board remove anyone from public office.

The instant case presented an incumbent, while not a litigant in the proceedings, was entitled to be heard, plus a claimant to office for whom any judgment could not possibly affect the status of the incumbent.

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<sup>89</sup> O'Brien v. Board of Education of West New York, supra.

<sup>90</sup> Koven v. Stanley, 84 New Jersey Law 446.

In deciding to dismiss the appeal, by affirming the Commissioner's decision, the State Board referred the appellant to the Courts.

Decisions reached in the Benz controversy again brings to mind the conclusions arrived at in DuFour et als. v. State Superintendent<sup>91</sup>, as cited in Donaghy v. Baker<sup>92</sup>.

Eligibility of school board members.- Weymouth Township Board of Education's<sup>93</sup> application, attempting to establish the eligibility of a school board member, and the legality of certain appointments to the board presents a complex problem concerned with the illegal appointment to office of a man who proceeded to act as clerk of the board.

Two opposing groups were in Weymouth, each of which claimed to be the official school board of the community. The complete local school board consisted of nine members, but there had been five vacancies to be filled by election; three terms were for three years, and two were for one year.

Rogers and Garrison won election to one year positions as school board members. At the next scheduled monthly meeting following the organization of the board, one, Bourgeois appeared before the group to state that Rogers, newly elected

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91 DuFour et als. v. State Superintendent, supra.

92 Donaghy v. Baker, supra.

93 Weymouth Township Board of Education, New Jersey School Report, 1915, p. 46.

because of his holding the position of attendance officer with the board was, in his opinion, disqualified as a board member under the law. Bourgeois then announced that since he held the next highest number of votes at the election contest, he was legally elected to office.

Facts at the hearing disclosed that Rogers had been attendance officer, but his term of service had expired prior to his acceptance of board membership, therefore he was eligible for office and was a de jure member.

As a result of Bourgeois' declaration, the president named him to replace Rogers, who had not been removed by warrant of law. This action of removal exceeded the board's authority, for Rogers was not removed for cause, as cited in Section 92 of the School Law. Nor can the board decide upon the eligibility of a member, therefore the president cannot determine who shall be recognized as members. The Court held in DuFour v. State Superintendent<sup>94</sup> that any board of education controversy concerning election of members properly is to be settled by the Commissioner. The law provides for appeal<sup>95</sup> to the Commissioner if Roger's membership was questioned, and if declared ineligible a vacancy<sup>96</sup> would

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94 DuFour v. State Superintendent, supra.

95 School Laws of 1903, Sec. 10, p. 7.

96 Ibid., Sec. 92, p. 35.

result which by law the board of education might fill. Bourgeois had no claim, for, being defeated at the polls, he was neither a de facto nor a de jure member as he alleged.

Subsequently, Rogers resigned, and was replaced by Geyer whose election was later challenged. Four of the board members met with Bourgeois, and after hearing of said resignation acted upon it by appointing Bourgeois. At this same meeting, one of the four incumbents resigned, and the group proceeded to appoint Mattison.

There had been a misunderstanding between the president and the district clerk as to when the meeting at which Geyer was elected was to be held. However, all but one member were properly notified. It was determined that Geyer's appointment was legal while Mattison's was not. A majority of a quorum of legally elected members was present at the first action, while there was not this necessary majority at the second. The resignation of the second board member was officially acted upon, and Tomlin, a member of the anti-Bourgeois group, was selected to fill the vacancy.

Recognition of the board group which Bourgeois served as a clerk caused the president's removal from office, for in turning to this group he did not perform his official duties, and it resulted in justification of his removal.

A decision was rendered of concern to the district clerk "who may be elected from among said (board) members". An exception to the case of Roberts v. Burlington County Board<sup>97</sup> is to be observed. The Public Law of 1885<sup>98</sup> was enacted in order to prevent municipal officers from using their authority to appoint themselves to offices they were responsible to fill. Despite the decision reached in the case referred to above, the secretary's position would have to be an exception:

Section 91, Chapter I, P.L. 1903, S.S. specifically provides that a member of a board of education may serve as district clerk and thereby receive compensation. There is no other statute providing remuneration for board members.<sup>99</sup>

for board members are privileged to hold this office.

Article VI school districts require that the secretary

. . . shall, before entering upon the duties of his office, execute and deliver to said board a bond in a sum to be fixed by said board, but not less than two thousand dollars, with surety or sureties to be approved by said board conditioned for the faithful performance of the duties of his office. Said board may accept the bond or undertaking of a trust company or surety or indemnity company, and may pay the annual premium or fee therefor as a current expense of said board.<sup>100</sup>

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<sup>97</sup> Roberts v. Burlington County Board, 37 New Jersey Law Journal 272.

<sup>98</sup> Public Law of 1885, p. 178.

<sup>99</sup> School Law Decisions, 1938, p. 50

<sup>100</sup> New Jersey School Law, 1928, Sec. 70 (56), p. 41.

The ruling differs but little in the Article VII district:

. . . the (district clerk) . . . shall execute and deliver to said board a bond in the sum to be fixed by said board, with surety or sureties to be approved by said board, . . .<sup>101</sup>

The distinction between the titles described above is observed to be that there is no minimum amount of bond required in the second ruling.

Confusion might still exist in the minds of some persons who find that the secretary also serves as a board member. Should the secretary's title change from that of secretary to "secretary-business manager", said official is no longer eligible to serve as a board member, for:

The board shall appoint a person to be its secretary, and may appoint a superintendent of schools, a business manager, and other officers, agents, and employees as may be needed, and may fix their compensation and terms of employment, but no such appointee, officer, agent, or employee, other than the secretary, shall be a member of the board.<sup>102</sup>

Should he choose to remain a board member, he would not be eligible to serve as secretary-business manager. The Piscataway decision strongly affected this job combination, for a board of education cannot enlarge the statutory duties of the secretary, with the result of "enabling a board member to engage in and be compensated for duties expressly denied him by statute".

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101 Ibid., Sec. 135 (91), p. 92.

102 New Jersey Statutes Annotated, Title 18, Education, 1940, 18-6-27, p. 119.

4. Tenure Rights Enjoyed by the Office.

District clerks and secretaries, like other school officers, can enjoy tenure of office for any

. . . secretary . . . of any municipality devoting his full time to the duties of his office, after three years' service, shall not be discharged, dismissed, or suspended from office . . .<sup>103</sup>

Numerous cases have arisen in the area of employment and dismissal of the clerk or secretary. Insofar as possible, only the more significant decisions will be reviewed.

District clerk may be elected by new board to begin service at any time subsequent to its organization.- Selection of a district clerk by a newly organized board was challenged in Moore v. Board of Education of Verona<sup>104</sup>. Moore had been serving as clerk of the board of education for some years, when a new board organized and selected Chatellier as its clerk or secretary to replace the incumbent, as provided for in Chapter I of the Public Laws of 1903, Section 91.

The president of this new board group had instructed the clerk to notify the membership of the meeting to be held for this purpose. At this meeting, the new secretary was selected to begin his duties on the following July 1.

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103 Ibid., 18-5-51, p. 68.

104 Moore v. Board of Education of Verona, School Law Decisions, 1938, p. 78.

On July 1, the board having appointed Chatellier to serve as clerk, requested that Moore turn the books and records of the school district over to his successor.

The incumbent refused to relinquish his office, which he had held for about sixteen years, claiming his was an indeterminate appointment and that he was not removed by a majority vote of the board. Events proved, however, that notice of his dismissal by the board was sufficient to make this action entirely legal.

Moore felt that the newly organized board could not properly perform actions over which the old board, still in power, had control. However, it was decided that the new group had such authority providing the action would become effective during its own term of office. Therefore, Chatellier was to be recognized as the new district officer to begin his functions on the date established by the board.

The board had recognized that Moore should remain until July 1, for:

. . . during the month of July in each year he (the district clerk) shall present to the board of education a detailed report of the financial transactions of the board during the preceding school year . . .<sup>105</sup>

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<sup>105</sup> Public Laws of 1903, Chapter I, Sec. 91, p. 35.

In Skladzien v. Bayonne<sup>106</sup> the Supreme Court held that each board of education had a right to select a medical inspector as well as to discharge him. Since the sections governing selection of the district clerk and that of appointment of the medical inspector are almost identical:

Every board, . . . by the majority vote of all members, appoint a district clerk, who may be elected from among such members, and shall fix his compensation and term of employment.<sup>107</sup>

and in the case of the physician:

Every board . . . shall employ . . .  
(a) medical inspector, and fix his salary and term of office.<sup>108</sup>

the findings in the Skladzien case would apply similarly to the district clerk in the litigation being considered.

Although not mentioned, one can observe that this case was not, nor could be, appealed on tenure grounds, for only those officers "devoting full time" to their duties can enjoy tenure. The Commissioner declared that the board acted with legal authority in replacing the incumbent with a person of its own selection.

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<sup>106</sup> Skladzien v. Board of Education of Bayonne, 173 Atlantic 600.

<sup>107</sup> Public Laws of 1903, Second Special Session, October 15, 1903, supra.

<sup>108</sup> Ibid., Sec. 229, p. 91.

Legality of dismissal of district clerk.- Tenure served to prevent the dismissal of the clerk in Piscataway v. Marshall<sup>109</sup>. The respondent, Marshall, had acquired tenure under the provisions of the Public Laws of 1927<sup>110</sup> and his removal was possible only upon charges of "inefficiency, bad behavior or other just cause".

Testimony revealed several illegal acts and official misconduct by the respondent in the performance of his duties, but all violations occurred prior to his going under tenure. The 1927 statute gave the Commissioner no authority over the offenses committed by the district clerk before he went under tenure, for the board controlled his appointment while it was for a limited term.

As previously cited in State v. Jersey City<sup>111</sup>, one could not be expelled for acts committed prior to his election to office. It appeared that the Legislature fully intended to disregard past performance in creating a new protective term for the clerk. Holiday v. Fields brought forth the

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<sup>109</sup> Piscataway Township Board of Education v. Marshall, School Law Decisions, 1928, p. 43.

<sup>110</sup> Public Laws of 1927, Chapter 128, Sec. 91, p. 241.

<sup>111</sup> State v. Jersey City, supra.

Court opinion that:

As is usual in such statutes, no direct reference is made to future acts or omissions, but there is no express declaration that it shall apply to the past offenses, and there is nothing in the words used that indicates a legislative intent that it shall do so, under the general rule of construction it must be given a prospective effect.<sup>112</sup>

thereby establishing the Commissioner's opinion that regardless of the offenses committed prior to tenure, he (the district clerk) was entitled to protection. Jurisdiction over the removal of the district clerk devolves upon the Commissioner, and the local board loses this prerogative to remove the officer for past offenses, once he gains tenure.

Term of district clerk coterminous with life of appointing board.- The Exempt Firemen's Act did not offer the protection the appellant hoped it would in Barr v. North Arlington<sup>113</sup>. Barr, who was an exempt fireman, had been elected as district clerk of the borough and served for a little over a year before being released.

In protesting his dismissal, the appellant claimed protection through his status as a fireman, as interpreted

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112 Holiday v. Fields, 275 Northwestern Reporter 642.

113 Barr v. Board of Education of North Arlington, School Law Decisions, 1938, p. 76.

from Chapter 212, of the Public Laws of 1911:

No person . . . holding a position or office under the government of this State, . . . town . . ., or other municipality, . . . whose term of office is not yet fixed by law, . . . who is an exempt fireman, . . . shall be removed from . . . position or office except for good cause shown after a fair and impartial hearing . . .<sup>114</sup>

Cited is the Supreme Court decision in Skladzien v. Bayonne<sup>115</sup>, that each board of education must organize annually, since it was a non-continuous body, and that all appointments should be coterminous with each board. However, in Bidgood v. Bayonne<sup>116</sup>, the Court declared that the board employee in question held tenure rights as a veteran. Also, in Young v. Stafford<sup>117</sup>, it was shown that there are some appointments not limited to the life of the board.

Justice Garrison, in delivering his opinion in the Burgan case, said that it did not "lay down the broad rule that all appointments are limited to the life of the body . . . that makes the appointment". He quoted the statute:

Each board shall upon organization . . . have power to employ a secretary.<sup>118</sup>

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<sup>114</sup> Exempt Firemen's Act, Public Laws of 1911, Chapter 212, p. 444.

<sup>115</sup> Skladzien v. Board of Education of Bayonne, supra.

<sup>116</sup> Bidgood v. Bayonne, 168 Atlantic 162.

<sup>117</sup> Young v. Stafford, 86 New Jersey Law 422.

<sup>118</sup> Public Laws of 1906, Chapter 120, Sec. 3, p. 210.

Contained in Chapter 164, Public Laws of 1928, is the statement, in part, "Every board of education . . . shall, . . . appoint a district clerk". The respondent held that the findings of Burgan v. Civil Service<sup>119</sup>, and Hayes v. Mobius<sup>120</sup>, could well apply to appointment of district clerks.

Being mindful of the decisions reached by the courts in the above cited cases, the Commissioner decided that the term of office of the clerk was coterminous with his sponsoring board's official life. Therefore, the appellant could not claim tenure, and his appeal was dismissed.

Dismissal of a city superintendent.- While it refers to the superintendent's position, Carr v. Bayonne<sup>121</sup> is of concern to the secretary's tenure. The appellant, Carr, protested his dismissal as superintendent in an appeal to the state commissioner. Upon hearing rumors of a questionable nature concerning the school district's proposed building program, the appellant had reported his findings to a committee of the board of education. Since no action was taken on the superintendent's report by these board members, Carr then

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119 Burgan v. Civil Service, 84 New Jersey Law 219.

120 Hayes v. Mobius, 96 New Jersey Law 88.

121 Carr v. Board of Education of Bayonne, New Jersey School Report, 1916, p. 197.

wrote to the mayor, and later appeared before the board of school estimate relative to this important information concerning the school district.

Shortly thereafter, the board met to charge the superintendent with making public statements detrimental to the board of education, and of interfering with the business methods of this group. The appellant was found guilty and thereupon relieved of his position.

It was the Commissioner's opinion that Carr had acted in good faith, thereby invalidating the charges against him. However, at the time of the litigation superintendents were not protected by the tenure act, and their term of service came under the provisions of Article VI of the School Law and the rules and by-laws of the employing boards of education.

Pointing to the respondent board's by-laws:

He (the superintendent) shall be appointed for a term of three years except in case of his first appointment as superintendent of schools in this city, when he shall be appointed for one year . . .

the appellant claimed that his was a three-year term, therefore he could not be dismissed prematurely.

In response, the board remarked that the statutes gave it the right to dismiss the superintendent without

cause, quoting:

Whenever a superintendent of schools shall be appointed, it shall be by a majority vote of all of the members of the Board of Education. He shall receive such salary as said Board shall determine, . . . He may be removed by a majority vote of all the members of said Board.<sup>122</sup>

The controversy before the Commissioner, as reflected above, involved which took precedence, the statute law, or the by-law provision of the board of education. Local boards may enact by-laws so long as these do not conflict with the statute law, in that they do not limit or extend these statutory powers.

Consequently, the "majority vote" clause in the statute prevailed, making removal of the appellant legal.

On appeal to the State Board, it became necessary for the Board to ascertain the intent of the Legislature in preparing section 71, Article VI of the School Law in relation to the secretary of the board, the superintendent of schools, and the business manager. In so doing, a portion of section 57 seemed pertinent to the issue:

It (board of education) shall appoint a person to be its secretary, and may appoint a superintendent of schools, a business manager . . . and may fix their compensation and terms of employment . . .

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<sup>122</sup> School Law of 1914, Article VI, Sec. 71, p. 33.

and in section 58:

. . . Such board shall make, amend and repeal rules, regulations and by-laws not inconsistent with this act or with the rules and regulations of the State Board of Education . . .

Article VI of the School Law provides for and defines the duties of board members, secretaries, superintendents, and business managers, and also for their removal. A specified cause is the important element for board member removal, but in the case of the secretary, superintendent, or business manager, any cause is sufficient plus the "majority vote".

A local board may contract for one's services for a definite term and also to release said individual, but only for cause. Carr's dismissal was completely for no cause, as was shown by the Commissioner whose judgment was confirmed by the State Board. The appellant's release was adjudged a violation of the terms of his contract, therefore the decision of the Commissioner that the dismissal was legal was reversed by the State Board.

Violation of contract of employment by board of education.- The appellant, Feeney, challenged the legality of her dismissal, in Feeney v. North Bergen<sup>123</sup>, as assistant secretary.

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123 Feeney v. Board of Education of North Bergen,

On two counts the petitioner was found to be in error. Initially, the Tenure Act<sup>124</sup> was not retroactive to cover Feeney's years of service prior to its adoption. Furthermore, the community's population did not warrant the application of the tenure statute. Unless the minimum population was at least 25,000, the tenure law was not significant to the case in point.

It would appear from the evidence produced, that the appellant's employment was contractual, for one year at a time. Reference was made to Beach v. Mullen<sup>125</sup> in establishing this important point.

Turning to still other recognized sources, the legal principle herein supported was:

. . . that a definite term contract is construed upon its expiration to be renewed for a like period and upon like terms if all the circumstances, such as continued retention and compensation of the employee indicate such an intention.<sup>126</sup>

The Court offered the case of Passino v. Brady Company in which it was held:

(that) The existence of a continuing contract of service from year to year or from one definite period to another may be implied from proved facts and circumstances and the course of business between the parties, and is always a question of the intent of the parties.<sup>127</sup>

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124 Public Laws of 1927, Chapter 201, p. 386.

125 Beach v. Mullen, 34 New Jersey Law 343.

126 26 Cyclopedia 976, supra.

127 Passino v. Brady Brass Company, 83 New Jersey Law 419.

Such was the case of Feeney, in which she was kept on as assistant secretary, and paid a yearly salary. The Commissioner opined that since the respondent continued to accept her services and compensated her beyond the date of expiration of the final contract, it was to be considered as an implied renewal of her contract for still another year.

Citing Flemington v. State Board of Education<sup>128</sup>, the Commissioner held that a contract between a teacher and the school board was a binding obligation although it passed from control of the board. Consequently, any contractual term incurred by the board could not be legally abrogated.

Action of the respondent in refusing the appellant's services one month and a half before the expiration date of her implied contract did not relieve the board of its obligation to pay her for this period. However, she could not be reinstated, for the contract obviously was not to be renewed and the expiration date had passed.

In a review of the stand taken by the Commissioner, the State Board concluded that this action was correct and proceeded to affirm the decision previously rendered.

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<sup>128</sup> Flemington v. State Board of Education, 52 Vroom 211.

District clerk acquires tenure upon completion of three successive years.- DePhillips v. Fairview<sup>129</sup> describes the efforts of the petitioner to secure tenure recognition by his board of education. Em, the petitioner, had been elected to office by three successive boards. In the fourth year, the board by resolution abolished the full-time clerkship, and recreated a part-time position to which he (Em) was appointed for the school year. One month later the board amended its former action to make Em's appointment for one year, starting from the previous month.

It was clearly proved that the petitioner had been employed as a district officer on a full-time basis. This was significant, for the respondent board in Section 3, of its By-Laws, Rules and Regulations held:

He (the district clerk) shall be on full-time duty between the hours of 9:00 A.M. and 3:30 P.M. during the school year.

The Commissioner ruled that the petitioner did serve the board in a full-time capacity, despite his additional employment outside of his designated working hours.

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129 DePhillips v. Board of Education of Fairview, School Law Decisions, 1939-1949, p. 102.

Also, the state statute was pertinent:

No secretary, district clerk, assistant secretary, . . . of any board . . . in any municipality devoting his full time to the duties . . . after three years' service, shall be dismissed, discharged, or suspended from office, . . . except upon a sworn complaint for cause and upon a hearing had before the board.<sup>130</sup>

Although the respondent held that the Carroll v. Matawan<sup>131</sup> decision by the Commissioner and affirmed by the State Board as well as the Supreme Court, defined clearly the meaning of "year", it was the Commissioner's contention that Barr v. North Arlington<sup>132</sup> showed the district clerk's term to be coterminous with the life of the board. This finding was guided by the case of Burgan v. Civil Service, in which the Supreme Court remarked:

We think that the term of the secretary is definitely fixed by law for one year, by the statute, as if the act had in express terms stated that the term of employment of the secretary shall be one year.<sup>133</sup>

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<sup>130</sup> New Jersey Statutes Annotated, Title 18, Education, 1940, supra.

<sup>131</sup> Carroll v. Board of Education of Matawan, New Jersey School Report, 1931, p. 119.

<sup>132</sup> Barr v. Board of Education of North Arlington, supra.

<sup>133</sup> Burgan v. Civil Service, supra.

In addition, the Court of Errors and Appeals, of Evans v. Gloucester, stated:

(The) Prosecutor's term of office was either fixed by the resolution creating the office for one year, or if not fixed, in the absence of statute, presently in force, or ordinance or rule under legislative action, the term was for one year being co-terminous with that of the appointing power.<sup>134</sup>

It was felt by the Commissioner that the Carroll case was more appropriate to teachers, whereas the district clerk is better to be compared with board members, whose term means in years measured between board organizational dates, not calendar years. Both the Burgan case, decided by the Supreme Court, and the Evans decision settled by the Court of Errors and Appeals, interpreted the year to be coterminous with the life of the board. These facts strengthened the Commissioner's ruling that the petitioner had come under tenure.

Remaining was the question of the legality of the abolishment of the full-time position and its protection for the incumbent. Citing Seidel v. Ventnor City, the Supreme

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<sup>134</sup> Evans v. Board of Education of Gloucester City, School Law Decisions, 1938, p. 100.

Court held:

. . . Granting that apart from the statute, a school board may in the interest of economy reduce the number of teachers, the protection afforded by the statute would be little more than a gesture if such board were held entitled to make that reduction by selecting for discharge teachers exempt by law therefrom, and retaining the non-exempt . . . 135

Turning to the decision of the State Board in Davis v. Overpeck<sup>136</sup>, it was found:

. . . We do not believe that we should place a construction on a statute which will so readily enable boards to evade its provisions.<sup>137</sup>

and continuing, the Supreme Court of the United States in the case of Standard Sanitary Manufacturing Co. v. United States<sup>138</sup> constructed the Sherman Law as follows:

This court has occasion in a number of cases to declare its principle. Two of those cases we have cited. The others it is not necessary to review or to quote from except to say that in the very latest of them the comprehensive and thorough character of the law is demonstrated and its sufficiency to prevent evasions of its policy 'by resort to any disguise or subterfuge of form', or the escape of its prohibitions 'by any indirection! . 139

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135 Seidel v. Ventnor City, 110 New Jersey Law 31.

136 Davis v. Overpeck, New Jersey School Report, 1912, p. 128.

137 Ibid., School Law Decisions, 1928, p. 191.

138 Standard Manufacturing Co. v. United States, 226 United States.

139 Ibid.

Feeling that enabling a board of education to transform a full-time clerkship to a part-time position and thereby removing the incumbent's tenure protection would render the statute useless, the Commissioner declared the resolution creating the part-time office was of no effect. The petitioner was to be reinstated on a full-time basis.

#### Summary.

Records indicate that the local schoolboard clerkship had been functioning for a long time before it was recognized by official sanction of the Legislature. This was quite fortunate, for when Section 56 of the Article VI school-district, and Section 91 of the Article VII district appeared, the problems of the office had already been encountered, and undoubtedly this experience influenced the preparation of these sections of the School Law referring to the clerk's office.

Perhaps the most important ruling to be rendered of interest to this position was the Piscataway decision. This action discouraged boards from enlarging the duties of the clerk beyond those established by statute. The title of "secretary-business manager" began to appear more often. The secretary's duties had been limited; and now should he

desire to assume the functions of business manager, he could not remain a member of the board of education.

Despite the fact that, in some of the cases cited, the litigants do not include the clerk, the rulings laid down affected his office in some measure.

In view of the secretary's ability to serve in a dual capacity, it became necessary to illustrate his qualifications for the position under discussion by way of those required for board membership.

With regard to tenure, Section 51, Chapter V, of Title 18, Education, 1940, defines the conditions under which the secretary may acquire tenure or be dismissed. It would appear that immediately significant to any tenure litigation is whether or not the incumbent was devoting "full time" to the "duties of his office". Further, any consideration of removal "after three years (full time) service", could only be accomplished by way of serving the clerk with a "sworn complaint" and conducting a "hearing before the board".

The present chapter differs considerably from its predecessor. The first dealt with a historical treatment of the clerk's office, whereas this is, and its successors will be concerned with a legal approach to the clerk and his duties. This chapter investigated the legal position of the office

of secretary, in its creation and expansion. The next area to be considered will be that of the clerk's functions as secretary to, and as legal agent of, the board of education.

### CHAPTER III

#### LEGAL BASIS OF THE FUNCTIONS AS SECRETARY AND AS LEGAL AGENT OF THE BOARD

State school records are replete with constant complaints of poorly kept or nonexistent municipal school records. Marcus D. Wells of Bethlehem, Hunterdon County, reporting in 1855, stated:

Every district ought to have a clerk, whose duty it should be to keep a record of all that transpires.<sup>1</sup>

This quotation simply reflects the sentiment of clear-thinking friends of education of the day who worked and hoped for general improvement of existing conditions.

Town superintendents and school committees alike emphasized the value of good records. William Bryan, superintendent of Willingboro, Burlington County, in 1857 wrote:

. . . for want of any reliable data from the operations of my predecessor to govern me, and the neglect of the trustees and teachers to perform a very important duty, the keeping of a proper record, statistical and otherwise, I am under the necessity of presenting a very lame report.<sup>2</sup>

It was the common experience of the successors to school offices to discover that few, if any, permanent

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<sup>1</sup> Annual Report of the State Superintendent of Public Schools of New Jersey, 1855, Appendix to the House Journal, 1856, p. 85.

<sup>2</sup> State Superintendent's Report, 1857, supra, Appendix to the Journal of the Senate, 1857, p. 146.

inscriptions of school activities had been prepared or preserved.

State Superintendent C. M. Harrison, in his annual report, saw fit to observe:

The first step, then, in remodeling the school system consists in providing an efficient government for it; . . . whereby the defects of school management are revealed; . . . to secure general supervision over local officers whose duties embrace the disbursement of funds, the inspection of schools . . . It must have its agents, each charged with the execution of specific duties, yet each responsible to a central authority.

(In) . . . good school government . . . (it will be found that) . . . its officers are few, and their duties, properly performed, secure uniformity, efficiency, and progress . . .<sup>3</sup>

Mr. Harrison was conscious of the pressing need for reorganization of public education in the state as it then existed.

Emphasizing the importance of the role of the clerical officer of the board of education, Sam Lockwood was candid in

. . . telling (the district clerks) that their office was of great importance, and would not be unattended with considerable personal care, in fact, that in a great measure, the prosperity of the respective schools would depend much upon the oversight and zeal of the respective clerks.<sup>4</sup>

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<sup>3</sup> State Superintendent's Report, 1865, *ibid.*, p. 7.

<sup>4</sup> Annual Report of the New Jersey State Board of Education with the Report of the State Superintendent of Public Instruction, 1867, p. 755-757.

Superintendent Lockwood felt that the work of this official was so vital and time-consuming, that its activities should no longer be voluntary in nature. The clerk should be expected to fulfill all the duties thereof, and be adequately compensated.

Burlington County Superintendent Edgar Haas described a most disturbing condition prevailing in 1876:

As to the matter for the history of the schools, it must be understood that but little could be gleaned from record, from the fact that until a few late years, little or none has been kept of the schools and their proceedings. As a matter of course, he had chiefly to consult, time and again, the old people of the county. And . . . not complete for want of time and meagerness of exact information . . .<sup>5</sup>

Despite the legal recognition given the clerk, as late as the above mentioned date, school officials were encountering difficulty in compiling accurate educational information.

During this same year of 1876 the county superintendent of Salem, William H. Reed, outlined what he felt should go to make up a good secretary:

To fully discharge the duties of clerk, requires not simply the very important qualification of an interest in the school, but good judgment, in a business sense; with a clear understanding of the provisions of the law relating to the duties of the office.<sup>6</sup>

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<sup>5</sup> New Jersey School Report, 1876, p. 33.

<sup>6</sup> New Jersey School Report, 1876, supra, p. 89.

Unfortunately, in too many instances, even these simple qualifications outlined were not observed. Lack of requirements for appointment to this office have handicapped progress of the schools in some measure.

Superintendent Homer A. Wilcox of Passaic County expressed his opinion of the school clerk:

While the chief executive officer in a board of education is nominally the president, in point of fact the district clerk holds that rank.<sup>7</sup>

Adding emphasis to the importance of the office of board secretary and its related duties, Superintendent A. B. Peland of Newark schools in 1902 wrote:

Permanent official records, to be sure, are not so necessary in case of continuous service of superintending or supervising officers, but with an ever-changing board of school commissioners and with changing school officials of all ranks, records of service that are full, definite and particular, are of inestimable value to protect merit and competency from arbitrary decisions and errors of judgment and action.<sup>8</sup>

Having in mind much of the experience expressed above, the Legislature saw fit to give the secretary legal stature in 1867, and upon recommendation periodically modified the functions of this officer.

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<sup>7</sup> State Superintendent's Report, 1898, supra, p. 180.

<sup>8</sup> Report of State Board of Education and of the State Superintendent of Public Instruction, 1902, p. 143.

Any change tends to create resistance. The secretary's office was no exception to this condition. As public education became more complex, so did the activities of the clerk. At times, it became necessary to refer school controversies to the state department of education and to the courts for adjudication. More often than not, reference was made to the local school board minutes in an attempt to settle these disputes.

School problems are usually, or become, the concern of the board, and it is the clerk's responsibility to record these difficulties and their solutions accurately when and if they are placed before the board of education for consideration. When these conflicts cannot be resolved locally, they are forwarded to the state commissioner who invariably calls for the recorded minutes dealing with the problem from the local level.

Various secretarial obligations of the district clerk will be investigated in the first of the following sections. The second half of the chapter will treat of the secretary's legal activities concerned with the board.

### 1. Functions as Secretary to the Board.

The secretarial functions of this district official are "such duties as are usual to a Secretary in recording minutes of the board . . ."9

A somewhat unusual point is discussed in Levine v. Bayonne Board of Education et al.<sup>10</sup> The appellant, Levine, had presented a series of petitions before the board, of which he was a member. The resolutions in question lacked significance in that they were not seconded by any of the several board members; consequently, the secretary made no record of them.

Subsequent to the reading of the minutes of the previous session at the following meeting, Levine suggested that the secretary correct his records to include the unseconded resolutions. When the secretary refused to comply, the appellant proceeded to offer a motion to honor his request, but this failed passage since it lacked a second.

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9 Administrative Organization of School Districts in New Jersey, Secretaries-District Clerks' Duties and Responsibilities, October, 1949, New Jersey Association of School Business Officials, p. 2, typewritten copy.

10 Levine v. Board of Education of Bayonne, New Jersey School Report, 1928, p. 69.

Counsel for the board cited the School Laws of 1925 in its defense motion:

The secretary shall record the proceedings of the board and of its committees, . . .<sup>11</sup> thereby legally defining what must be included in the records of the local school board. And further:

Such board shall make, amend and repeal rules, regulations and by-laws not inconsistent with this act or with the rules and regulations of the State Board of Education, for its own government for the transaction of business . . .<sup>13</sup>

This section of the law outlined the local board's limits in its transaction of business. Note should be taken that the Legislature simply set the minimum, and in so doing gave the local board of education considerable latitude in this area of control.

The rules of the Bayonne board provided that:

No motion shall be entertained unless seconded. The name of a member making a motion shall be entered in the minutes and every resolution or report made shall be in writing except by consent of two-thirds of all the members present.<sup>13</sup>

and, that:

All meetings of the board shall be governed by the usual parliamentary law. . . . questions of parliamentary law not herein provided for, Cushing's Manual shall be the standard authority.<sup>14</sup>

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11 School Laws of 1925, Sec. 72, p. 40.

12 Ibid., Sec. 64-A, p. 37.

13 The Manual of the Bayonne Board of Education, 1925, paragraph 24.

14 Ibid., para. 24.

Further, Cushing's Manual offered the provision that:

A motion must be seconded, that is, approved by . . . one member, . . .; and if a motion be not seconded, no notice whatever is to be taken of it by the presiding officer . . .<sup>15</sup>

In order for an action to become a proceeding of the board, as required by state statute and local rule, it must be acted upon. Following the Manual, the president is powerless to observe a motion lacking a second.

It was the Commissioner's contention that the law clearly stated that "the secretary shall record the proceedings of the board". However, actions of individual members do not constitute things done by the board, and as such need not be recorded by the secretary.

The Bayonne school board proceeded within its authority in refusing to order the secretary to make note of the petitioner's unseconded resolutions.

Among the responsibilities of the district clerk is the duty of certifying by his signature that school registers are kept in accordance with the law. Miller v. Guttenberg Board of Education<sup>16</sup> revealed that either by delegation or

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<sup>15</sup> Luther S. Cushing, Cushing's Manual of Parliamentary Practice, Philadelphia, Penna., Winston, 1928, Chap. I, Sec. 55, p. 50.

<sup>16</sup> Miller v. Guttenberg Board of Education, New Jersey School Report, 1920, p. 190.

arrogation, the appellant, Miller, a school principal, was signing the clerk's name to registers, contrary to the law.

There were numerous other important charges brought against Miller, but of immediate concern to this study was that of his assuming functions of the clerk. Testimony revealed that local custom had been established permitting principals to certify registers in the name of the clerical officer. Other loose practices of the board were pointed out.

Boards of education may not give over duties belonging wholly to them such as the attendance register obligation. The appellant was discharged, not for signing the clerk's name, but rather for endorsing the name of a substitute teacher to a money order made in her favor. In this action of dismissal, the Commissioner concurred.

The district clerk serves as secretary to all meetings of the board and all its "standing, special and sub-committees". Harris v. Pemberton Board of Education<sup>17</sup> described efforts of a local board to rescind final actions taken at one of its meetings. Harris, the petitioner, was a tenure teacher whose salary, among others, for the following school year had been set by the board during a series

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<sup>17</sup> Harris v. Pemberton Board of Education, School Law Decisions, 1939-1949, p. 164.

of meetings. The clerk had been authorized to send contracts to teachers according to a list approved before the school year ended.

During the latter half of August the clerk notified Harris that her salary, according to the August board action, would be sixteen hundred dollars, two hundred dollars less than that originally set by board resolution.

In a hearing before the state commissioner, it was determined that final action had been taken in the matter of salaries during May of the school year, and these minutes and actions of the board were reaffirmed in June.

Minutes taken by the secretary in the controversy under discussion were extremely important since the weight of evidence lay in the records. Parol testimony could neither alter nor supplement these minutes, as declared by the Court of Errors and Appeals in Campbell v. Hackensack<sup>18</sup> in a similar situation.

The clerk's notes revealed that this final action in the matter of salaries had been approved. Of significance was the fact that like many others, this board did not send contracts to its tenure teachers. This protected group, by

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<sup>18</sup> Campbell v. Hackensack, 115 New Jersey Law 209.

reason of Public Laws of 1909<sup>19</sup>, found contracts unnecessary to establish their rights to the salary designated by the board. However, non-tenure teachers acquired this protection only after a contract was drawn<sup>20</sup>.

Harris had not been officially notified by the clerk of the May board salary action. No testimony indicated that the petitioner was not present at either the May or June salary meetings of the board. Regardless, since board minutes are public records and are comparable to a public announcement of the board's actions, it would not have been necessary for the petitioner to establish her attendance at those meetings concerning salaries.

Reconsideration of action taken, once approved, reviewed by the Supreme Court held, in part:

We have, then, . . . (a motion made), the vote of acceptance by the board . . ., the adjournment of the board without an attempt to further revise their action, and the public announcement of their proceedings. It seems . . . that the matter then was put beyond recall or reach of the board, by a reconsideration of their action . . .<sup>21</sup>

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<sup>19</sup> Public Laws of 1909, Chap. 243; Revised Statutes, 18: 13-16.

<sup>20</sup> Public Laws of 1903, Chap. I, Sec. 106; Revised Statutes, 18: 13-7.

<sup>21</sup> Whitney v. VanBuskirk, 40 New Jersey Law 463.

The Court continued:

. . . and (it was thought that) when a vote of confirmation intended by them to be final, has been taken, and the result publicly proclaimed, they have performed their last act of duty and of power; the matter is no longer in fieri, but fully consummate.<sup>22</sup>

A review of this interesting case reveals the importance of the records of actions taken by the local board. The necessity of accurate minutes taken by the secretary is of as much value to other litigants as it is to the board itself.

An attempt was made by a school board member to have his board's organizational meeting and its attendant acts declared void, as described in Stoothoff v. Blood et al.<sup>23</sup>

Active and newly-elected members of the board in question were duly notified concerning a meeting for the purpose of organization, by the district clerk. At this meeting, called to order by the clerk, the oaths of the new members were presented and, except for one, were unchallenged. Discussion concerning this member became so heated that the five neophyte members left the board room in a body, inviting the secretary and any others in agreement to accompany them.

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<sup>22</sup> Ibid.,

<sup>23</sup> Stephen Stoothoff v. Lewis H. Blood et al., New Jersey School Report, 1931, p. 87.

However, the group retiring to another area, was not augmented by other meeting attendants.

The members remaining in the room proceeded to elect officers consistent with methods associated with a meeting called for such purpose. In an adjoining room, the new members also elected officers including a new district clerk, maintaining that the incumbent had refused to perform her duties. At the splinter group's meeting, an approved motion ordered the deposed clerk to turn over all school records to her successor.

According to state statute:

. . . meetings . . . of every board of education in the State, shall be public and . . . commence not later than eight P.M.<sup>24</sup>

As indicated by the public records and not denied by the respondents, this legal requirement was met. Also, required oaths of board members which "shall be filed with the district clerk of . . . (the) board"<sup>25</sup> were properly cared for. The new members complied with the law in that their attestations were filed, even though with an acting clerk, thereby qualifying them as de facto or de jure members.

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<sup>24</sup> 1928 Compilation of New Jersey School Law, Art. I, Sec. 1 (2), p. 8.

<sup>25</sup> 1928 School Law Compilation, supra, Sec. 126, p. 85.

"No board committee should meet without first having a written notice sent to all its members"<sup>26</sup>. The majority group of the board had left the meeting room without announcing plans for any actions other than organization. Had all members met in one place, lack of a formal notice would have been unnecessary. Need of complete assembly of membership limited proceedings to organization; the election of one of its members as president and another as vice president was completely within the province of the majority group meeting.<sup>27</sup>

Because the purpose of the special meeting was for board organization, election of a district clerk, which is not fixed by time or statute, was not legally before the board. Absence of an appropriate notice to all concerned, and the necessity of a full attendance of members obliged the Commissioner to rule the election of the new clerk null and void. However, the action of organization by the majority group of the board was sustained.

Again the importance of the district clerk appeared in the controversy of McCain et al. v. Harrison Board of

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26 Secretaries-District Clerks' Duties, *supra*, p. 2.

27 See 1928 Compilation, *Ibid.*, Sec. 126, p. 85.

Education<sup>28</sup>. The petitioners, whose tenure protection was involved, put their problem before the Commissioner for adjudication.

The McCain sisters, petitioners, had offered their resignations to the local board, but were informed by the district clerk that this proposal was declined by the board. Later, the petitioners were advised by the clerk that they were to appear before the board to defend themselves against dismissal proceedings.

On the advice of counsel, the teachers did not meet with the board as directed. The result of this absence was the introduction of a resolution prepared and passed by the board which summarily dismissed the appellants for insubordination and unprofessional conduct. Notice of this action was subsequently given to the McCains by the district clerk.

Apparently the board had ignored one of the functions of its secretary. "All official correspondence of the board should be conducted through this office and signed by either the president, secretary or both officers, as the need may be"<sup>29</sup>.

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<sup>28</sup> McCain et al. v. Harrison Board of Education, New Jersey School Report, 1915, p. 50.

<sup>29</sup> Secretaries-District Clerks' Duties, supra, p. 2.

According to the Tenure Act:

No . . . teacher shall be dismissed . . . and after written charges of the cause . . . (have) been preferred against him . . . , signed by the person . . . making the same and filed with the secretary or district clerk of the Board of Education . . . , and after the charge shall have been examined into and found true . . . by said Board of Education upon reasonable notice to the person charged, who may be represented by counsel. Charges may be filed by any person . . .<sup>30</sup>

Other than notice of the board meeting, no terms of the statute had been met by the school committee.

Written charges had not been filed with the secretary, and the board completely neglected to examine the alleged charges. No evidence was produced to prove the petitioners insubordinate or unprofessional; therefore the Commissioner ruled the board's action concerning the teachers' dismissal null and void.

Review of the case of Williamson v. Union Township<sup>31</sup> revealed rather interesting facts concerning the influence of the district clerk. The appellant, Williamson, had been voted out by his fellow board members as president for allegedly failing to perform his duties of office.

At the hearing it was brought out that Williamson did not approve of the financial actions recommended by the board.

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<sup>30</sup> Public Laws of 1909, Chap. 243, Sec. 1, p. 398.

<sup>31</sup> Williamson v. Union Township, New Jersey School Report, 1920, p. 216.

The stand taken by the appellant was clearly in line with the legal requirements concerning such matters.

Of importance to this study was the action of the secretary who gave oral notice of the meeting at which time the president was removed. Significant testimony disclosed that the president was absent from the meeting in question, and that he was neither informed of the action being considered against him, nor allowed to present a defense. The verbal notice issued by the clerk did not state the purpose of the meeting which had been called by the president in order to determine how much money the board of education had on hand.

For reason of the defective notice given by the district clerk, together with the manner in which the charges against Williamson were handled, the Commissioner ordered the immediate reinstatement of the appellant as president.

From a review of the case of Aeschbach v. Secaucus Board of Education<sup>32</sup>, it would appear that there was a complete misinterpretation of the secretary's function in relation to teachers.

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<sup>32</sup> Aeschbach v. Secaucus Board of Education, School Law Decisions, 1936, p. 598.

According to the Duties and Responsibilities of the clerk, it is held that:

. . . this officer (the secretary) takes the place of the board and sees that its policies, rules, mandates, etc., are carried out.<sup>33</sup>

Aeschbach, the appellant, had been informed that her teaching position was abolished by the board of education for reasons of economy. The appellant was one of three tenure teachers so advised by the board secretary.

A series of discussions in person and via telephone ensued between Aeschbach and the secretary of the board. It was testified to and not refuted that the appellant had on several occasions also discussed her status with the president of the board.

As a result of counsel offered her by the secretary to the effect that she was not likely to be reinstated, Aeschbach submitted a Teachers' Pension Fund withdrawal certificate to the clerk with the understanding that it was not to be construed as a resignation from her teaching position.

Conferences were held with the president of the board who told the appellant that she would be reinstated should her fellow teachers be, who were actively contesting their dismissal. She was advised by the clerk not to present an appeal before the board, but later the respondent contended

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<sup>33</sup> Secretaries-District Clerks' Duties, supra, p. 1.

that the appellant was guilty of laches for not taking the appeal action that had been discouraged by the secretary. Also, it was held that the board could not be bound by the unauthorized statements of its officers.

In the Commissioner's judgment, the statements and acts so described did not bind the board since those dealing with public officials are presumed to know the limits of their authority. Yet, these same school officials had a responsibility to the organization which they served. Both the president and secretary were bound to report to the board the substance of their consultations with Aeschbach, which, it developed, they had done, according to the president's testimony.

Evidence verified that the appellant had discussed her status on various occasions with the secretary and the president. Aeschbach's dismissal was ruled not justified.

The hearing before the State Board emphasized that the appellant had been poorly advised by the school officers previously mentioned. These officials had inadvertently bound the board, in the opinion of the Commissioner.

The State Board found no evidence in the local board's minutes to indicate the board's knowledge and approval of the secretary and president's actions. According to the findings

of Sooy v. State<sup>34</sup> at page 399, these officials could not obligate the board. It was further held that the petitioner could not rely upon conversations with the secretary or president to protect her interests.

Weighing all the evidence, the Board finally concluded that the petitioner was not "estopped by laches" and concurred with the Commissioner in that she should be reinstated.

In the case under discussion it would be difficult to determine who was more at fault, the secretary or the teacher. Clearly, it fell to the teacher to file an appeal when she felt her position was in jeopardy. The clerk was quite obviously acting outside his sphere of authority in counseling the appellant in the manner described.

Additional emphasis of the importance of proper minutes is cited in Mandeville v. Middletown Township Board of Education<sup>35</sup>. A disgruntled board member, Mandeville, objected to alleged malpractices of his board. While attending one of the meetings, he threatened to resign unless conditions were corrected. The appellant left the board session early, and consequently missed some of its later activities. Before

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<sup>34</sup> Sooy v. State, 41 New Jersey Law 394.

<sup>35</sup> Mandeville v. Middletown Township Board of Education, School Law Decisions, 1938, p. 62.

the close of the meeting discussion was held concerning plans for a special business meeting, but no date was set.

The clerk's minutes concerning the following meeting read that it was an adjourned meeting, and that the appellant was absent. Regular business of the evening was dispensed with and action was taken on Mandeville's alleged resignation. He was replaced by the election of one, Leach, to his office.

Following instructions, the secretary later advised the appellant of the action taken by the board at the meeting held in June during his absence. Mandeville responded in August and again in September to the effect that he had no intention of resigning, and demanded minutes and notices of all meetings. His presence was not officially acknowledged nor was he permitted to participate in the November meeting which he attended without having received a notice from the district clerk.

Pointing to his early departure from the meeting on the night plans for the special session were discussed, Mandeville stated that his first knowledge of the meeting he failed to attend was by way of a notice which arrived for him one hour before convening time of the board session.

In a hearing before the Commissioner, efforts were made to determine whether Mandeville's threat constituted a

resignation. Witnesses for both sides testified, for the board minutes did not indicate the appellant's exact words.

A stenographic record of the meeting in question was produced but its punctuation was challenged, for variations changed the meaning of statements made by Mandeville. Board minutes did not support the contention that he had intended to resign.

It was revealed through the minutes of the board that the June meeting missed by the appellant was not an adjourned one as so recorded by the secretary, but rather a special session as interpreted by the Supreme Court cited in Stiles v. Lambertville<sup>36</sup>. Also, the official board records did not indicate that a special meeting date had been agreed upon.

The secretary's meeting notice neglected to include that action was planned concerning the resignation under discussion at the special session; therefore the resignation could be accepted only at a regular meeting.

In view of the confused conditions surrounding the appellant's alleged action, the Commissioner declared Mandeville's position as not being vacant.

As the secretarial officer of the board of education the district clerk must be conversant with school statutes covering this phase of his responsibility.

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<sup>36</sup> Stiles v. Lambertville, 73 New Jersey Law 90.

Illustrations were provided describing the importance of accuracy in recording board actions, together with emphasizing the limits of the secretary's authority in dealing with educational personnel.

## 2. Responsibility as Board's Legal Representative.

". . . The Secretary or District Clerk must sign all orders, contracts, bills, . . ." <sup>37</sup> Absence of a proper signature colored the decision rendered in the controversy of Appleman v. Harmony Township Board of Education <sup>38</sup>.

According to unrefuted testimony, the appellant, Appleman, had been offered a teaching contract signed by both the board president and secretary. The appellant commenced her work with the district at the beginning of the school year, but neglected to sign the contract of employment presented to her.

Additional evidence revealed that the petitioner had withheld her signature from the contract for the reason that no decision had been reached concerning inclusion of a clause providing for her transportation to school by the board, which accommodation it had agreed to supply. After

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<sup>37</sup> Secretaries-District Clerks' Duties, supra, p. 2.

<sup>38</sup> Appleman v. Harmony Township Board of Education, Annual Report of State Board of Education and the Commissioner of Education, 1925, p. 261.

some three weeks of school service, Appleman was released from her position by the board.

According to the School Law:

No contract between a board of education which has not made rules and regulations . . . and a teacher shall be valid unless the same be in writing, in triplicate, signed by the president and district clerk . . . and by the teacher.<sup>39</sup>

It must be executed in triplicate by all three parties concerned, and "filed with the board . . . , the teacher, and . . . with the city or county superintendent".

Since the terms of the statute were not observed by the appellant, she was unable to appeal on the grounds of being illegally discharged. Lack of the secretary's signature from the contract, as noted in the law, would also have invalidated the agreement. Citation of the case was desirable for that reason.

Failure to file a sworn complaint with the secretary made the action of the board null and void in the controversy of Goorley v. Bradley Beach Board of Education<sup>40</sup>. A special meeting of the Bradley board of education had been called by the president for the purpose of settling "the question of janitors and the election of District Clerk".

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<sup>39</sup> Compiled Statutes of New Jersey, 1709-1910, Vol. IV, Sec. 106, p. 4762.

<sup>40</sup> Goorley v. Bradley Beach Board of Education, New Jersey School Report, 1912, p. 130.

The local board consisted of nine members, with the law requiring simply the "majority of a quorum" in order to elect janitors for employment. Four members of five present voted to hire the appellant, Goorley, for the following school year.

At the next regular meeting of the board a notice was prepared in the name of five of the members and served on the appellant. This notice stated that Goorley's services were no longer required.

The law, in the Commissioner's opinion, recognized the presence of a quorum at the election of Goorley during the special meeting, therefore he could not be

. . . discharged, dismissed, or suspended, nor shall his pay or compensation be decreased, except upon sworn complaint for cause, and upon a hearing had before such board.<sup>41</sup>

No charges had been filed with the clerk against the appellant according to the board's minutes, and he had been legally elected to the position.

McAuley v. Prospect Park Board of Education<sup>42</sup> presented a rather unusual situation. Lack of proper certification offered the local board of education the opportunity

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<sup>41</sup> Public Laws of 1911, Chap. 44, Sec. 2, p. 67.

<sup>42</sup> McAuley v. Prospect Park Board of Education, New Jersey School Report, 1916, p. 189.

to discharge the petitioner, McAuley. The details of the case were not of sufficient importance to be described completely. It is sufficient to cover the secretary's connection with it.

In order for the appellant's teaching certificate to be renewed, she required a testimonial of her success in the profession. The respondents declined to recommend McAuley, and thereupon proceeded to dismiss her.

At the board meeting following the one at which time dismissal action was taken, the district clerk was ordered to write a recommendation for the discharged teacher. The clerk, who was not a member of the board and was absent from the meeting, later declined to write a testimonial.

To begin with, the secretary claimed he did not know how to go about writing such a recommendation. Of importance to this study is that action of this nature was clearly beyond the scope of this officer's responsibility. A recommendation for the teacher over his signature was not what the appellant sought, nor what the secretary felt he should prepare. As clerical officer, he was legally bound to reproduce any statement the board saw fit to dictate, but he was not obliged to create a testimonial of his own opinion.

Shortly thereafter, perhaps recognizing its error, the board rescinded the resolution which ordered the clerk to compose the suggested recommendation.

Local board rules obviously in contravention of state statutes<sup>43</sup> served to dismiss a tenure teacher in Nommensen v. Hoboken Board of Education<sup>44</sup>. Nommensen, the appellant, was married near the close of the school year. During the summer which followed, her mother with whom she was visiting in Germany, became seriously ill. Forced to remain abroad, the appellant petitioned her board of education through the president for a leave of absence.

The secretary of the board, in line with his legal responsibility, officially informed the petitioner that a leave had been granted to her by action of the board of education. Upon return to the school district about one month prior to expiration of her leave, Nommensen reported to the president that she was ready to return to work. The president proceeded to inform her that she had broken tenure through marriage, and that she was no longer an employee of the board.

Of significance to the Commissioner in rendering an opinion was the favorable response from the board secretary

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<sup>43</sup> Public Laws of 1909, Chap. 243, p. 398.

<sup>44</sup> Nommensen v. Hoboken Board of Education, School Law Decisions, 1928, p. 166.

of Normensen's request for a leave of absence. Since this district officer transmits the board's official acts, it was quite reasonable for the appellant to assume that her absence was permissible. The Commissioner ordered that the teacher be reinstated immediately.

In its deliberation, the State Board of Education considered the secretary's action of response as official approval of the board. Investigation revealed that several of this local board's by-laws conflicted with the Tenure Act. Also, apparently no charges were filed with the secretary against the appellant, nor had a hearing been provided for her in the matter<sup>45</sup>. No choice was available to the Board but to concur with the Commissioner's decision.

Recognition of a legal responsibility of the district clerk is briefly described in Hampton Borough Board of Education v. Melick, Custodian<sup>46</sup>. The local board insisted that orders "legally issued and signed" by the president and secretary of the board of education must be recognized and funds issued for by the respondent, Melick. In his capacity as custodian of school funds, he was not vested with powers of an auditor and therefore could not challenge board expenditures.

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<sup>45</sup> Public Laws of 1909, supra.

<sup>46</sup> Hampton Borough Board of Education v. Melick, Custodian, New Jersey School Report, 1916, p. 205.

In his decision the Commissioner maintained that the respondent, as the board's custodian, was simply to control the safekeeping of school funds and to release amounts when authorized by the board president and clerk of the board of education<sup>47</sup>.

Another attempt by a school custodian to go beyond his legal authority was cited in Atlantic City Board of Education v. Beyer, Custodian<sup>48</sup>. The board of education had found that a surplus existed following the use of funds obtained from the sale of bonds, and directed the custodian to transfer this balance to an account in need of funds. The custodian refused to comply with the directive.

Chapter 285 of the Public Laws of 1912 defined the custodian's responsibilities in relation to orders from the president and secretary concerning disposition of school funds, but this officer saw fit to act otherwise.

Section seventy-six of the School Law provided that as soon as school bonds were sold, the entire proceeds belonged to the board of education. As such the money could only be expended on orders signed by the president and secretary of the board of education.

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<sup>47</sup> Public Laws of 1912, Chap. 285, Sec. 185, p. 507.

<sup>48</sup> Atlantic City Board of Education v. Beyer, Custodian, School Law Decisions, 1928, p. 75.

Citing Zimmerman v. Mathe<sup>49</sup>, the Commissioner whose decision was later affirmed by the State Board, declared that it was not the custodian's responsibility to control the application of school funds. As school custodian, he was bound to honor warrants signed by the board of education through the officers previously mentioned.

An additional example of efforts by local government to control school board activities can be found in Bayonne Board of Education v. Evans, Auditor<sup>50</sup>.

In creating an appropriation for a school building program, the board of school estimate did not provide for the architect's fees. The board of education saw fit to include this expense in its warrants for payment by the school custodian of moneys. Approved for payment by the board at a regular meeting, and signed by the president and secretary as provided for by statute, the order for payment was delivered to the auditor whose responsibility it was to examine and countersign it. This official refused to approve the architect's bill for services rendered.

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<sup>49</sup> Zimmerman v. Mathe, 20 Vroom 45.

<sup>50</sup> Bayonne Board of Education v. Evans, Auditor, New Jersey School Report, 1924, p. 254.

Townsend v. State Board of Education<sup>51</sup> was referred to as evidence to justify payment of the architect even though the board of school estimate had seen fit not to include the amount in its appropriation. The case cited above in a similar situation held that unless the total amount must specifically not be used for the payment of the item in question, there was nothing to prevent expenditure of some of the funds to cover this obligation.

The School Law of 1911<sup>52</sup> made it mandatory that the auditor approve bills for payment once they have been reviewed and passed upon a second time by the local board and returned to him for countersignature.

It is most essential that the secretary, in his role as legal agent, be constantly prepared to safeguard the privileges and responsibilities of the school board from encroachment by other agencies. Examples of this potential danger were reviewed in some detail throughout the action immediately above.

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51 Townsend v. State Board of Education, 88 New Jersey Law 97.

52 The School Law of 1911, Art. VI, Sec. 68 (62), p. 30.

### Summary.

Successful school management by a board of education is largely the result of the efficiency of its chief clerical officer, whose duties are multitudinous.

The importance of the office of secretary or district clerk of the local board of education was early recognized by the Legislature in the creation of an appropriate statute which made the position mandatory<sup>53</sup> for all school districts in the state.

Considerable evidence is available to certify to the need for this essential service. Quotations from early educators' reports reflected consciousness of the lack of provision for this necessary functionary.

Many of the townships in the state failed to make reports to the Trustees of the school fund, who were obliged to report to the Legislature on the progress of the public schools. The true condition of the state educational system could not be accurately determined from such partial or imperfect records being received by state officials.

Recording of minutes is an extremely important task, and should be dealt with as intelligently as possible. Great injustice is done to the board and its membership should the

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<sup>53</sup> Compiled Statutes of New Jersey, 1709-1910, Sec. 50, p. 4741.

minutes not reflect accurately and completely all of the transactions of this school committee.

In view of the fact that any responsible corporate agency speaks through its records, it becomes imperative that its records be accurate, legally acceptable, and as comprehensive as is possible. Thus, the keeping of a correct record of all proceedings of the board of education is the primary function of this position.

Board of education reorganize annually<sup>54</sup>; therefore the secretary is (usually) the only continuing official of the board. Continuity of board action rests largely with this officer, for between meetings he represents the school board in carrying out its mandates and rules and regulations.

While the preceding chapter directed its attention to the legal inception and evolution of the district clerk's office, this third division has given stress to the secretary's functions as board scribe and official representative of the school board.

Having examined various secretarial and legal areas of concern to the clerk of the board, the writer will explore in the following chapter this officer's responsibilities as clerical agent of the board of school estimate, his duties

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<sup>54</sup> Laws of 1903, Second Special Session, Chap. I, p. 5.

related to properly acknowledging board activities, and his authority concerned with calling meetings of the board of education and its committees, and of the board of school estimate.

## CHAPTER IV

### LEGAL BASIS FOR RESPONSIBILITIES RELATIVE TO PREPARATION AND PRESENTATION OF REQUIRED REPORTS AND NOTICES

Early leaders of the public education movement were keenly aware of the need for a financially sound school system. In light of this trend, legislators prepared a bill to appropriate a sum of money from the annual income of the State School Fund "to be apportioned among the several townships in the State". Included was the recommendation that:

. . . made it obligatory upon the inhabitants of each township to raise by taxation an amount at least equal to that which they receive(d) from the state . . .<sup>1</sup>

Unfortunately, an amendment was appended to the proposed bill which made it discretionary with the communities as to the amount to be raised locally.

Friends of education felt that a very high value was not likely to be placed upon education that cost the recipient nothing. Educational opportunities, it was held, should be made available to all, but not without some effort being expended by the citizenry enjoying the privilege.

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<sup>1</sup> Votes of the General Assembly, 1834, Adjourned Sitting, January 7, 1835, p. 259.

Interest in providing for the future financial stability of public education, together with employing methods whereby the general public would participate in the expense of maintaining educational facilities resulted in the creation of a fiscally sound structure for the schools.

Functions of the secretary in relation to his duties concerned with necessary obligations to the board of estimate, and his responsibilities regarding certification of the board of education's activities and in the issuance of notices will be the substance of the present chapter.

1. Service as Secretary to Board of School Estimate.

The constitutionality of the act which recognized the existence of the board of estimate<sup>2</sup> was tested:

. . . because it create(d) a local appointive board of estimate, with power to fix the amount to be raised by taxation.<sup>3</sup>

Newark School Board, Sup.<sup>4</sup> established the validity of the act which created the estimate board. Objection raised held the school law was unconstitutional in that it created an appointive estimate group whose responsibility

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<sup>2</sup> Laws of 1903, Second Special Session, Chap. I, Sec. 73, p. 26.

<sup>3</sup> Compiled Statutes of New Jersey, 1709-1910, Art. VI, Sec. 73, p. 4746.

<sup>4</sup> Newark School Board, Sup., 70 Atlantic Reporter 881.

included establishment of the sum of money necessary for school purposes. As in the case of Bernards Township v. Allen<sup>5</sup>, the important issue was not whether the local board was to be appointive or elective, but rather that municipal control of taxing authority be maintained locally.

The board of school estimate, commonly found in the Article VI district, is composed of two board of education members, two municipal councilmen, and the chief executive officer of the local government. The school estimate group represents the community as a whole in approving and appropriating funds for the board of education. It is served by:

The Secretary of the board of education (who) shall be the secretary of the board of school estimate, but shall receive no compensation as such.<sup>6</sup>

This secretarial officer records the minutes of the estimate board, and prepares its resolutions and certifications. As secretary, he is the only permanent member of the board.

The decision arrived at in Ferris v. O'Keefe<sup>7</sup>, while not of direct application to the secretary of the board of education, was a matter of concern to this office.

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5 Bernards Township v. Allen, 61 New Jersey Law 228.

6 Public Laws of 1907, Chap. 276, Sec. 73, p. 695.

7 Ferris v. O'Keefe, 87 New Jersey Law 341.

At its organizational meeting, the board of commissioners of Jersey City, consisting of five officials, chose one, Fagan, to serve as the mayor of the city. Shortly thereafter, a vacancy occurred in the board of education membership to which the mayor appointed the defendant, O'Keefe.

Protesting this action, the mayor's colleagues met and by a majority vote appointed the relator, Ferris, to the board post.

Section thirty-eight of the School Law of 1903 provided for such appointive powers, designating the mayor as responsible for this function. In Section seventy-three of this same law compilation, it is related that the board of education's responsibility is to appoint two of its members to the estimate board, the town government to select two of its commissioners to this body, and the fifth and presiding member of the group is to be the mayor.

Citing provisions from the Walsh act, the relator interpreted this act to mean that the entire commission group had the power of appointment to the estimate board. This incorrect interpretation of the statute could have resulted in a nine member board of estimate -- two board of education representatives, two members selected by the town commission, and the five elected officials of the commission group itself.

The Supreme Court held that the mayor had exclusive power of school board appointments and was to be the presiding member of the board of school estimate. It was declared that the mayor's appointment of O'Keefe was completely valid.

Misinterpretation of this important legislation could have created a most unwieldy school estimate body for the clerk to serve as secretary, thereby increasing his difficulties multifold.

In Rahway Board of Education v. Rahway Board of School Estimate<sup>8</sup> a challenge was presented to the local board of education, and the responsibilities of the secretary who served both groups were directly ignored.

An attempt was made by the town officials who were members of the school estimate board to change the amount of an appropriation previously approved by that body as a whole. The three town representatives, although lacking authority for such action, called a meeting of the board of estimate and proceeded to reduce the amount of money approved for appropriation.

Neither the board of education nor the secretary had initiated any action in the direction of holding a meeting

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<sup>8</sup> Rahway Board of Education v. Rahway Board of School Estimate, New Jersey School Report, 1915, p. 40.

of the estimate group. A request for a meeting to act on appropriations originated by the board of education through the secretary is the only legal way in which the board of school estimate can meet<sup>9</sup>.

It was alleged by the town government representation on the school estimate body that the board of education had not given a true picture of its financial condition at the time the appropriation was being considered. The respondent proceeded to point out that:

. . . The Secretary of the Board of Education is also the Secretary of the Board of School Estimate. As Secretary of the Board of Education he is its general accountant, and has charge of the books and financial papers of the Board. Any information as to the finances of the Board of Education could have been furnished by him . . .<sup>10</sup>

Items to be included in the "statement of the amount necessary" furnished by the secretary of the board of education to the members of the board of school estimate are clearly defined by statute<sup>11</sup>. Any balances held by the board of education need not appear in the statement supplied.

Once the amount of the appropriation has been "fixed and determined", the secretary delivers the certificate of the amount to the governing body of the municipality where

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9 New Jersey School Report, 1915, p. 41.

10 Ibid., p. 41.

11 Public Laws of 1903, Second Special Session, Sec. 74, p. 27.

"upon receipt of such notice"<sup>12</sup> it is obliged to appropriate the certified amount. In this matter being heard before him, the Commissioner ordered that the city council appropriate the amount "fixed and determined".

The desirability of the secretary of the board also serving the board of school estimate is illustrated by the case of Bayonne Board of Education v. Ryan, Custodian<sup>13</sup>. In the citation referred to, the custodian of school funds refused to transfer funds between accounts as directed.

A resolution approving the motion was adopted by the local board of education and recorded by the secretary. An order authorizing this action was executed by the president and the secretary who sent a copy of the resolution together with the appropriate warrant to the custodian.

Offered in support of his protest, the respondent, Ryan, quoted a rule of the State Board of Education:

The district and State appropriation are not subject to transfer from one account to another by resolution of the board of education. A transfer of any part of the district appropriation can be made only by resolution of the Board of Estimate in Article VI districts and by vote at a regular or special district meeting in Article VII districts. Subdivisions of an 'account' or 'item' may be transferred by the board.<sup>14</sup>

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<sup>12</sup> Public Laws of 1903, supra, Sec. 75, p. 27.

<sup>13</sup> Bayonne Board of Education v. Ryan, Custodian, New Jersey School Report, 1927, p. 72.

<sup>14</sup> Rules of the State Board of Education of New Jersey, adopted June 7, 1924.

In rebuttal, it was pointed out by the appellant that in the School Law of 1925<sup>15</sup> the custodian is required to pay out school moneys on duly executed warrants. The responsibility for any illegal expenditure of money rests with the board of education alone.

Citing Bayonne Board of Education v. Evans et al., it was held by the appellant that:

Of all school funds, except the proceeds of a bond issue, the Custodian of School Moneys is . . . merely a custodian in the most literal sense of the term and must pay out the school moneys held in trust by him by order of the board of education and on duly executed warrants without any exercise of discretion whatever on his part, and the responsibility is on the board of education alone for any illegal expenditure of school moneys made by it.<sup>16</sup>

The controversy involved funds, the source of which was not a bond issue; therefore the Commissioner ruled the transfer entirely legal.

It was the Commissioner's opinion that the transfer of funds did not require the board of estimate's approval. By statute, the board of education through its secretary was obliged to prepare and submit to the several members of the estimate body a report of the financial needs of the school district for the next fiscal year. In turn, the board of

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15 1925 School Law Compilation, Art. VIII, Sec. 274.

16 Bayonne Board of Education v. Evans et al., New Jersey School Report, 1926, p. 40.

estimate was required to "fix and determine" the amount of money to be appropriated.

Reference was made to the decision arrived at in Hayes v. Townsend, Comptroller where it was held that:

The language used clearly shows that it was the intent of the Legislature that the annual appropriation should be in bulk and not a separate appropriation for each purpose specified in the itemized statement received from the board of education. Had it been the intent of the Legislature that the appropriation should be itemized, the appropriate language would have been "to fix and determine the several amounts needed for the several purposes specified in the certificate".<sup>17</sup>

Reasoning of the Supreme Court paralleled that of the Commissioner and State Board of Education.

The certificate (of the Board of School Estimate) is not part of the return, and we are therefore not informed whether it simply called for a lump sum or specified the items, but under Section 75 a certificate of a lump sum is plainly sufficient for all that the board of estimate has to determine is 'the amount of money to be appropriated for the public schools in such district for the ensuing school year'. . . In our view, it became the duty of the board of estimate to . . . determine the total amount . . . for the schools. It could reach this result by striking out items or reducing them, but the result became a total and . . . such total as modified by county appropriation that the board of estimate is to certify and the city council provide in the tax levy.<sup>18</sup>

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<sup>17</sup> Hayes v. Townsend, Comptroller, New Jersey School Report, 1914, p. 122.

<sup>18</sup> Bayonne Board of Education v. Ryan, supra, p. 74.

Interpretation of the quotations offered above leads to the conclusion that the board of estimate was bound to make a bulk appropriation to the board of education. Any attempt to control the disposition of the amount so granted would have been clearly illegal.

Rules of the State Board of Education expanding local school boards of estimate's powers beyond their statutory limits are in conflict with the School Law. The State Board shall have power to "prescribe and enforce rules and regulations necessary to carry into effect the school laws of this state". Therefore, the 1924 rule of the board, previously quoted, was an "ineffective enlargement of its own power".

It is stated by many important authorities such as Dillon<sup>19</sup> that any rule or by-law of a public board or body "which is in conflict with the organic law of the State, or antagonistic to the general law, or inconsistent with the powers conferred upon the board adopting it is invalid". The custodian was obliged to make the requested transfers by order of the Commissioner.

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<sup>19</sup> John F. Dillon, Commentaries on the Law of Municipal Corporations, Boston, Little, Brown, 1890, Vol. I, Chap. XII, Sec. 317, (251), p. 394.

Considerable detail was developed in the case reviewed above, for the board secretary by virtue of his dual responsibility sat with both groups in their deliberations. No one could have better served the interests of the school district in the controversy described than the officer presently under study.

Historically, it has been the function of the municipal governing council to provide funds for the operation and maintenance of local schools. Responsibility for expending this money and the management of the local school system rests with the district board of education.

The constitutionality of the School Law providing for a board of school estimate was thoroughly debated in the courts, but was not found to be obnoxious to any constitutional provision. The clerk's duties related to the estimate body have become progressively more important.

## 2. Certification of Board's Official Transactions.

It would seem from a review of the records that the secretary had been rather derelict in his duty in the case of Lambertville Board of Education v. City of Lambertville<sup>20</sup>.

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<sup>20</sup> Lambertville Board of Education v. City of Lambertville, New Jersey School Report, 1913, p. 226.

A certificate prepared by the secretary under the direction of the board of education had been submitted to the board of estimate requesting a lump sum of money for "the construction of a new school and furnishing the same and for repairs to existing school buildings". Following its approval of the board of education request, the board of estimate "fixed and determined" the sum of money necessary in the same amount to the common council of the city of Lambertville.

Doubt as to whether a certain member of the school estimate group had been properly notified by the secretary of the meeting at which the board of estimate had passed on the resolution in question was raised. Attendance of the member at this meeting dispelled any thought of protest along that line. Other contentions cited were not pertinent to this study.

In his decision, the Commissioner ordered the city to place the sum "fixed and determined" to be necessary by the board of estimate at the disposal of the board of education.

The ruling was appealed to the State Board of Education who concurred with the Commissioner's thinking. The controversial resolution was conditioned upon purchase of a particular site, and the board of school estimate had determined

that the requested amount was sufficient to affect the purchase and for the other purposes expressed in the resolution under discussion.

Although the Commissioner's opinion was affirmed by the State Board and also the Supreme Court<sup>21</sup>, the issue was reopened before the Court on error<sup>22</sup>.

Incompetency of the secretary appeared at this final hearing. It was definitely established that the certificate issued by the board of education to the board of estimate was defective in that the amount necessary for repairs was not separately stated. Appearing as a single item, the total appropriation could legally have been used for repairs. Consequently, the judgment previously held was reversed.

In order to avoid possible future complications, the secretary might better have properly notified all members of the board of school estimate, de jure or de facto, of any meetings planned by the estimate body. Familiarity with Sections seventy-four, seventy-five, and seventy-six of the School Law would have aided the secretary in his preparation of the certificate that was presented to the board of estimate which later proved to be defective.

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<sup>21</sup> Board of Education of Lambertville v. City of Lambertville, 90 Atlantic Reporter 242.

<sup>22</sup> Ibid., 87 New Jersey Law 196.

"All processes of law are served on this officer for the board of education"<sup>23</sup>. Expenses incurred by the board in defending itself are certified to by the secretary as one of his responsibilities. Merrey v. Paterson Board of Education<sup>24</sup> tested the right of a board of education to employ its own counsel for defense in litigation.

Paterson Board of Education had passed a resolution to engage special counsel for representation in certain matters; he was to appear before state school officials and to act as counsel and attorney in any legal action the board became a party to.

It was maintained that the board of education was a department of the city government and not a separate municipal corporation. Offered as evidence was Hoxsey v. Paterson<sup>25</sup>. However, the contention was discounted for:

Each township, city, incorporated town or borough shall be a separate school district.<sup>26</sup>

and

A board of education in a city school district shall be a body corporate.<sup>27</sup>

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23 Secretaries-District Clerks' Duties, *supra*, p. 2.

24 Merrey v. Paterson Board of Education, 100 New Jersey Law 273.

25 Hoxsey v. Paterson, 40 New Jersey Law 186.

26 School Act of 1903, Pamphlet Laws 1903, Sec. 32, p. 14.

27 Ibid., Sec. 45, p. 20.

A local board of education is a corporate entity separate and distinct from the corporation comprising the city.

Further, provided in 1903 school act is the statement that:

Such boards shall, in and by their corporate name, sue and be sued, . . .<sup>28</sup>

It was clearly the intent of the legislature that city school districts be separate and distinct corporate entities.

And, finally, the statutes declared in relation to Article VII school districts that authorization was granted to employ counsel<sup>29</sup>. It could not be successfully argued that the lack of special authority to Article VI districts in this section of the act indicated that the legislature intended to deny this right to these boards. Privilege to sue and liability of suit imply the right to secure counsel for such action.

Brady v. Carteret Board of Education<sup>30</sup>, in reference to a controversy involving two claimants to the office of district clerk, reviewed the custodian's reluctance to sign warrants presented by the secretary. The school custodian attempted to recover costs and counsel fees in connection

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28 Ibid., Sec. 47, p. 20.

29 School Act of 1903, supra, Sec. 94, p. 36.

30 Brady v. Carteret Board of Education, 10 New Jersey Miscellaneous 358.

with his resistance of the board of education demand for payment of warrants signed by the new clerk.

The plaintiff, Brady, had been sent a copy of the board resolution containing the appointment of Bradford as district clerk to replace one, Coughlin, the incumbent. Subsequent to receipt of notice of the board action, Brady was informed by Coughlin to recognize only himself as the secretary of the board of education.

Despite the ruling of Article eighteen of the School Law, which provides that the custodian shall pay out school moneys on warrants signed by the president and district clerk, Brady saw fit to refuse to countersign Bradford's warrants.

Offered as evidence by the defendants was the ruling of the Court in the case of Zimmerman v. Mathe, in which the language used was as follows:

With the expenditure of moneys for school purposes and the application to the purpose for which they were raised, the tax collector has no official concern.<sup>31</sup>

Application of school board funds is not the concern of the custodian. Orders coming to him drawn as the law prescribes places the responsibility for the disposition of the funds solely upon the board of education.

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<sup>31</sup> Zimmerman v. Mathe, 49 New Jersey Law 45.

Since Brady's duty as custodian was simply ministerial in nature, he had no authority to determine whether Coughlin had legally been removed from office. In the eyes of the public, either claimant had de facto status.

Exercise of a power by a de facto official that serves the best interests of the public, general rule holds, is considered legal and binding. Under the conditions outlined, the plaintiff was not entitled to recover his expenses.

Had the custodian's action been sustained, the power of certification exercised by the secretary would have been seriously limited.

Another matter of certification by the secretary of the board of education's official transactions brought to public attention the failure to complete a contract within the specified time, which was responsible for the case of Shaner v. Millville Board of Education<sup>32</sup> wherein the city council attempted to interfere.

The board of education had let a contract for construction of a school building containing a penalty clause. Although the structure was not completed within the time allowed, the board saw fit not to exercise the penalty privilege. The city of Millville pressed for specific performance of the contract.

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<sup>32</sup> Shaner v. Millville Board of Education, 6 New Jersey Miscellaneous 671.

Appropriate sections of the School Law were cited, especially Section ninety-four:

A board of education may, in its corporate capacity, sue and be sued, complain and defend in any court of law and equity, and employ counsel therefor, and the amount of the expense incurred by said board in conducting or defending any such suit shall be certified to the assessor by the president and district clerk of such board, and said amount shall be assessed and collected in the next annual tax levy.<sup>33</sup>

to point out that the local government had no right in the matter of board of education contract execution.

The opinion of the Court was that since the board of education was recognized by law as a corporation with power to participate in contracts such as for the building of schools, it followed naturally that any problems in reference to these agreements would be resolved by the board, and without pressure being exerted by the city government.

It was not the thinking of the legislature that the local board of education should give over its prerogatives to the municipality. Despite the fact that the city is financially responsible for bond issues for school purposes, the board as an independent corporation was not to be subordinated to the local government.

Since boards of education are corporate entities, municipalities may not intervene in legal action against the board concerning its contracts.

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<sup>33</sup> School Act of 1903, Art. VII, Sec. 94, p. 36.

### 3. Issuance of Notices.

In order that there be no confusion or misinformation concerning meeting dates and times, it is the responsibility of the district clerk to:

Notify all members of the board of all regular and special meetings of the board.<sup>34</sup>

Certain members of the board obviously saw fit not to consider the clerk's responsibilities as cited above, in the controversy of Cotton et al. v. Brooklawn Borough Board of Education<sup>35</sup>.

An adjourned meeting of the local board was held starting at 7:30 P.M., and on proper motion was recessed at 9:45 P.M. until such time on the same evening as a certain committee was ready to give its report. Five of the board members left the meeting at the recess, while four chose to await the reconvention of the session until 1:10 A.M., at which time they dispersed. At 5:30 A.M. the majority group returned to reconvene the meeting and to conduct additional items of business.

Authorities such as McQuillin, Scanlon, and Roberts on parliamentary law, would agree that any session planned

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<sup>34</sup> Laws of New Jersey, 1909, Chap. II, Sec. 91, p. 26.

<sup>35</sup> Cotton et al., v. Brooklawn Borough Board of Education, New Jersey School Report, 1927, p. 82.

to be resumed after adjournment should include in the adjournment resolution, or rules and by-laws of the organization represented, information concerning time and place of reconvention.

The Commissioner ruled that the reconvened session was illegal, for the meeting had actually adjourned sine die. Only through observation of the requirements of the School Law, in that the secretary perform his duty of notifying members of planned special meetings, could official recognition be given such sessions.

Discussed briefly elsewhere in this study is Cullum v. North Bergen Board of Education<sup>36</sup>, in which the Commissioner concluded that in view of the substantial amount of evidence to support his opinion, together with the statute covering the situation, only the secretary had the authority to issue notices of special meetings.

Interpretation by the Commissioner of the School Law regarding a function of the secretary was found to be somewhat different in Nicosia v. East Paterson Borough Board of Education et al.<sup>37</sup>

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<sup>36</sup> Cullum v. North Bergen Board of Education, supra, p. 62.

<sup>37</sup> Nicosia v. East Paterson Board of Education et al., New Jersey School Laws, Session of 1950, School Law Decisions, p. 62.

Nicosia, the appellant, was released as counsel to the board of education. Much of that cited to support his claim for reinstatement was not pertinent to this research. Of interest, however, was that one of the appellant's contentions was that his successor had been appointed at a special meeting of the board of education not called "in accordance with the law".

Because of the nature of the employment of attorneys in Article VII districts, in that the law recognized that problems in those districts were usually not so great as those encountered in Article VI, together with the board's continuance of use of the new counsel, the Commissioner felt it was somewhat unnecessary to insist upon this appointment's being made at a meeting properly called by the secretary, and stating its purpose, as required by statute.

Responsibility of the secretary in relation to action concerning board vacancies was reviewed in Bourne v. Atlantic City Board of Education<sup>38</sup> wherein the petitioner, Bourne, claimed board membership.

Bourne's was plainly a "lame duck" appointment, and the board of education voted not to recognize the action of the mayor in the matter. Among the arguments put forth by

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<sup>38</sup> Bourne v. Atlantic City Board of Education, New Jersey School Report, 1912, p. 114.

the respondent was that:

Any vacancy in such board of education shall be forthwith reported by the secretary of said board to the mayor or other chief executive officer, who shall, within thirty days thereafter, appoint a person to fill such vacancy for the unexpired term.<sup>39</sup>

It was contended by the board of education that unless the secretary notified the mayor that vacancies existed, the chief executive could not make appointments such as the appellant's.

The Commissioner's interpretation of this legal function of the secretary was that it was in the nature of a convenience, that it simply was to bring the problem to the mayor's attention in order that the vacancies might be filled more rapidly. It was held that this town executive was not legally obliged to withhold action on appointments until properly notified by the clerk.

Hulmes et al. v. Jefferson Township Board of Education<sup>40</sup>, referred to previously in relation to another matter, again can be considered.

Along with the claim that the clerk failed to file a required bond, the appellants further contended that certain meeting notices issued by the secretary contained serious

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<sup>39</sup> Public Laws of 1912, Chap. 370, P. 656.

<sup>40</sup> Hulmes et al. v. Jefferson Township Board of Education, New Jersey School Report, 1924, p. 240.

discrepancies. In the case of one notice sent to members, the date and time of the planned meeting were omitted; a second meeting notice lacked the clerk's signature. Absence of some members from still another board meeting was held to be due to their not having been properly advised by the secretary, that they were informed by way of a verbal announcement by the president at a previous meeting. A quite valid reason for protest was given by one of the appellants, namely that he was not advised of a planned important session which he missed, by the district clerk. This board member's only knowledge of the meeting in question was by way of a verbal message from the president of the board to the appellant's wife through a third party not connected with the board of education.

Of interest was the opinion authorities held that defects in meeting notices were "cured" by attendance of all members, "since all may then be presumed to have been legally notified". It was determined at the hearing that no meetings were held on the dates of notices unsigned by the clerk, thereby correcting that particular discrepancy.

Two of the challenged meetings were found not to have complied with the School Law in that statutory notices

were not given to the members of the board by the secretary:

If the charter or the statute provides a method by which the notice shall be served, its provisions must be strictly obeyed.<sup>41</sup>

Verbal notice by the president did not meet the legal requirement of notification in one instance. In reference to the second meeting, the district clerk's notices were received much too late by the members, and the verbal message coming to the absent member by way of a disinterested third party did not contain a statement of the purpose of the special session.

Citing Burns v. Thompson, the Court held:

Our statute is silent on the question whether a notice of the called meeting . . . shall be in writing; but we are of the opinion that when an official notice is required to be given of such a meeting, it is contemplated that it shall be in writing and that it shall state the time, place and purpose of the meeting . . .<sup>42</sup>

Offering the case of Allen v. Stricklin, the Court maintained that:

. . . the service of notice made in a way and manner recognized and sanctioned by law is an essential requisite of it; without this, it is ineffectual for the purpose intended and void. Unless it is given as the law directs and allows, the party to whom it is given is not bound to recognize it nor indeed is it notice. It is the legal sanction that gives the notice its sufficient form and substance life and efficacy.<sup>43</sup>

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<sup>41</sup> Dillon, Municipal Corporations, *supra*, Chap. X, Sec. 263, p. 344.

<sup>42</sup> Burns v. Thompson, 64 Arkansas 489.

<sup>43</sup> Allen v. Stricklin, 100 North Carolina 225.

Bouvier stated in his Dictionary that "a statutory notice is not binding unless given as the law directs or allows"<sup>44</sup>.

Finally, 35 Cyclopedia 904, held:

The meetings of the board (of education) must be upon notice to all the members of the board, must be in writing and must be signed by such of the members of the board as are prescribed by law; and the call must be signed by an officer or officers duly authorized.<sup>45</sup>

Since statutory notices were not given announcing the two meetings in question, and the defect not "cured" by attendance of the full membership at these sessions, the Commissioner felt obliged to declare the meetings referred to immediately above and the actions taken thereat as illegal and void.

#### Summary.

Recognition of the importance of a fiscally sound business-like organization of education provided inspiration for a series of well-planned recommendations to implement the adequate financing of free public education. However, local interests operated to nullify temporarily any anticipated improvement in the financing program of the schools.

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<sup>44</sup> John Bouvier, Bouvier's Law Dictionary and Concise Encyclopedia, St. Paul, Minn., West Publishing Co., 1914, Vol. II, p. 2368.

<sup>45</sup> Cyclopedia of Law and Procedure, 1910, supra, p. 90<sup>3</sup>.

Foresighted builders of the present structure of public education sensed the logic of having the clerk of the board of education serve in a similar capacity for the board of school estimate. In this dual responsibility the secretary could render invaluable service to both boards by virtue of his intimate knowledge of the common problems faced by each group.

The board secretary is the only permanent member of the estimate group. To this officer falls the challenge of seeing to it that the board of estimate's operations are coordinated with those of the school committee.

A wise and sagacious legislature, perhaps anticipating potential legal pitfalls, created appropriate statutes as a measure of protection to the local school district. However, as the study reveals, there were those who, by probing actions, constantly attempted to misconstrue the thinking of the legislators.

Lack of a definite system whereby boards of education and their several committees might be called together for meetings would create a most chaotic condition. Fortunately, suitable legislation was provided in order to prevent such a condition from existing.

Efforts in the former chapter centered about the officer under study in his capacity as secretarial agent to and official representative of the board of education. In this fourth chapter problems faced by the clerk in his coordinate function as secretary to the board of school estimate were examined, together with his duties regarding the issuance of notices and certification of school board activities.

The next chapter, continuing the theme of investigating responsibilities of the secretary, will devote itself to the basis of the clerk's obligations connected with his functions as accountant and purchasing agent of the board.

## CHAPTER V

### LEGAL BASIS FOR RESPONSIBILITIES RELATIVE TO GENERAL BUSINESS TRANSACTIONS AND FISCAL ACCOUNTING

The clerk is regarded as the chief fiscal officer of the school district. Research reveals that all boards of education throughout the country provide for a clerical official whose major responsibility is the keeping of financial records of the local schools. It is here the value of an experienced and efficient secretary pays dividends to the school district. Job, in his handbook for the district clerk states:

A large portion of the business of the board of education is transacted by the school clerk either upon the orders of the board or according to duties and prerogatives vested in the clerk by state law. Among other duties, the clerk keeps the minutes of all board meetings, conducts the board's correspondence, keeps the financial accounts and makes official reports. An efficient clerk can, without being penurious, effect many economies which will save his salary many times; moreover he can contribute numerous ways to the smooth and efficient management of the schools.<sup>1</sup>

To a great extent, business activity of the board of education is transacted by the school clerk either in response to direct board orders, or in conformance with duties vested in his office by state statute.

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<sup>1</sup> L.B. Job, et al., The School Clerk and His Records,  
Bloomington, Illinois, Public School Publishing Co., 1931,  
p. 1.

As one of his functions, to the clerk falls the responsibility of the preparation of the annual school budget. This undertaking demands that he have, or must acquire, a thorough knowledge of the needs of the entire school system. His familiarity with local requirements is reflected in the adequacy of the budget he submits for the board's consideration.

In his role as budget director, the secretary has complete control of all board expenditures and the allocation to the proper appropriation of all disbursements. This officer also determines the availability of appropriations before commitments are made. An auxiliary function of the clerk is the preparation of the report he submits to the board of all expenditures and balances in the several accounts of the school board.

The present chapter will concern itself with an examination of the secretary's area of responsibility related to purchasing and accounting activities in the interest of the board of education.

## 1. Activity as Purchasing Agent.

It is the obligation of the board's clerical officer to establish and maintain control of expenditure of school moneys. The secretary should review all orders for purchases, and determine whether the requested items are essential, as well as decide whether sufficient funds are available.

"No orders should be placed without first having the approval of the Secretary or District Clerk"<sup>2</sup>. A deterrent to either the secretary or other members of the board of education gaining pecuniarily from purchases made by the clerk is the law stating that:

Any member of any board of education in any school district who shall be directly or indirectly concerned in any agreement or contract, or directly or indirectly interested in furnishing any goods, chattels or supplies or property of any kind whatsoever to the school district, the expense or consideration of which is paid by the board of which such member is a part, shall be guilty of misdemeanor.<sup>3</sup>

Park v. Hearon<sup>4</sup>, previously cited, described a potentially illegal action on the part of a board members, with the full knowledge of the secretary as well as the entire membership of the board.

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<sup>2</sup> Secretaries-District Clerks' Duties, *supra*, p. 6.

<sup>3</sup> School Law of 1914, Sec. 430 (32), p. 185.

<sup>4</sup> Park v. Hearon, School Law Decisions, 1938, p. 44.

Subsequent to the election of the respondent, Hearon, to the board, he became part owner of a printing firm. Advertising and printing from this firm were received and paid for by the board of education. Park, the appellant, charged Hearon with violation of the School Law:

. . . it shall be unlawful for any county superintendent of schools, member of a board of education, teacher or any person officially connected with the public schools to be agent for or to be in any way pecuniarily or beneficially interested in the sale of any text-books, maps, charts, school apparatus or supplies of any kind or to receive compensation or reward of any kind for any such sale or for unlawfully promoting or favoring the same. A violation of the provisions of this section shall be punishable by removal from office or by revocation of certificate to teach.<sup>5</sup>

It was determined that the board had ordered the supplies in question, which were not actually school supplies to be used for children. Hearon had not promoted the sale of the items provided. In view of this situation as outlined, there was no violation of the law.

However, the School Law provided as follows:

(A board member) shall not be interested directly or indirectly in any contract with nor claim against said board.<sup>6</sup>

Since Hearon had an interest in a claim against the board, he was violating this section of the law. The ruling held that the respondent should not permit any claim of

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<sup>5</sup> School Law of 1903, Art, XIV, Sec. 152, p. 58.

<sup>6</sup> Ibid., Art VII, Sec. 83, p. 31.

financial interest to him to come before the board while he held membership in the group.

On appeal to the State Board it was revealed that Hearon's firm had continued doing business with the board after he had accepted membership. Advice of other board members, together with favorable information concerning the matter from the Attorney General's office given him and the district clerk, encouraged this action.

When public protest of the respondent's activity came to his attention, Hearon refused to permit his concern to continue serving the board, until upon a direct appeal from the board secretary he accepted an advertisement, but then again declined board work.

The State Board felt that Article fourteen of the School Law did not apply to supplies of any kind furnished to school boards, but only to those things supplied for the use of pupils. The case, as a consequence, was adjudged a controversy not properly before the Commissioner or the Board.

Boards of education are largely dependent upon their secretaries to counsel and guide them in their legal transactions. Either the clerk's advice was not sought or the board was poorly advised in the case of Nichols v. Pemberton

Township Board of Education<sup>7</sup>, for while not a matter of acquisition of goods, it was concerned with the purchase of service involving the district clerk and the board membership.

Contracts for transportation of children were awarded to the board president's son and to the wife of a second member. Appointed as attendance officer was the spouse of still another member, while a fourth board trustee was designated as custodian of school moneys.

Although counsel for the appellants held that the Commissioner had no jurisdiction in the controversy allegedly concerned with "An act for the punishment of crimes"<sup>8</sup>, proper jurisdiction was described in Thompson v. Elmer Borough Board of Education<sup>9</sup>, and DuFour v. State Superintendent<sup>10</sup>, together with designation of the appropriate statute, namely:

He (member of the board of education) shall not be interested directly or indirectly, in any contract with nor claim against said board.<sup>11</sup>

In referring to Stoothoff v. Davies<sup>12</sup>, the Commissioner felt that acceptance of board membership demanded that

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<sup>7</sup> Nichols et al. v. Pemberton Township Board of Education, School Law Decisions, 1938, p. 48.

<sup>8</sup> School Law Compilation, 1931, Sec. 926.

<sup>9</sup> Thompson v. Elmer Borough Board of Education, 28 Vroom 628, 57 New Jersey Law.

<sup>10</sup> DuFour v. State Superintendent, 43 Vroom 371.

<sup>11</sup> Public Laws of 1903, Chap. I, Sec. 83, p. 31.

<sup>12</sup> Stoothoff v. Davies, New Jersey School Report, 1930, supra, p. 105.

it be inspired by a desire to render public service rather than anticipation of financial remuneration.

An illegal contract involving a board member was described in Ames v. Montclair Board of Education<sup>13</sup>, and another with a borough councilman as a principal in Sturr v. Elmer Borough<sup>14</sup>. In the case of Engle v. Passaic Township Board of Education et al.<sup>15</sup>, the Commissioner opined that in view of the circumstance wherein the wife was a member of the board and shared in her spouse's earnings, a contract between the board and her husband was clearly illegal.

While the Court held in the state of Idaho, citing Muckols v. Lyle et al.,<sup>16</sup> that employment of the wife of a board member as a teacher in the same district as illegal and void, this ruling would not apply in New Jersey. Here a husband has no control over his wife's income and therefore cannot have a legal pecuniary interest therein. In relation to offspring, neither parent has a legal interest in the earnings of emancipated children.

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<sup>13</sup> Ames v. Montclair Board of Education, 97 New Jersey Equity 60.

<sup>14</sup> Sturr v. Elmer Borough, 75 New Jersey Law 443.

<sup>15</sup> Engle v. Passaic Township Board of Education et al., School Law Decisions, 1928, p. 266.

<sup>16</sup> Muckols v. Lyle et al., 8 Idaho 589, Pacific 401.

The contracts let and given, as described above, while not considered in good taste, were not illegal. However, there was one board action decreed illegal, under the law that ". . . a member of a board of education may serve as district clerk, and . . . receive compensation . . . No other statute provid(es) remuneration for board members"<sup>17</sup>. The law provides that the municipal collector or treasurer shall serve as school custodian. Should this officer desire also to act as a member of the board of education, he must perform the duties as custodian of school moneys without compensation.

Payment of a salary to a board member serving as custodian is illegal, for as a board member he is "directly interested in the claim or contract" due him as school custodian. This opinion, together with the other conclusions reached by the Commissioner, was concurred with by the State Board.

Unauthorized action of the board of education and its officers and committees described in Lindstrom v. Hillsborough Township<sup>18</sup> again emphasized shortcomings of the district clerk.

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<sup>17</sup> Public Laws of 1903, Special Session, Chap. I, Sec. 91, p. 35.

<sup>18</sup> Lindstrom v. Hillsborough Township Board of Education, New Jersey School Report, 1929, p. 58.

Evidence produced at the Commissioner's hearing revealed that the local president transacted a great deal of the board business on his own, and then expected the membership to ratify his actions at subsequent meetings, usually without even the formality of a properly presented motion.

After the second of two elections, authorization to purchase certain property was secured. Ignoring the requirement:

Whenever bonds shall be authorized to be issued by any school district as aforesaid, the district clerk shall transmit certified copies of the record of the proceedings authorizing the issue of such bonds to the Attorney General for his approval of the legality of said proceedings, and duplicate copies of such record shall be filed with the Commissioner of Education.<sup>19</sup>

and lacking specific approval from the board, the president arranged for a bank loan in anticipation of a bond issue, and took necessary steps to acquire the property previously mentioned.

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<sup>19</sup> Compilation of New Jersey School Law, 1925.  
Sec. 125, p. 100.

Bonding proceedings must be approved by the Attorney General:

If from said certified copies it shall appear that a majority of the legal voters present at such meeting . . . shall have voted in favor of the issue of such bonds, the secretary of the board of education . . . shall transmit such certified copies, together with certified copies of the record of the proceedings of the board of education of such . . . school concerning the issue of such bonds, to the Attorney General for his approval of the legality of said proceedings, and shall file duplicate certified copies of the record of all such proceedings with the Commissioner of Education, and upon the approval thereof by the Attorney General, said bonds may be issued and sold by said board.<sup>20</sup>

or the bonds may not be sold; therefore temporary loans are not legal.

Borrowing funds in expectation of a loan and purchase of property without direct board sanction, by the president, was declared illegal. Lack of approval of the Attorney General in bonding proceedings prevented the board from giving legal sanction to any of the president's actions in the matter under consideration.

Individual actions of members minus specific approbation of the membership of the board at a regularly convened meeting was to be discontinued, by direct order of the Commissioner.

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<sup>20</sup> School Law, 1925, *ibid.*, Sec. 210, p. 132.

Apparently the secretary, who is "personally responsible for all business functions of the board of education", acquiesced in these unlawful practices by the several board members, thereby abdicating his legal responsibility. However, it is conceivable that the responsible school trustees did not "seek guidance" or "obtain factual information" at this source.

Among the complaints offered in protest of certain official actions of his fellow board members, Roberts, appellant in the case of Roberts v. Cranford Township Board of Education<sup>21</sup>, alleged that the board was relinquishing much of its authority acquired by statute in transferring this power to individual members.

Trustee Roberts urged that all contracts not specifically approved by the membership as a whole be declared illegal, together with bills and other financial demands improperly approved. To be noted is that:

No contract shall be entered into by a board of education nor shall any bill or demand for money against said board be paid until same shall have been presented and passed on at a regularly called meeting of the board.<sup>22</sup>

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<sup>21</sup> Roberts v. Cranford Township Board of Education, New Jersey School Report, 1932 and 1933, p. 111.

<sup>22</sup> Public Laws of 1903, School Statutes, Chap. I, Sec. 89, p. 34.

Shortly after receiving the appellant's bill of particulars the respondent board took suitable legal action to correct any errors of acts of delegation of authority.

Appropriate to the instant case is American Heating and Ventilating v. West New York Board of Education<sup>23</sup> wherein the president and district clerk had been authorized to contract for a heating and ventilating system for one of its schools. No evidence was produced before the Court of Errors and Appeals that the contract in contest was considered and approved by the respondent board.

Concerning the same contract, the Court said:

A mere reading of . . . (Sec. 89) of the School Law . . . makes it clear that nothing that the president and clerk might do under this resolution would make a contract on behalf of the board 'until the same had been presented and passed on at a regularly called meeting of the board'.<sup>24</sup>

Justice Depue, in turning to a similar controversy, stated:

The power purported to be conferred upon the committee was to make the contract . . . We think that a contract such as was contemplated by this resolution should either have been negotiated by the city council or, if the negotiations were conducted by a committee, should have been submitted to the city council for discussion, consideration and adoption, and that the resolution delegating power to make such a contract was not warranted by the statute in question.<sup>25</sup>

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<sup>23</sup> American Heating and Ventilating v. West New York, 81 New Jersey Law 423.

<sup>24</sup> Foster v. Cape May, 31 Vroom 78.

<sup>25</sup> Foster v. Cape May, *supra*.

Board of education may not assign their authority to committees or individuals. Entirely in order would be for board officers to prepare agreements, but the membership is legally obliged to award such contracts. Financial obligations in terms of items and names of creditors should be presented to and passed upon by the board in proper meeting.

In response to the appellant's prayer, the Commissioner ruled that the board was legally bound to comply with the pertinent sections of the School Law:

The public functions (of the board) should be coordinate with other school officials, but should be under the supervision of the (secretary's) office so that (they) reflect the policies of the board in general and not that of individuals.<sup>26</sup>

Perusal of any of the cases previously cited denotes total ignorance of acknowledged responsibilities of the secretary by the boards of education involved. "The board must rest heavily on this officer . . ." Most district clerks have adequate knowledge of school law. They can and should advise boards against any actions which might result in litigation and consequent additional financial burden to the school district represented.

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<sup>26</sup> Secretaries-District Clerks' Duties, supra, p. 1.

"There is no more important function than safeguarding the public money and spending it intelligently"<sup>27</sup>. Orders involving expenditure of board funds should not be placed without the approval of the clerk. This official has final authority to sign all board of education orders.

Some boards of education are careless and wasteful in the upkeep of school property. They are also very neglectful in the purchase and distribution of the necessary supplies -- books, papers, maps, pens, pencils, occupation material for young children . . .<sup>28</sup>

Regulation of board spending is exercised by the secretary through his practice of "analysing all orders" to determine whether such requests are necessary and whether sufficient funds are available to honor approved orders. This procedure requires that there be a coordination with inventory control. A perpetual inventory involves adequate supervision of all supplies and equipment, with the net result reflecting a substantial saving of funds to the board.

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<sup>27</sup> Secretaries-District Clerks' Duties, supra, p. 6.

<sup>28</sup> Annual Report of State Board of Education with Report of Commissioner of Education, 1910, p. 51.

## 2. Requirements as Bookkeeper.

Expenditures involving public funds represent a far greater responsibility than that of handling private money. In view of the fact that the secretary is legally accountable for disbursement of public moneys, he is obliged to be adequately bonded for assurance of proper performance in office.

History of early educational effort in New Jersey records concern with the problem of development of a standard financial procedure for the state public school system. In his annual report of 1861, the state superintendent remarked:

Much difficulty has always been experienced in obtaining correct information in regard to the receipts and expenditure of money for school purposes. The sources whence the money came is, in many instances a mystery to the officer in whose hands it is placed for disbursement; and, when questioned as to what they receive as taxes, as school funds, as surplus revenue, tuition, etc., their answers are vague, and in many cases, grossly incorrect. Frequently, no distinction is made between the school fund and the surplus revenue; and the latter term is supposed by some officers to be synonymous with balance on hand. . . .<sup>29</sup>

There is every reason to believe that the condition described in 1857 by Franklyn Township superintendent James

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29 Annual Report of the State Superintendent of Public Instruction, 1861, p. 9.

Villet had not improved:

I find it very difficult to obtain full and accurate reports from all districts. Every school district should be supplied with a copy of the school laws, as many of the school officers and teachers have no means of knowing what they are required to perform.<sup>30</sup>

Sporadic adjustments were made periodically, but by 1913 the problems of education had pyramided so that it was deemed advisable to realign the state department of public instruction into a more business-like organization. This adjustment created three divisions: education, law, and business<sup>31</sup>.

Observing the statutes of 1911, the state board appointed an inspector of school accounts<sup>32</sup>. This official recognized the need for an adequate accounting program for the several school districts of the state by promulgating a "uniform and simple system of bookkeeping" in line with authority<sup>33</sup> given by the State Board of Education. Since the new project conformed to the School Law, the state board saw fit to adopt the system.

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<sup>30</sup> Ibid., 1857, p. 236.

<sup>31</sup> New Jersey School Report, 1912, p. 13.

<sup>32</sup> New Jersey School Law, 1911, Art. I, Sec. 3, VI, p. 8.

<sup>33</sup> New Jersey School Laws, 1911, supra, Art. I, Sec. 3, VIII, p. 9.

With the institution of a standard procedure for accounting and the service of state inspection came betterment in the general school program. Encouraged by its initial effort, the business division introduced, with the approval of the state board, an improved financial bookkeeping system to become effective in Article VI districts on July 1, 1924, and in Article VII districts a year later.

The system follows in its entirety the sound principles laid down by the National Association of Public School Business Officials, the National Education Association, the United States Department at Washington, and complies with our School Law. New Jersey has the honor of being the first State in the Union to put such a system into practical use in every school district of the State.<sup>34</sup>

Along with a procedure so designed that the board is in a position to know at any time its free balance in any appropriation not contracted for, a method providing a comprehensive budget plan was adopted.

Subsequent experience indicated a need for a simplification of accounting procedures for the smaller Article VII districts. Modification of the existing system was instituted for use by the affected townships in the 1929-30 school year. The simplified plan was adopted to compensate for the lack of training by many of the district clerks.

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<sup>34</sup> Annual Report of State Board of Education and Commissioner of Education, 1925, p. 16.

There is a dearth of cases relevant to the accounting responsibilities of the clerk. As a consequence, of necessity the controversy of Hazard v. Board of Education of Swedesboro must be constantly referred to in scrutinizing these duties of the secretary.

In filing a claim of lien against the respondent board of education, Hazard was apparently ignorant of the fact that:

. . . where a municipality constructing a public building was a school district, and the board having charge of the work was the board of education, the "financial officer" included both the district clerk, who was required to pay out, by orders drawn on the custodian of the school moneys, all school funds of the district; and the custodian, who is the officer intrusted with the finances of the district, and who receives and pays out its moneys.<sup>35</sup>

for the petitioner erroneously filed his lien with the treasurer of the borough of Swedesboro. Two notices were to be filed, one with the president of the board and the second with the district clerk as the financial officer of the board of education.

The municipal treasurer could not, under the conditions described, be considered as the financial officer of the respondent school district. This district was "an independent municipal organization, with its own officers". It was

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<sup>35</sup> Hazard v. Swedesboro Borough Board of Education, 75 Atlantic Reporter 237.

conceded that the treasurer did perform some duties that "inure to the benefit" of the school district. However, this activity did not qualify him as an officer of the district, especially since the school district covered more than one municipality.

Hall v. Jersey City<sup>36</sup>, cited in part, was suggested in an effort to establish who is the financial officer of a school district within the meaning of the act. In filing a notice with the city comptroller, the Court felt that the petitioner, Hall, had met the demands of the act by filing notice with the financial officer, since this official was "'par excellence', the financial officer of the city".

Examination of the School Law reveals no officer with duties comparable to those of the comptroller. In addition to the president and vice-president, and the district clerk, the statutes<sup>37</sup> require every school district to have a custodian of the school moneys. This person may be the treasurer of the city, or the board of education is free to designate the municipal collector as its custodian. Where the school district includes more than one municipality, the board may select any suitable person as this official.

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<sup>36</sup> Hall V. Jersey City, 62 New Jersey Equity 489.

<sup>37</sup> Laws of 1903, Special Session, Chap. I, Sec. 184, p. 71.

Board secretaries have functions to perform which are basically financial in nature. The school law succinctly points out that they:

. . . shall examine and audit all accounts and demands against the board . . .<sup>38</sup>

and similarly, the district clerks are obliged to compile accurate reports of all board expenses. They must:

. . . keep a correct and detailed account of all the expenditures of school moneys in the district.<sup>39</sup>

All bills must be presented before and approved by the board. Thereafter, orders in proper amounts are prepared by the secretary and signed by this officer and the president prior to presentation to the custodian of school moneys.

Both the secretary and district clerk report monthly to the board of education the amount for which warrants have been drawn, and the accounts against which the warrants have been drawn. The clerk presents the amount of orders for all contractual obligations since his previous report, and the accounts against which the contractual obligations are to be charged. Balances to the credit of all accounts are submitted by the secretary, while the clerk prepares the cash and free balance of each account.

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38 Ibid., Chap. I, Sec. 60, p. 22.

39 Ibid., Sec. 91, p. 35.

A quotation from the pertinent statute holds that:

. . . He (the secretary) shall, at the close of the fiscal year, make a full itemized report of the finances of the school district.<sup>40</sup>

and, in making reference to the district clerk, the law requires that this officer:

At each annual school meeting, present his record books and accounts for public inspection, and make a statement of the financial condition of the district . . .<sup>41</sup>

These officials annually file copies of the reports, referred to above, with the county superintendent of schools on or before the first day of August.

Provisions of the School Law reveal that the clerical officer, by virtue of his position, is intimately acquainted with existing conditions concerning the district, especially its financial stability. In returning to the Hazard controversy, it will be found that in "harmony with its (the statute) spirit and purpose", the Court held that in view of the provisions related above:

. . . either the custodian of school moneys or the district clerk may be properly regarded as the financial officer of a school district.<sup>42</sup>

As a special and distinct statutory requirement, a notice of the pendency of an action must be filed with the

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<sup>40</sup> Laws of 1903, supra, Chap. I, Sec. 63, p. 24.

<sup>41</sup> Ibid., Sec. 91, p. 35.

<sup>42</sup> Hazard v. Board of Education of Swedesboro, supra.

financial officer of the school district. This officer is charged with the task of maintaining a lien docket; therefore all claims of lien must not only be filed with the president of the board of education, but also with its financial officer.

Comparison of the fiscal duties for which the secretary and the district clerk are each answerable substantiates the conviction that these responsibilities are quite parallel in scope.

#### Summary.

Among the more important matters of concern to the board of education are its financial records. A prominent reflection of a school system's efficiency is to be observed in the manner in which it conducts its business functions.

The business activity of the school board is an essential segment of its being.

. . . Due consideration has not been given to the amount of money spent in relation to the value received. A school system should meet the same requirements that any business corporation must meet . . .<sup>43</sup>

In the main, a substantial amount of the business activity of the local board of education is conducted by the

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<sup>43</sup> Department of Public Instruction, Education Bulletin, Vol. VIII, No. 1, Trenton, N.J., Sept. 1921, p. 8.

clerical officer. It is this financial area of operation that makes for the importance of this office. Its functions are in response to board directives or in observance of state law. These obligations have become quite detailed and technical.

Equipping, operating, and maintaining school facilities, together with purchasing of all types of services and commodities represent examples of the secretary's fiscal activities. Need for this valuable functionary is further evidenced by the volume of business he handles daily. He audits claims against the board, places its insurance, and prepares the annual budget. Control of the payroll involves deductions for withholding tax, hospitalization, medical surgical fees, and accurate pension procedures. To these duties is added the responsibility for regular inventory of all of the physical properties of the board.

Funds available for expenditure by the board are also the responsibility of the secretary. In order to effect accurate accounting of the district's debts, this official, who makes most purchases, is expected to approve all expenditures.

School trustees turn to the clerical officer when preparing the annual budget and in ordering supplies. The board looks to him for competent counsel in such matters as

determining the local school tax or in selling district bonds.

Duties concerned with financing the school program suggest a tremendous responsibility. Complicated procedures related to finance demand an accurate system of fiscal accounting be adopted and maintained.

While the fourth chapter reviewed activities of the secretary relative to reports and notices, the present chapter deals with this officer's responsibilities concerned with his duties as purchasing agent and general accountant for the local board of education. The sixth and concluding chapter will discuss school elections and referendums together with the secretary's role in these activities.

## CHAPTER VI

### LEGAL BASIS RELATIVE TO RESPONSIBILITIES CONCERNED WITH SCHOOL ELECTIONS AND REFERENDUMS

Expansion of school curriculum is creating an ever-increasing demand for additional funds to meet the need for new and improved facilities in school plants, purchases, and general financial and legal services. Education budgets take more tax dollars than ever before. It is therefore imperative that this immense business enterprise be effectively directed.

The business functions of a school system are an integral part of its existence. They are not co-ordinate with the educational functions. Neither are they subordinate.<sup>1</sup>

It becomes the charged responsibility of the secretary to oversee the commercial, legal, and physical plant operation and maintenance programs of the school system. This clerk of the board of education is a most significant figure in the management of the public schools. His position and functions related to elections and referendums will be the subject of the concluding chapter of this investigation.

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<sup>1</sup> American Association of School Administrators, School Boards in Action, Twenty-Fourth Yearbook, 1946, Chap. VI, p. 143.

### 1. Relationship to School Elections.

As part of his election responsibilities, the district clerk must post sufficient notices about the school district at least ten days prior to the date of a planned school election, in addition to placing a paid advertisement in the local papers not later than one week preceding election day.

Alleged failure to comply properly with election procedure was related in Stewart et al. v. North Hanover Board of Education<sup>2</sup>. Among the allegations cited was the claim that the clerk had not given legal notice of the forthcoming election. In his response, the clerk declared he had personally posted four such announcements one day, and that he had sent two additional notices to a responsible individual with appropriate orders for display. Two days later the clerk posted a seventh notice and sent out an eighth one for posting, which he later saw properly displayed.

Although the claim that some eight notices had been correctly placed was not contradicted, it was admitted by the clerk that three of the announcements were defective in that two were up for viewing less than the required ten days, and a third notice was inadvertantly placed out of the county.

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<sup>2</sup> Stewart et al. v. North Hanover Board of Education, New Jersey School Report, 1921, p. 317.

While the required number was displayed within the county, one of this group of seven was before the public less than the number of days demanded by statute.

The irregularity described above was disregarded since the substantial vote recorded indicated that sufficient publicity had been given to the event. Lack of the required number of vote tellers<sup>3</sup>, plus other minor defects, was not serious enough for the Commissioner to declare the election results invalid.

Effort was made to set aside the expressed will of the people in Barnes v. Waldwick Borough Board of Education<sup>4</sup>. Barnes, the appellant, charged that the doors of the polling place were not opened early enough.

The polls for the election shall be opened at such time as the board may designate between the hours of two and nine P.M., and . . . remain open for at least two hours and as much longer as may be necessary . . .<sup>5</sup>

Voting was to start at eight P.M., and it was testified that the doors were opened shortly before the announced time. In response to the contention that the election was not properly advertised, it was satisfactorily pointed out that in addition

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<sup>3</sup> Laws of 1903, Second Special Session, Chap. 1, p. 5.

<sup>4</sup> Barnes v. Waldwick Borough Board of Education, New Jersey School Report, 1924, p. 259.

<sup>5</sup> Laws of 1903, ibid., Chap. 1, p. 5.

to the required posted notices an appropriate announcement had been printed in a circulating newspaper of the community.

Exception was taken to the form of the ballot used, the contention being that such designations as 'full term' must be properly printed on the ballot as 'three years'. By statute, either of the designations may be used, for they are considered synonymous terms<sup>6</sup>. The conclusion reached by the Commissioner, namely, that the election was valid, received affirmation from the State Board.

Election results of the local board of education were challenged in Albertson v. Glassboro Board of Education<sup>7</sup>, for the appellant held, among other allegations, that the secretary of the respondent board neglected to have the municipal poll books at the election, and, as a consequence, illegal votes were cast.

Counsel for both litigants agreed that at least one hundred votes cast by persons not listed as having voted in the last general election. In permitting these persons to vote, and not obtaining the proper polling lists, the board was not proceeding contrary to instructions from the state department of education concerning annual elections. The

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<sup>6</sup> Laws of 1903, supra, Chap. 1, Sec. 80, p. 30.

<sup>7</sup> Albertson v. Glassboro Board of Education, New Jersey School Report, supra, p. 261.

Attorney General construed the annual election law by stating that:

The Constitution requires that all citizens of the United States having the qualifications therein set forth shall be entitled to vote for officers to be elected. It is clear that the Legislature in enacting the proviso not only intended that those who shall have become of age subsequent to the last preceding general election and otherwise qualified should be entitled to vote, but all legal voters should also be entitled to do so.<sup>8</sup>

Following this interpretation by not prescribing qualifications for school elections differing from those created for election of public officials, the Commissioner decreed that the votes of those reputed not to have participated in the last general election were to be counted in arriving at the total vote.

The prayer of the appellant seeking a new election could no wise be granted, for had the election results been set aside it then would devolve upon the county superintendent to select the board members.

An appeal from the Commissioner's decision by Barnes brought forth a review of Section twelve, Chapter 211 of the Laws of 1922<sup>9</sup> which dealt with procedure concerning election of school board members. The respondent maintained that the

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<sup>8</sup> Opinion of the Attorney General, October 17, 1922, New Jersey School Report, 1924, p. 263.

<sup>9</sup> Laws of 1922, Chap. 211, Sec. 12, p. 364; see appendix 5, p. 234.

statute in question had been declared illegal by the Commissioner in conformity with the Attorney General's opinion which the former felt was binding upon him.

In recognizing the opinion cited, the Commissioner appeared to have overlooked Section ten of the School Law granting power for him to decide "all controversies and disputes that shall arise under the school laws". Note was made of this authority by the Supreme Court in the matter of Thompson v. Board of Education of New Jersey, wherein:

. . . the Legislature for the government of a particular branch of the public service has given authority to a special tribunal to hear and decide all controversies arising thereunder . . .

and, such decisions have given:

. . . all the properties of a judgment pronounced in a legally created court of limited jurisdiction acting within the bounds of its authority.<sup>10</sup>

Statute law restricts the power to pass on election controversies to the Commissioner, and on proper appeal, to the State Board. Thus, these officials are not bound by opinions held by the Attorney General. Cited elsewhere in this study are cases which hold that the Commissioner and Board may not pass on the constitutionality of acts of the

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<sup>10</sup> Thompson v. Board of Education of New Jersey, 57 New Jersey Law 628.

Legislature. Since the appropriate statute was neither complied with by the district clerk nor recognized by the Commissioner in arriving at his ruling, the Board saw fit to reverse the state school official's decision by declaring the Glassboro election null and void.

Results of the annual school election were challenged by the appellant, Greer, in the controversy of Greer v. Caldwell Borough Board of Education<sup>11</sup>.

Of considerable interest was Greer's contention that sample ballots bearing the district clerk's name were circulated prior to the election. These ballots were reputed to have strongly favored certain candidates. Existence of the sample ballot described was established at the Commissioner's hearing. It remained, however, for the petitioner to prove that the questioned ballots had been authorized by either the board of education or the secretary in pursuance of a general statutory power to act for the board.

Greer was unable to establish the approval of the sample ballots by the board or their distribution to the residents of the school district. In addition, there is no statutory authority available to the clerk as the board's representative to act in matters of the kind described. As stated in reviewing another problem, the power of public

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<sup>11</sup> Greer v. Caldwell Borough Board of Education, New Jersey School Report, 1924, p. 271.

officials to bind their municipal corporations is quite limited. Therefore, in the absence of express or statutory authority, the general public may not assume the acts of an agent to be those of the municipal corporation.

Since the appellant could not point to the board of education as being responsible for the ballots problem, he was unable to have the election declared invalid. Absence of poll books was not significant enough to change election results, nor was Greer able to state the number of people who had voted improperly. None of the petitioner's allegations were proved, and, as a consequence, the Commissioner sustained the local school board election.

Omission of the name of a school board aspirant from the official election ballot created the controversy of Lewis v. Weymouth Township Board of Education<sup>12</sup>, wherein the results of the annual school election were contested.

Despite Lewis' having filed an authentic petition for candidacy as a board member with the secretary, his name did not appear on the official printed election ballot.

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<sup>12</sup> Lewis v. Weymouth Township Board of Education, New Jersey School Report, 1926, p. 51.

Perusal of the appropriate statute, which stated:

The names of the candidates shall be printed upon the official ballot according to the alphabetical order of their surnames and the grouping of two or more candidates upon any ballot to be used for the election of members of said board of education is hereby prohibited.<sup>13</sup>

failed to disclose any point at which the petitioner had erred. Lewis' allegations were acknowledged by the district clerk, in a sworn statement to the Commissioner.

Terms of the statute quoted above are mandatory, and lack of observance of the subject in question could influence the outcome of an election. Since the secretary admitted that the appellant's name had not been included on the ballot despite his compliance with the requirements involved, it was ruled by the Commissioner that the election under discussion was invalid. Failure to elect members to board positions properly placed the responsibility to fill the existing vacancies upon the county superintendent, as provided for by the School Law, until the next annual election.

Again, in the case of Potter v. New Hanover Township Board of Education<sup>14</sup>, controversy arose because the clerk did not include the names of two candidates for election to

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<sup>13</sup> Public Laws of 1922, Chap. 211, Sec. 7, p. 366.

<sup>14</sup> Potter v. New Hanover Township Board of Education, New Jersey School Report, 1927, p. 127.

the office of school trustee on the annual school election ballot.

Subsequent to the filing of petitions for the appellant, and one, Price, the district clerk, in response to information given him to the effect that Messrs. Potter and Price were not qualified for board membership, consulted both the county clerk and the county superintendent of schools for advice on procedure in the matter.

The secretary's interpretation of the county officials' counsel let him to certain conclusions concerning the board aspirants' petitions. Potter was informed, by way of a message given to his wife by the clerk, that in order to have his name appear on the election ballot, he would be obliged to file an affidavit declaring his place of residence. Price was similarly advised, but neither man complied with the instructions; therefore their names did not appear on the official ballots.

A review of the laws applicable to the case in point reveals some interesting facts<sup>15</sup>. At the Commissioner's hearing it was decided that improper residence of a candidate would not invalidate an election, but omission of names from the ballot, under certain conditions, could.

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<sup>15</sup> School Law Compilation, 1925, supra, Sec. 118, para. 2, 3, and 8, p. 67-68; see appendix 5, p. 234.

Actions of the secretary were performed in good faith and without prejudice in turning back the questionable petitions and omitting the aspirants' names from the final ballot. In the judgment of this officer, he was complying with state statutes in returning defective petitions. The Commissioner ruled, however, that the clerk could not require an oath of the appellant, but rather simply a certification of the facts presented.

In the opinion of the state commissioner, it was the responsibility of the appellant to return his petition to the clerk together with a statement that such document contained no errors<sup>16</sup>. Under the conditions outlined, the clerk's duty would then be clear, that being to place the petitioner's name on the ballot. Any other course of action would have invalidated the election. Failure to return the challenged petition caused the appellant to lose any rights he had in the election dispute.

In contesting the legality of the Long Beach board election, the appellant, in the matter of Eckert v. Long Beach Township Board of Education<sup>17</sup>, questioned certain actions of the district secretary.

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16 Laws of 1901, supra, Chap. 1, p. 5.

17 Eckert v. Long Beach Township Board of Education, 70 New Jersey Law 762.

It was Eckert's contention that the budget amount passed upon was excessive, and that had the clerk properly notified the electorate, the budget discrepancy would have been corrected.

Voting for the annual budget occurred at the same time the annual school board election was conducted. It was conceded by the appellant that the district clerk had adequately met the statutory requirements concerned with the posting of appropriate notices announcing forthcoming elections. However, no evidence was produced to indicate that an election notice had been placed in a newspaper with circulation in the school district, a week prior to the election.

Substantial rather than exact compliance with statutes is sufficient where any notice deficiency is "cured" by a "full and fair" expression of the electorate<sup>18</sup>. Substantial compliance is not adequate where indications are that voters in numbers sufficient to affect the final result were uninformed of the event<sup>19</sup>.

Results of the election under dispute were affected by noncompliance with the School Law, for an insufficient number of people voted for the budget and elected board member, while

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<sup>18</sup> Brown v. Street Lighting District, 70 New Jersey Law 762.

<sup>19</sup> Cyclopedia of Law and Procedure, 1905, Vol. IV, No. 73, p. 324; see appendix 5, p. 236.

a considerable number of citizens indicated that they would have appeared to vote had they been made aware of the election. Under the conditions described, the Commissioner felt that the entire election outcome should be ignored, and ordered that the election be set aside.

Lack of the alphabetical arrangement of candidates' names together with other deficiencies in local school elections brought Smith v. Shrewsbury Township Board of Education<sup>20</sup> before the Commissioner.

Smith stated that despite instructions to the contrary from the county superintendent, candidates' names were not listed alphabetically. In her response, the clerk did not deny that the condition existed, but explained that it had always been her practice to list names on the ballot according to the order in which petitions were received. She vigorously denied the allegation that she had any prior knowledge of the three successful aspirants' plans to campaign as a unit.

Legal precedents cited in the case amply supported the Commissioner's final decision. In Purdy v. Roselle Park

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<sup>20</sup> Smith v. Shrewsbury Township Board of Education, New Jersey School Laws, Session of 1950, School Law Decisions, 1949-1950, p. 62.

the state commissioner had ruled that:

Irregularities in school elections should not be condoned, but irregularities which do not affect the results of the election should not be permitted to penalize innocent persons . . . The presumption is with the incumbent and it is necessary to uphold an election whenever possible.<sup>21</sup>

It was felt that the best interests of the community were served when the will of the people, as expressed at the polls, was recognized.

Appropriate to the discussion is a quotation from

Title 19, New Jersey Statutes Annotated:

It was never the legislative intent, nor is it the proper statutory construction, to defeat the vote of the citizen by an act for which he was neither directly nor indirectly responsible, nor for a negligent or wilful act of a municipal official, nor for the misconception of any legal duty or form required in the preparation of ballots issued by such an official for distribution to the voters.<sup>22</sup>

In a Supreme Court decisions, it was concluded that:

There are cases where the judges of elections have been guilty of acts which render them liable to indictment, and yet (in the absence of fraud by the party who claimed benefit from the result), the election will be held valid. If this be so, surely the will of the people is to be given effect, if only irregularly expressed. Negligence or mistake in the performance of duty by election officers will not be allowed to stand in the way so as to defeat the expression of the popular will.<sup>23</sup>

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<sup>21</sup> Purdy v. Roselle Park Borough Board of Education, New Jersey School Laws, Session of 1950, supra, p. 34.

<sup>22</sup> New Jersey Statutes Annotated, Title 19, p. 148-149.

<sup>23</sup> 119 New Jersey Law 322.

The appellant offered no evidence to support his contention that the newly-elected board members had requested the apparent grouping, or that the district clerk's action of arrangement of names was anything more than an error in judgment.

Despite the action of the Commissioner in setting aside an election in the controversy of Engle et al. v. Hainesport Township Board of Education<sup>24</sup> for lack of an alphabetical listing as required by law, in the instant case, it was decreed that the improper arrangement of names did not seriously affect the election results. In view of all that has been previously outlined, the petition was dismissed.

Most school trustees are voted into office rather than appointed as such. While these school elections are set at a time deliberately apart from general elections in order to avoid municipal political influence, the practice of annual voting permits voters to control board policies. The relative merits of this procedure are largely dependent upon the sound judgment of the community, for if interest in education is sincere and dynamic good candidates will be selected.

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<sup>24</sup> Engle et al. v. Hainesport Township Board of Education, School Law Decisions, 1938, p. 175.

The preceding section dealt in some detail with such matters as correct election procedures, proper form of ballot, and the like. Of particular interest was investigation of what constituted "substantial" and "exact" compliance with the law, and the degree of significance attached to "irregularities" in certain controversies.

## 2. Functions Concerned with School Referendums.

The state constitution adopted on June 29, 1844, was quite barren of the subject of education. A single section guaranteed the state school fund as a perpetual source of money for:

. . . the support of public free schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever.<sup>25</sup>

Education was still properly considered as a matter of local control.

However, public education is the responsibility of the state, for in 1875 the amended constitution made it mandatory that:

. . . the legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years.<sup>26</sup>

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25 Constitution of New Jersey, 1844, Art. IV, Sec. 7, para. 6.

26 Ibid., as amended 1875, Art. IV, Sec. 7, para. 6.

The duty of the state had been recognized early by State Superintendent Apgar:

The principle upon which we found our public school system . . . is that every child has a right to an education, and that it is the duty of the state to provide the means whereby he may obtain that right.<sup>27</sup>

The superintendent extended his philosophy in a later report, which is quoted, in part:

It being for the common good that all the citizens, so far as possible, shall be educated, it becomes a wise policy, on the part of the state, to place within the reach of all the opportunity of acquiring this education, and it is simply a matter of equity that the expenses incurred in maintaining the schools needed to impart this education, shall be borne by all alike.<sup>28</sup>

Responsibility for its share of the expense of education is discharged in some measure through the income from the state school fund. In delegating a portion of this task to local authority, the legislature declared that:

. . . each school district shall provide suitable school facilities and accommodations for all children residing in the district, and desiring to attend the public schools therein.<sup>29</sup>

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<sup>27</sup> Report of the State Superintendent of Public Instruction, 1868, p. 20.

<sup>28</sup> Idem, supra, p. 23.

<sup>29</sup> Public Laws of 1907, Chap. 123, Art. X, Sec. 126, p. 291.

Local school districts supply upwards of ninety per cent of the funds needed for education by direct taxation on its residents, mainly through a general property assessment.

This final section of investigation will treat referendums and the secretary's obligations in the matter of raising moneys at the local level for purposes of education.

Legality of a district school meeting was the subject of controversy in Huser v. North Bergen Township Board of Education.<sup>30</sup> An attempt was made to invalidate the vote on a bond issue in the district.

Among the protests raised was one declaring the polling area as being too small. The statutes required nothing more of the board of education than to designate a meeting place; preparation of a ballot in any form, except as a matter of local convenience, was not necessary.

It was the appellant's contention at the hearing of the case that at a previous meeting no action was taken to authorize the district clerk to include items relative to a bond issue in notices to the voters; therefore any action concerning bond issues was illegal.

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<sup>30</sup> Huser v. North Bergen Township Board of Education, New Jersey School Report, 1913, p. 241.

Again, the value of board minutes accurately kept was demonstrated.

The minutes and other records of the board are the history of its work. They should be accurate in content and orderly in arrangement. They are important and should be carefully preserved and protected but in such manner, that they may be easily consulted when needed.<sup>31</sup>

The secretary testified that the minutes included resolutions offered by him to verify discussion and action taken in the matter of bond issues. Testimony of the clerk was supported by several other board members.

The Commissioner found no infirmity in the bonding procedure, for the clerk was adjudged to have acted with the approval of the board in inserting bonding items in the challenged notices.

In contrast to the legal conditions existing at the time of the North Bergen litigation, the statutes now require the board of education to:

. . . provide at least one suitable polling place in a schoolhouse or such other convenient public place situated within the district.<sup>32</sup>

The legal ballot form is clearly described and illustrated in Title 18<sup>33</sup>.

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<sup>31</sup> American Association of School Administrators, 24th Yearbook, 1946, supra, Chap. IV, p. 80.

<sup>32</sup> Title 18, New Jersey, supra, 18:7-16, p. 167.

<sup>33</sup> Ibid., 18:7-30, 18:7-31, p. 173-174.

Dennis v. Westfield Board of Education<sup>34</sup> challenged the validity of the bonding authorization in the annual school election of the town. Appellant Dennis stated that at the election he was denied the right to speak on the propositions to be voted for. An additional infraction, he felt, was the official opening of the polls by persons other than the president or secretary of the board.

At the hearing it was disclosed that the pertinent statute provided as follows:

The board of education before they receive any vote shall make public proclamation by the president or the clerk of the opening of the election, and of their readiness to receive the vote of the voters. A judge of elections and two tellers shall be elected by those present and thereupon the election shall be opened and the balloting shall continue without recess in accordance with the instructions printed upon the ballots used at said election and in accordance with the provisions of this act until the hour of closing shall have arrived.<sup>35</sup>

Perusal of the school law section quoted reveals no provision for public discussion of issues at the school meeting as called for by the appellant. In defining the term "school district meeting" the Commissioner held that:

A school district meeting is an election and not a meeting in the ordinary meaning of that word.<sup>36</sup>

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<sup>34</sup> Dennis v. Westfield Board of Education, New Jersey School Report, 1924, p. 266.

<sup>35</sup> Public Laws of 1922, Chap. 211, Sec. 14, p. 365.

<sup>36</sup> Krug et al. v. Woodbridge Township Board of Education, School Law Compilation, 1918, p. 374.

The State Board expressed its opinion on the subject, in the appeal heard before it:

Where the Legislature has undertaken to specify the procedure to be followed at such a meeting we cannot assume that something which it has not specified is essential to its validity.<sup>37</sup>

It was felt by the Commissioner that procedure at such meetings should be confined to meeting organization and the casting of ballots as described by statute. In response to the criticism concerning procedure in opening of the polls, the Commissioner expressed the belief that there was "substantial compliance" with the law in that the chairman of elections had performed this function.

To allegations such as the neglect of the statutory requirements demanding distribution of ballots to voters as they enter the polling area, it was ruled that this regulation applied to bonding elections, for despite the presence of a bonding question as part of the voting, according to legal definition it was an annual school election. Other complaints in the proceedings were not sufficiently important to the research to describe.

In the Commissioner's opinion, the appellant had failed to prove any vital infirmities in the challenged meeting,

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<sup>37</sup> Ibid.

therefore the validity of the election was completely sustained. However, the State Board held otherwise in the controversy.

Since bonding was included in the election, it was felt that the 1922 law requiring the president or clerk to make the appropriate proclamation should have been complied with. Further, in bonding elections the statutes hold that:

At the entrance to the building or room in which the voting is to be done ballots shall be distributed as the voters enter the room, and sufficient accommodations shall be provided by the board of education to mark their ballots without undue publicity . . .<sup>38</sup>

Testimony disclosed that ballots were not distributed where voters entered the voting area, but at a point well within the polling section. This procedure was not considered as even "substantial compliance" with the law, in the opinion of the state body.

In light of the above results of the Board's hearing, the Commissioner's decision was reversed. Statutory requirements designating who shall have the legal authority in the matter of opening the polls have since been modified to read that:

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 meeting and of readiness to organize . . .<sup>39</sup>

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<sup>38</sup> Public Laws of 1921, Chap. 98, Sec. 1, p. 162.

<sup>39</sup> Title 18, New Jersey, supra, 18:7-35, p. 177.

Apparently the problem of legal proclamation was significant enough to bring about needed amendment of the pertinent statute and thereby relieved the clerk of the obligation.

Action was brought before the Commissioner by Mundy, the appellant, in the litigation titled Mundy v. Metuchen Borough Board of Education<sup>40</sup>, which questioned the validity of a special school bonding election.

Mundy charged that the district clerk disregarded the law in using the registry list of the general election of the same year as the special election, rather than that of the preceding one; that the clerk made reference to the list mentioned in the case of only one voter; and that the number of voters whose names did not appear on the list being used by the clerk was about equal to the majority authorizing the bonding procedure.

A reading of statutes related to the problem brought to light one providing that:

No action, suit or proceeding to contest the validity of the election ordering the issuing of bonds shall be instituted after the expiration of twenty days from the date of said election.<sup>41</sup>

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<sup>40</sup> Mundy v. Metuchen Borough Board of Education, New Jersey School Report, 1926, p. 56.

<sup>41</sup> School Law Compilation, 1925, supra, Art. VII, Sec. 149, p. 98.

In New Jersey all court actions begin with issuance and service of writs<sup>42</sup>. This practice colored the Commissioner's opinion, for he concluded that the respondent board should have been served, and within the time limit established by law. Lack of observance of statutory time restrictions would handicap the board and eventually defeat the will of the electorate. The board would be subject to potential litigation at any time, and of which it would have no notice. In 15 Cyclopedia it was stated that:

In an election contest the notice is the foundation of the proceeding, and in some jurisdictions, it is not only the foundation of the proceeding, but also serves the double purpose of writ and declaration, or of summons and complaint or petition, as the case may be.

No particular form of notice or citation is required in a contested election case, but notice in some form setting forth one or more of the statutory grounds of contest is jurisdictional and is absolutely essential to the validity of the proceedings.

The intention of the contested election laws is to furnish a summary remedy and to secure a speedy trial. Consequently, the statutes generally provide that anyone desiring to contest an election must file a notice and statement of the grounds of contest within a certain number of days after the election, or the official declaration of the result.

These statutes are mandatory and strict compliance with them is jurisdictional. The notice and statement required to be served by the contestant on the contestee constitutes the predicate upon which the power of the court is set in motion, and unless served within the time required by the statute, the court has no jurisdiction to hear and determine the contest.<sup>43</sup>

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<sup>42</sup> Delaware River Quarry v. Board of Freeholders of Mercer County, 88 New Jersey Equity 506.

<sup>43</sup> Cyclopedia of Law and Procedure, 1905, Vol. XV, p. 398.

Under existing law the Commissioner was powerless to exceed his authority to extend the expired time in order to honor the appeal in question.

It was conceded that the secretary had neglected to use the proper registry lists required in annual school elections<sup>44</sup> as well as for all other school elections<sup>45</sup>. Failure to observe the legal demands concerned with registry lists in the instant case was insufficient grounds for voiding the election, in the Commissioner's judgment.

Neither election irregularities that do not seriously affect the result nor illegal votes, unless substantial in number would set aside the expressed will of the voters<sup>46</sup>. Again turning to 15 Cyclopaedia, it is held that:

Where an election appears to have been fairly and honestly conducted, it will not be invalidated by mere irregularities which are not shown to have affected the result, for in the absence of fraud the courts are disposed to give effect to elections when possible. And it has been held that gross irregularities when not amounting to fraud do not vitiate an election.<sup>47</sup>

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<sup>44</sup> School Law Compilation, 1925, supra, Sec. 118, para. 12.

<sup>45</sup> Public Laws of 1925, Chap. 94, Sec. 1, p. 298.

<sup>46</sup> Lehlback v. Haynes, 54 New Jersey Law 77.

<sup>47</sup> Cyclopaedia, Vol. XV, supra, p. 372.

Mundy, the appellant, was unable to prove that the irregularities he had brought forth had been responsible for any persons' voting whose names did not appear on the 1924 listing. This situation, together with the time elapsed beyond the legal date for filing a protest with the respondent board, caused the Commissioner to dismiss the appeal petition discussed.

The State Board, in its deliberation, considered only the condition of the expiration of twenty days, and for that reason alone, affirmed the Commissioner's decision.

A meeting of the legal voters was alleged to contain fatal irregularities in the matter of Hartpence v. Kingwood Township Board of Education<sup>48</sup>. It was also revealed that the district clerk had neglected to notify the assessor and collector of the action taken at the meeting under discussion.

Hartpence, the appellant in the controversy being considered, claimed the challenged meeting was not legally called, since the notice announcing the session was prepared by a committee rather than by the board acting in regular convention. The appellant further declared that the clerk did not personally post the announcements, and that it was questionable whether or not the notices were displayed for the required period of time.

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<sup>48</sup> Hartpence v. Kingwood Township Board of Education, New Jersey School Report, 1912, p. 126; School Law Decisions, 1928, p. 110.

In his response, the secretary testified that at the direction of the board he prepared and caused notices to be posted on some eight schools in the district concerning the questioned meeting session. Individual board members had seen fit to post these notices at the schools nearest their own homes. Evidence indicated that all announcements had been on display for a sufficient period of time.

Failure of the district secretary to post the notices personally did not affect the meeting, for performance of this function by board members constituted "substantial compliance". To the claim that the form of ballot was illegal, it was determined that existing law did not specify a required form for ballots, only that they express the intent of the voter.

On the point that there was no legal authority given the board of education to use money voted for purchase of a certain plot of land and school construction at an earlier session for property purchases approved at a later meeting, the appellant was held to be correct.

. . . The statute does not say that the moneys received by the treasurer for school purchases shall be paid out for such uses as shall be authorized by the trustees; but they shall be paid out on the written order of the trustees, which order shall state the purchase for which it is given. The object of requiring

the order to state the purpose is not to enable the trustees to divert the fund to an object different from that for which it is raised but, on the contrary, to prevent them from doing so.<sup>49</sup>

Action of the type suggested above was completely out of order since funds appropriated for a specific need may not be applied to another purpose without the approval of the electorate. Until such time as the legal voters authorized a proper transfer of moneys to include purchase of the new tract, the funds appropriated previously could not be used.

At its hearing, the State Board concurred with the Commissioner's decision as previously outlined.

#### Summary.

Of primary consideration to any board of education is that it functions within the limits of delegated authority. In the main, these powers are derived from the state board, for education is the responsibility of the state.

Annual school meetings permit the electorate to exercise effective control over school policy. These elections include several activities, namely, vote of the annual school budget, raising of funds for current expenses

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<sup>49</sup> Lee v. School Trustees, 36 New Jersey Law (9 Stewart) 581.

by means of a special tax, and the voting of bond issues for capital expenditures. Within defined limits, a vote may be taken to rescind action of a previous meeting appropriating funds:

There is nothing in the law which authorizes or prohibits calling a meeting for the purpose of rescinding action previously taken. The right exists, therefore, under the general power to call a meeting when the interests of the schools require it.<sup>50</sup>

Special meetings of the legal voters are called only by the board regularly convened at such time as it determines.

The Board of Education shall have the power . . . to call a special meeting of the legal voters of the district at any time when in its judgment the interests of the school require it, or whenever fifty of such legal voters shall request it by petition so to do. In the notices of any special meeting, called upon petition as aforesaid, shall be inserted the purposes named in said petition so far as the same are not in conflict with the provisions of this act. No business shall be transacted at any special meeting except as shall have been set forth in the notices by which said meeting was called.<sup>51</sup>

School law decisions have established that boards enjoy power to call special meetings of the voters, but may not be compelled to do so if they feel such actions would not serve the best interest of the school district<sup>52</sup>.

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<sup>50</sup> Stoltz v. Warren Township Board of Education, New Jersey School Report, 1912, p. 121.

<sup>51</sup> School Laws of 1911, Sec. 36, para. 10.

<sup>52</sup> Wills v. Upper Freehold Township Board of Education, School Law Decisions, 1928, p. 111.

Legislation concerning the schools has become quite complicated. It follows then that the board of education must rely, to a considerable degree, upon the knowledge and talents of its district secretary who is expected to be well versed in the interpretation of the requirements of the law related to local public education. Lack of this essential legal "know-how" governing its financial affairs exposes the board to delaying litigation brought about by aggravated taxpayers. These actions ultimately have adverse effects upon the local school system.

Just as in other areas of this study, not all of the functions of the district secretary concerned with the annual school meeting were discussed. It was determined that more would be accomplished by selecting for review those activities about which litigation has arisen and about which the Commissioner felt moved to render decisions when such controversies were placed before him for adjudication, together with those matters appealed to the State Board and the Courts for opinion.

The danger of invalidating the vote on bond issues becomes quite apparent, once considered. As a matter of sound business, it is imperative that a time limit be set concerning appeal on bond matters.

If a board has any expectation of completing its annual election proceedings, discussion of issues can not be permitted at the annual meeting. Subversive forces could effectively defeat the aims and purposes of the education body if the statute were not specific on this point.

Finally, the legislature, perhaps anticipating the possibility, made certain that money voted for specific purposes would be used exactly in the manner planned for, and in no other way.

Responsibilities of the secretary for properly advising the board in its financial activities are quite apparent. In large measure, the efficiency of the board is due to the capable guidance and the effectiveness of this district official in the performance of his various financial functions for the local school district.

## SUMMARY AND CONCLUSIONS

The imposing task of providing for free public education in New Jersey has spanned several centuries. Under the theory that it held "those powers not delegated to the United States Constitution" the state incorporated a mandatory section concerned with education in its amended constitution<sup>1</sup> of 1875. This constitutional mandate recognized the legislature as the responsible agency to implement the accepted theory that education is a matter of state rather than of local concern, that it is the state that should establish, maintain, and support a "thorough and efficient" system of free public education for all of its children between the ages of five and eighteen.

Education within the state is subject to three controls: the state board of education and commissioner, the county superintendent, and the local school district. The purpose of this thesis has been to review the legal basis of the duties of the office of secretary of the local board as affected by these controls.

A church clerk who was licensed by the colonial governor in 1664 was a teacher in what is believed to be

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<sup>1</sup> State Constitution of New Jersey, amended 1875, Art. IV, Sec. VII, No. 6.

the first school established in New Jersey. There were no boards of education or other persons especially designated to employ these 'drillmasters'. Later, the law provided for three "town's men" to assume the responsibility of hiring school masters and acquiring schoolhouse accommodations.

Puritan educational tradition of the New Haven Colony made a most significant impression upon the derivation of the school system of the state. Perhaps the most important of these contributions were the town meeting and the common school to serve the community. This New England township system of education was controlled by the town meeting which supervised all essential school activities.

Conditions in town management became such that appropriate legislation was soon provided for the administration of schools at the township level by three or more persons selected annually by the town meeting. Duties of this committee were largely taken over by the town superintendent some years later. Each of the school districts existing within the township was represented by a board of three trustees who were elected by the taxable inhabitants of the district represented.

It was inevitable that municipal functions expanded to the point that, progressively, more authority was of necessity delegated to the school committee in the management

of school activity. Since most school problems either originated or were ultimately resolved at the town meeting, the municipal clerk assumed, and rightly so, that he was held responsible for including school committee actions in recording the minutes of the town meeting. Inadvertently, the town clerk prepared the groundwork for the advent of the school clerk who was soon to follow.

Problems of education paralleled those being experienced by the growing communities for many of the same reasons. Primarily a constant increase in population effected the development of the schools. Growing pains forced the town meeting to give over a larger share of its control of the schools to the school committee. This body usually consisted of a heterogeneous group of persons in terms of background, interests and motives concerned with education; therefore the membership would often informally delegate to one of its number the duties and responsibilities of the committee as a whole.

The second and major phase of this writing is divided into several divisions dealing with the legal basis of the secretary's appearance, development, and various functions and responsibilities: the creation and expansion of the office; his functions as secretary and legal representative of the board; responsibilities relative to the preparation

and presentation of the board's required reports and notices; his responsibilities concerned with business transactions and accounting; and finally, the responsibilities dealing with school elections and referendums.

Much needed revision of the education "Act" was accomplished in 1867 with the reorganization of the state school system. The state superintendent's foresight was largely responsible for the official recognition given to the district secretary's office at this time. It had been obvious for a considerable period that school records were very meager. There was little appreciation of the need for legal proceedings and proper meetings, and of accurate records of local school activities.

Of the decisions reviewed relating to the limits of the clerk's sphere of authority, the Piscataway decision appeared to be the most significant. Therein it was determined that the secretary's office had permanent duties covered by statute, that his powers were derived through the statutes rather than from the local board of education. The board could not legally expand this officer's functions beyond those covered by the School Law.

Many of those familiar with the needs of the office of district secretary have repeatedly urged that appropriate requirements be set by statute in order for persons to become

eligible for employment as such. Other than qualifying as a board member, if chosen from its membership, the clerk of the board needed to meet no specific conditions to secure appointment.

Review of cases dealing with the term of office of the board secretary reveals that he too is subject to dismissal under proper legal conditions. However, it has been clearly established that the clerk can enjoy tenure rights upon successful completion of three successive years of full time service to the board of education.

It would be difficult to measure the contributions which an efficient secretary makes to the total school program. His is the responsibility for establishing a desirable routine in the keeping of accurate and complete minutes of all board activities and accomplishments. Since all school problems eventually come to him, he must always be prepared to place before the board, without loss of precious time and effort, all evidence of past board actions dealing with any subject. This board scribe must be possessed of excellent judgment in the matter of compiling an accurate and concise account of the board's history.

The board secretary assumes an extremely important position in his role as legal agent. Although boards of education, under the statutes, are noncontinuous bodies,

their efforts are continuous. It is the district secretary who bridges the gap created by changing administrations to effect the board's continuity of action by enforcing its rules and mandates.

Existence of the board of school estimate perturbed some people to the extent that this body became the subject of periodic controversy. The Supreme Court was eventually called upon to establish constitutionality of the act which created the estimate body. In addition to his duties as secretary of the board of education, this officer also serves as secretary of the board of school estimate, but without additional compensation.

An instructional publication<sup>2</sup> of the state school business officials expressed concern with an alleged tendency among its membership to permit persons other than themselves to release board information, to give certification of the authenticity of these board records, and even to go so far as to affix signatures to documents which were clearly matters for the secretary's attention. Attempts to assume the board's financial responsibilities have usually been effectively thwarted by reference to the statutes or through appropriate legal action.

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<sup>2</sup> Secretaries-District Clerks' Duties, supra, p. 2.

Chaos could be the result, while the progress made in education would be virtually nil, should the School Law not require that the clerk, in his capacity as secretary to all standing and subcommittees of the board, send written notice to all concerned of meetings of the board of education. This officer is expected to take minutes of these sessions for future reference by the board.

Judgment of the composers of the requirement that purchase orders be approved by the secretary was simply in conformance with sound business procedure. Procurement of many nonessentials or items in full supply, together with placement of orders for which no funds existed, can occur without this officer's performing this control activity. Purchases are normally made from the lowest bidder, who may not be a member of the board of education, for as such he would have a direct interest in the "claim or contract", in line with budget allotments and maintenance of proper standards. Purchasing procedures must be analysed periodically to achieve greater benefit for the local school district.

To a significant degree, the type of educational program offered by the schools is influenced by the financial support extended. It follows, then, that while the business functions of education need not be overemphasized, the importance of these operations must not be underestimated.

The value of fidelity bonds for assurance of proper performance of these procedures by the responsible officer are immeasurable.

Recognition at the state level of the need for a "uniform and simple system of bookkeeping" brought about the appointment of an inspector of accounts by the state board of education. This official apparently was aware that sound general and accurate cost accounting, together with intelligent budgets and financial reports, were basic to correct business procedure. The statutes further provided a check upon the handling of public funds for education by requiring that the district secretary "audit all accounts and demands against the board". Assurance must be available that the books are accurate and all expenditures legal by verification and analysis of all entries.

In conclusion, it can be said that the history of the development of the functions of the secretarial office of the local board of education had its origin long before its appearance in 1867 at which time creation of the office became mandatory. Its duties and importance have expanded to the degree that it is inevitable that recognition must soon be given to the recommendation that applicants for appointment to this office be certified in terms of educational background and fitness as established by the State

Board and Commissioner of Education. This long-needed action, undoubtedly, will be its next development of historical significance.

Duties of the clerical officer of the board of education are myriad. Many of these functions have been tested for their legality before the local board, the state commissioner and state board of education, and the Courts. Those found in contravention with the statutes are appropriately revised to conform to state requirements, for education at the local level derives its powers from authority delegated to it by the state board of education. The secretary is clearly more than simply a clerical employee whose duties are created and established by the local board of education. His functions and authority are derived from the statutes and the State Board of Education.

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Valuable source of legal and historical reference. Provided considerable background reference for the study at hand. In some instances, this was the only accessible material on early educational conditions.

APPENDIX I

NEW JERSEY STATUTES ANNOTATED, 1940, TITLE 18,  
EDUCATION (PERMANENT EDITION): COMBINED LIST  
OF DUTIES OF SECRETARY AND DISTRICT CLERK  
OF BOARD OF EDUCATION

APPENDIX 1

NEW JERSEY STATUTES ANNOTATED, 1940<sup>1</sup>, TITLE 18, EDUCATION (PERMANENT EDITION): COMBINED LIST OF DUTIES OF SECRETARY AND DISTRICT CLERK OF BOARD OF EDUCATION. IN GENERAL, THE ORDER CATEGORY WAS CONSIDERED IN STUDY.

<u>Year</u>	<u>Page</u>	<u>Title: Chap. Sec.</u>	<u>Description</u>
<u>Chapter II</u>			
	122	18:6-30	Appointment; compensation; removal; bond.
1955	90	18:7-68	Appointment; compensation; term; removal; bond.
"	90	18:7-69	Powers and duties.
"	188	18:7-61	Special meeting of legal voters.
"	137	18:13-7	Contracts of employment.
"	64	18:6-31	Appointment; removal of clerks in office.
"	59	18:6-8	Qualifications.
"	76	18:7-11	"
1954	61	18:6-27	Tenure and dismissal.
	185	18:7-56	" " "
1955	42	18:5-51.3	Tenure in office.
<u>Chapter III</u>			
	123	18:6-32	Recorder and custodian of securities, books, and papers.
1955	90	18:7-69	Duties (general).
"	44	18:5-61	Failure to make report; penalty.
	81	18:5-67	Removal of janitors for cause; procedure.
	107	18:6-9	Oath of board members.
1955	76	18:7-12	" " " "
	64	18:6-34	Verification of demands.

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1 1940 Compilation unless otherwise indicated.

<u>Year</u>	<u>Page</u>	<u>Title: Chap. Sec.</u>	<u>Description</u>
<u>Chapter III (con'd)</u>			
1955	89	18:7-67	Affidavits as to bills presented.
"	43	18:5-54	Money paid out on warrant.
	152	18:6-78	Disbursements by warrants.
	154	18:6-82	Approval or disapproval of warrants by auditor and board of education.
1955	90	18:7-69(b)	Disbursements by warrants.
"	137	18:13-7	Contracts of employment.
"	138	18:13-9.1	Administer oaths.
"	147	18:13-17	Written charges filed.
"	190	18:13-113	School Registers.
"	"	18:13-118	Annual convention; attendance; salaries.
	395	18:14-44	Filing of charges.
	399	18:14-53	Vaccination expense.
1955	90	18:7-69(d)	Duties.
"	41	18:5-51	Complaints certified.
	105	18:6-6	Board vacancies.
	106	18:6-7	" "
	182	18:7-51	" "
1955	61	18:6-23	Sue and be sued.
	89	18:7-59	" " " " ; employment of counsel.

Chapter IV

	129	18:6-48	Secretary of board of estimate.
1955	105	18:7-113	Annual budget estimate hearing.
"	66	18:6-50	Determination by board of estimate of amount necessary.
"	105	18:7-114	Certificate of amount fixed.
	136	18:6-56	Determination of amount needed for emergency.
	141	18:6-60	Board of estimate to fix amount.

<u>Year</u>	<u>Page</u>	<u>Title: Chap. Sec.</u>	<u>Description</u>
<u>Chapter IV (con'd)</u>			
	239	54:4-45 <sup>2</sup>	Certifications to county tax board.
	148	40:184-25 <sup>3</sup>	Execution of transfer deeds.
1955	61	18:6-22	Annual report.
	188	18:7-61	Special meeting of legal voters.
	421	18:14-101	Military referendum vote.
1955	149	18:13-18	Subpoenas.
	29	18:4-9	Reports to county superintendent.
1955	43	18:5-55	Certification of payroll.
"	59	18:6-12	Organization of board of education.
"	"	18:6-13	Organization of board of education.
"	61	18:6-23	Sue and be sued.
"	89	18:7-59	" " " "; employment of counsel.
	105	18:6-6	Board vacancies.
	106	18:6-7	" "
	182	18:7-51	" "

Chapter V

1955	59	18:6-8	Qualifications.
	214	18:7-87	Record of proceedings with bonds.
1955	61	18:6-22	Annual report.
"	70	18:6-77	Claims authorized, itemized, and amount appropriated.
	193	18:7-66	Itemized bills.

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<sup>2</sup> New Jersey Statutes Annotated, 1940, Title 54, Taxation, 54:4-45, p. 239.

<sup>3</sup> Ibid., Title 40, Municipalities and Counties, 40:184-25, p. 148.

<u>Year</u>	<u>Page</u>	<u>Title: Chap. Sec.</u>	<u>Description</u>
<u>Chapter V (con'd)</u>			
1955	90	18:7-69	Money paid out on warrant.
	153	18:6-80	Warrants and statements forwarded to auditor.
1955	161	18:13-94	Making of deductions from compensation.
"	45	18:5-65.3	Summary of audit.
"	190	18:13-114	Annual report to county or city superintendent.
	123	18:6-33	Collection of moneys; monthly report of receipts.
1955	64	18:6-34	Audit and preservation of accounts, vouchers and contracts.
	123	18:6-35	Monthly and yearly reports to board of education.
1955	196	18:14-7	Tuition.
	468	18:15-100	Disbursements on signature of president and secretary.
1955	65	18:6-49	Annual estimate of board of education.
"	104	18:7-12	Annual budget estimate.
"	67	18:6-55	Emergency estimate by board of education.
"	139	18:6-59	Estimate of needs by board of education.

Chapter VI

1955	21	18:5-1.7	Special election to separate school districts.
"	24	18:5-17.1	Election on consolidation.
"	25	18:5-17.2	Certificate of results of election.
	89	18:5-83	Election results lost.
1955	74	18:7-5	Reduction in board membership.
"	75	18:7-9	Increase in board membership.

<u>Year</u>	<u>Page</u>	<u>Title: Chap. Sec.</u>	<u>Description</u>
<u>Chapter VI (con'd)</u>			
1955	76	18:7-15	Notice of election.
"	168	18:7-17	Additional polling places.
1955	77	18:7-20	Equipping " " .
"	"	18:7-22	Nominating petition and accompanying certificate.
	170	18:7-24	Verification of nominating petition.
1955	77	18:7-25	Time to file nominating petition.
"	"	18:7-26	Defective nominating petition.
"	78	18:7-28	Clerk to obtain registry lists.
"	79	18:7-29.3	Drawing of names for position on ballot.
"	"	18:7-30	Description of ballot (clerk's signature).
"	82	18:7-35	Certification of challengers.
"	84	18:7-44	Election results forwarded.
"	85	18:7-45	Announcing results and forwarding ballots, etc.
"	"	18:7-47.2	Notice that voting machines will be used; delivery.
"	69	18:6-72.1	Provisions applicable to bonds.
	214	18:7-87	Record of proceedings with bonds.
1955	97	18:7-90	Issuance of bonds.
	221	18:7-96	Tax statement of bond interest.
	222	18:7-97	Paid bond cancellation.
	149	18:6-72	Tax levies.
1955	101	18:7-99	Issuance of refunding bonds.
	220	18:7-95	Bonds as liens on property.
1955	101	18:7-100	Notes or temporary bonds.
	224	18:7-103	Taxation to pay interest.
	"	18:7-104	Temporary loan bonds or permanent bonds.
1955	102	18:7-106	Local tax reduced by amount transferred.
"	103	18:7-106.1	Local tax reduced by amount transferred.

Title of Secretary as defined by law.

Source: New Jersey School Laws, School Law Decisions, 1952-1953, p. 13. Chapter 255, Laws of 1953.

An Act changing the title of district clerks of boards of education to that of secretary, and amending section 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 title of every district clerk in office on July 1, 1953, 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.

Article VI and VII School Districts.

Article VI districts: usually found in cities. Board members appointed by the mayor.

Article VII districts: usually found in towns, townships, and boroughs. Board members elected by the voters.

**APPENDIX 2**

**OPINION OF THE COURT**

## APPENDIX 2

OPINION OF THE SUPREME COURT GIVEN BY JUSTICE PARKER IN THE CASE OF Kozusko v. Garretson, 102 New Jersey Law 510, (Footnote 24, p. 30).

In this state it has been held that the vote of a member present who declined to vote at all should be counted in the affirmative. Mount v. Parker, 32 New Jersey Law 341. But that, in our view, is not this case. If there was one point on which the three non-voters expressed themselves, it was that they did not wish to be counted as in favor of the resolution. Under such circumstances the correct rule is laid down by the Court of Chancery in the same year (1867) in Abels v. McKeen, 18 New Jersey Equity Reports 462 (p. 465), where Chancellor Zabriskie said:

At such a meeting, if a vote is taken, and no one dissents, all who do not vote are considered as voting with the majority for the motion. And a vote of three ayes at a meeting of twenty, where no one dissents, is considered as the affirmative vote of all present.

But the obvious corollary is that when a member does dissent, his vote cannot properly be counted in the affirmative. The common sense of the matter seems to be that it should be recorded in the negative.

We conclude that in law and fact there were only three affirmative votes of six present in favor of the resolution, and that it was not legally adopted.

OPINION OF THE COURT OF ERRORS AND APPEALS OF NEW JERSEY GIVEN BY CHIEF JUSTICE BROGAN IN THE CASE OF State of New Jersey v. Goodfellow, 111 New Jersey Law 604, at page 606 and 607 (Footnote 25, p. 30).

It should be noted that counsel stipulated in open court below that the three objecting councilmen were in the meeting room at the time of the appointment of the respondent and expressed their dissent before quitting the council table. Their refusal or failure to vote justified recording them in the negative. Kozusko v. Garretson, 102 New Jersey Law 508.

AMENDMENT TO School Act of 1903, Section 276, School Law, Public Law of 1915, Chapter 302, (Footnote 34, p. 35).

. . . whenever any school district shall contain more than one municipality the Board of Education may appoint a suitable person as custodian of school moneys of said district, and may fix his salary and term of office. Such custodian shall, when requested to do so at any time by the board, render to said board a true and full account of all moneys in his possession, as such custodian, up to such time, and of all payments made by him out of said moneys and for what purpose, and shall also, when required by resolution of said board, deposit in any bank or banking institution designated by said board, all moneys then in his hands or thereafter collected or received by him as such custodian; he shall give bonds for the faithful discharge of his duties in such amount and with such sureties as said board shall direct, but such bonds shall be for a sum not less than the amount apportioned to said district by the County Superintendent of Schools; until the appointment of a custodian of school moneys by the board of education, the collector or other person residing in the municipality situate in such school district having the largest amount of taxable property shall be custodian of the school moneys of such district.

**APPENDIX 3**

**OPINION OF CERTAIN AUTHORITIES CONCERNING  
THE MATTER OF POWERS AND CONTRACTS**

### APPENDIX 3

#### OPINION OF CERTAIN AUTHORITIES CONCERNING THE MATTER OF POWERS AND CONTRACTS

Slattery v. School et al., 86 Northwestern Reporter  
860 (Footnote 39, p. 38).

All persons dealing with school officers are presumed to have full knowledge of the limitations of the powers of such officers to bind their corporations and the limit of the power of a school board must be recognized by those contracting with them.

In the case of Wheeler v. Alton, 56 New Hampshire 540, it was held that (Footnote 40, p. 38).

A school trustee in the discharge of his duties is a special agent whose powers are limited, and it is incumbent upon those who undertake to deal with him in that capacity, to ascertain whether he is acting within his authority.

Woorhees stated, at page 127 of Law of Public Schools, that (Footnote 41, p. 38).

. . . an oral modification of written contracts of the school board by the president of the board is of no effect. Nor has the president of the board any special right to modify an existing contract on behalf of the board . . . A provision inserted by the president of the board in a

written contract without the authority of the board is not binding upon the board or district.

In his work on Contracts, Anson, in Chapter XV, paragraph 382, page 459, held that (Thesis, p. 38).

A contract may be broken in any one of three ways: A party to a contract (1) may renounce his duties under it, (2) may by his own act make it impossible that he should fulfill them, (3) may totally or partially fail to perform what he has promised. . . The last, of course can only take place at or during the time for the performance of the contract.

In Section 394 of the same source, Anson remarked that:

When default is made on one side, the courts must determine whether or not that default amounts to a renunciation of the contract by the party making it, or so frustrates the object of the contract as to discharge the party injured from his duties and liabilities.

**APPENDIX 4**

**STATE BOARD OF EDUCATION, NEW JERSEY**

APPENDIX 4

STATE BOARD OF EDUCATION, NEW JERSEY

Rules and Regulations, 1943, Rule 133 (Footnote 50,  
p. 44).

It shall be the duty of a supervising principal to visit the schools under his control, to supervise instruction in the classrooms of such schools and to consult with and advise the principals and teachers in procedures, methods, and materials of instruction so that the best results may be obtained by the pupils. He shall be responsible for the discipline and conduct of the schools. He shall also advise concerning child accounting, behavior and personality problems and needs, educational and other adjustments to individual abilities, problems of guidance, programming, class and school organization and management. He shall exercise such other functions of educational and administrative leadership, supervision, and guidance as may be necessary for producing best possible educational conditions and outcomes.

LEGALITY OF ENLARGEMENT OF DUTIES OF DISTRICT CLERK, Gaskill et al. v. Piscataway Township Board of Education, N. J. S. R., 1927, p. 82, (Footnote 59, p. 48).

It is therefore the opinion of the Commissioner of Education that the Piscataway Township Board of Education cannot legally enlarge the statutory powers of the district clerk so as to include any function such as the supervising of the business of the schools and of buildings, grounds, equipment, janitors, etc., with the further result of enabling a Board member to engage in and be compensated for duties expressly denied him by statute. There would appear,

however, to be nothing illegal in a district clerk's performing such duties as are logically connected with his statutory functions, such for instance as the distribution and supervision of school supplies, which duties are implied in his express power of purchasing school supplies.

**APPENDIX 5**  
**ELECTION REQUIREMENTS FOR SCHOOL BOARD**

## APPENDIX 5

### ELECTION REQUIREMENTS AND PROCEDURES FOR SCHOOL BOARD VOTING PRIVILEGES.

Laws of 1922, Chapter 211, Section 12, p. 364, (Footnote 9, p. 180).

The said clerk of the board of education shall at least seven days before the holding of such election obtain from the person having in charge the poll books for the municipality or municipalities, or election districts, comprised within said school district, and no person shall be permitted to vote at such school election unless his or her name appears on said books as having voted at the preceding general election; provided, however, that any person who shall have become of age since the preceding general election, and shall be otherwise possessed of all the qualifications which would entitle such person to vote in any general election, shall, upon application to the clerk of the board of education at least two days prior to the holding of such school election be entitled to vote in said school election.

Should any person so mentioned in this proviso make application, as aforesaid, it shall be the duty of the clerk of the board of education to compile separately a registry of such applicants and the list so compiled, as aforesaid, shall have the same force and effect for the purposes of this act as the poll books, and a person's name so appearing thereon shall be entitled to vote at such school election as if his or her name had appeared on the poll books of the preceding general election.

### ELECTION REQUIREMENTS FOR SCHOOL BOARD MEMBERSHIP CANDIDACY.

School Law Edition of 1925, Section 118, paragraphs 2, 3, and 8, p. 67-68, (Footnote 15, p. 185).

(2) Candidates to be voted for at the regular school election shall hereafter be nominated directly by petition, as hereinafter provided.

(3) Said petition nominating a candidate for member of the board of education shall be addressed to the clerk of the board of education and shall set forth that the signers thereof are qualified voters of the school district in which they reside and for which they desire to nominate the said candidate; that they endorse the candidate named in the said petition for member of the board of education, and that they request that the name of the person so endorsed be printed upon the official ballot to be used at the ensuing election for members of the board of education. Said petition shall further state the residence and post office address of each person so endorsed, and shall certify that the person so endorsed is legally qualified under the laws of this State to be elected a member of the said board of education. Accompanying the said petition the person endorsed therein shall file a certificate stating that he is qualified to be elected a member of the said board of education; that he consents to stand as a candidate for election, and that, if elected, he agrees to accept and qualify as a member of the said body.

(8) In case any petition requesting that the name of the person so endorsed be printed upon the official ballot shall be found to be defective, it shall be the duty of the clerk of the board of education to forthwith notify the candidate so endorsed, setting forth the nature of such defect, and the dates when the ballots will be printed and the candidate endorsed on the defective petition referred to shall be permitted to amend such petition either in form or substance, so as to remedy such defect, at any time prior to the date set for the printing of such ballots.

## ELECTION NOTICES DEFICIENCIES.

Cyclopedia of Law and Procedure, 1905, Vol. XV, N 73,  
p. 324, (Footnote 19, p. 187).

For the established rule is that the particular form and manner pointed out by the statute for giving notice to the great body of electors is sufficient, and the question in such cases is, whether the want of the statutory notice has resulted in depriving sufficient of the electors of the opportunity to exercise their franchise to change the result of the election.

**APPENDIX 6**  
**COURT CASES**

## APPENDIX 6

Kozusko v. Garretson, 102 New Jersey Law 510.

In this state it has been held that the vote of a member present who declined to vote at all should be counted in the affirmative. Mount v. Parker, 32 New Jersey Law 341. But that, in our view, is not this case. If there was one point on which the three non-voters expressed themselves, it was that they did not wish to be counted as in favor of the resolution. Under such circumstances the correct rule is laid down by the Court of Chancery in the same year (1867) in Abels v. McKeen, 18 New Jersey Equity Reports 462 (p. 465), where Chancellor Zabriskie said:

"At such a meeting, if a vote is taken, and no one dissents, all who do not vote are considered as voting with the majority for the motion. And a vote of three ayes at a meeting of twenty, where no one dissents, is considered as the affirmative vote of all present".

"But the obvious corollary is that when a member does dissent, his vote cannot properly be counted in the affirmative. The common sense of the matter seems to be that it should be recorded in the negative".

"We conclude that in law and fact there were only three affirmative votes of six present in favor of the resolution, and that it was not legally adopted".

The Court of Errors and Appeals of this State decided similarly in the case of State of New Jersey v. Goodfellow, 111 New Jersey Law 604, at page 606 and 607.

"It should be noted that counsel stipulated in open court below that the three objecting councilmen were in the meeting room at the time of the appointment of the respondent and expressed their dissent before quitting the council table. Their refusal or failure to vote justified recording them in the negative. Kuzusko v. Garretson, 102 New Jersey Law 508".

Slattery v. School et al., 86 Northeastern Reporter 860.

"All persons dealing with school officers are presumed to have full knowledge of the limitations of the powers of such officers to bind their corporations and the limit of the power of a school board must be recognized by those contracting with them".

In the case of Wheeler v. Alton, 56 New Hampshire 540 it was held that:

"A school trustee in the discharge of his duties is a special agent whose powers are limited, and it is incumbent upon those who undertake to deal with him in that capacity, to ascertain whether he is acting within his authority".

In the Law of Public Schools, page 127, Voorhees stated:

. . . an oral modification of written contracts of the school board by the president of the board is of no effect. Nor has the president of the board any special right to modify an existing contract on behalf of the board . . . A provision inserted by the president of the board in a written contract without the authority of the board is not binding upon the board or district".

Anson, in his work on Contracts, para. 382, says:

"A contract may be broken in any one of three ways: A party to a contract (1) may renounce his duties under it, (2) may by his own act make it impossible that he should fulfill them, (3) may totally or partially fail to perform what he has promised . . . The last, of course can only take place at or during the time for the performance of the contract".

Moreover, in Section 394 of the same work Anson holds that:

"When default is made on one side, the courts must determine whether or not that default amounts to a renunciation of the contract by the party making it, or so frustrates the object of the contract as to discharge the party injured from his duties and liabilities".

Rules and Regulations of the State Board of Education, 1943.

## Rule 133:

"It shall be the duty of a supervising principal to visit the schools under his control, to supervise instruction in the classrooms of such schools and to consult with and advise the principals and teachers in procedures, methods, and materials of instruction so that the best results may be obtained by the pupils. He shall be responsible for the discipline and conduct of the schools. He shall also advise concerning child accounting, behavior and personality problems and needs, educational and other adjustments to individual abilities, problems of guidance, programming, class and school organization and management. He shall exercise such other functions of educational and administrative leadership, supervision, and guidance as may be necessary for producing best possible educational conditions and outcomes".

Public Law of 1915, Chapter 302, amendment to School Act of 1903, Section 276, School Law.

". . . whenever any school district shall contain more than one municipality the Board of Education may appoint a suitable person as custodian of school moneys of said district, and may fix his salary and term of office. Such custodian shall, when requested to do so at anytime by the board, render to said board a true and full account of all moneys in his possession, as such custodian, up to such time, and of all payments made by him out of said moneys and for what purpose, and shall also, when required by resolution of said board, deposit in any bank or banking institution designated by said board, all moneys then in his hands or thereafter collected or received by him as such custodian; he shall give bonds for the faithful discharge of his duties in such amount and with such sureties as said board

shall direct, but such bonds shall be for a sum not less than the amount apportioned to said district by the County Superintendent of Schools; until the appointment of a custodian of school moneys by the board of education, the collector or other person residing in the municipality situate in such school district having the largest amount of taxable property shall be custodian of the school moneys of such district".

Legality of Enlargement of Duties of District Clerk.

Gaskill et al. v. Piscataway Board of Education

It is therefore the opinion of the Commissioner of Education that the Piscataway Township Board of Education cannot legally enlarge the statutory powers of the district clerk so as to include any function such as the supervising of the business of the schools and of buildings, grounds, equipment, janitors, etc., with the further result of enabling a Board member to engage in and be compensated for duties expressly denied him by statute. There would appear however to be nothing illegal in a district clerk's performing such duties as are logically connected with his statutory functions, such for instance as the distribution and supervision of school supplies, which duties are implied in his express power of purchasing school supplies.

APPENDIX 7

ABSTRACT OF

Historical Development and Present Legal  
Status of the Office of Secretary  
of the Board of Education  
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### ABSTRACT OF

#### Historical Development and Present Legal Status of the Office of Secretary of the Board of Education in New Jersey

Education in New Jersey is primarily the responsibility of the state, by virtue of a constitutional mandate. In the statewide reorganization of public education in 1867, mandatory provision was made for the office of district secretary of the local board of education. This thesis investigates the historical background and development, and the legal basis of the duties of this office.

The development of the study has several limitations to be observed. Since the investigation refers only to New Jersey, it is confined by the number and types of records which are accessible in order to accomplish the aims set forth. Review of the statutes, significant decisions, and recognized authorities, together with a limited use of findings of courts of areas other than New Jersey, establish the legal aspects and practices sought. Included as primary sources are the state and federal constitutions, state statutes, both "official" and annotated series, school law decisions of the commissioner and state board of education, decisions of the courts, and state legislative documents.

In its evolution, the thesis undergoes two distinct phases, while containing some six chapters. The initial phase, to be found in Chapter I, contains background information dealing with the office under investigation. Scrutiny of early records indicates current educational conditions while under the direct influence and control of town meeting administration. Delegation of much of this responsibility for local education is described in the formation and activities of the school committee whose work was implemented by the passage of proper enabling legislation. All evidence indicated a pressing need for more efficient management of the schools. Permissive appearance of the clerk in the person of one of the trustees, to whom was given, or who assumed, much of the responsibility of the school committee, tended to improve this difficult condition.

Moving from a background of permissive existence, as described in the opening chapter of this thesis, Chapter II, in introducing the second stage of development, brings forth the inadequacy of the then existing educational system. With the revision and reorganization of legislation concerned with schools in 1867 came official and mandatory acts providing for the district secretary. Creation and anticipated expansion of this office demanded that the scope of its authority be delimited. Decisions arrived at

in school litigation, as described herein, accomplished a great deal in the problem of circumscribing this official's jurisdiction. The question of specific qualifications required for appointment to this important position devolves to a description of requirements necessary for eligibility for board membership, since the clerk's legal qualifications are insignificant and for the reason that he may also concurrently sit as a board member. The secretarial agent, as revealed in this writing, may also enjoy tenure of office under certain prescribed conditions, among which is the obligation that he serve in a full-time capacity.

Discussion of the desirability and value of the required secretarial duties performed by the clerical agent of the board are described in some detail in Chapter III. The functions of this officer as legal representative of the local board of education, with particular emphasis on some of the legal responsibilities he assumes, are also reviewed.

Legal existence of the board of school estimate is explored in Chapter IV; the local school board secretary serves this group as its secretarial agent. Importance of certification by the clerk of the board of education's official transactions is reiterated and confirmed in the second of some three sections of the chapter. It is further

determined that one person, namely the secretary, should assume the responsibility for notifying the board membership of impending meetings or other activities of its concern.

Role of the clerk as the chief fiscal official of the board is explored in Chapter V by way of an examination of his duties as purchasing agent. His activities concerned with proper accounting procedure in the disbursement of school funds are also observed in examining the manner in which the board performs its business functions, since the secretary conducts a substantial amount of this business activity.

The concluding chapter of this study reviews the obligations of the clerk in his responsibilities dealing with elections and referendums. Duties of the district secretary related to the annual school meeting are discussed, in addition to his obligations in the matter of raising funds at the local level for educational needs. It is quite apparent that the secretary must be capable and effective in his various financial functions in the interest of the local school district.

This investigation of the background and present legal status of the school district secretary discloses that the office in question had been in existence and was functioning for some time prior to its official appearance

in 1867. Few legal requirements must be met in order to qualify for appointment to this position, but it can be safely concluded that it is inevitable that appropriate standards will ultimately be formulated in order to improve the contribution of this valuable functionary. It has also been clearly established that this official is far more than merely a clerical employee whose duties are created and defined by the local board of education. His functions and authority are derived from the state statutes created by the Legislature and the State Board of Education.