

- b. Fees for surveying school system by various individuals, groups, or organizations.
 - c. Rental of IBM equipment under a new contract.
2. Instructional Services.
- a. Free textbooks. Section 703 of the State Education Law provides these may be furnished only when authorized by the voters. However, under section 701 textbooks may be rented or sold to pupils in accordance with rules or regulations established by the board of education. If free textbooks have been provided in the past, new textbooks may be acquired to supplement the stock on hand. In such case a rental charge must be made for all books both new and old.
 - b. Student workbooks.
 - c. Pupil instructional supplies such as pencils, paper and art even though uniformity is educationally desirable.
 - d. Conference expenses of teachers and administrators, except for teachers' conferences called by superintendents and State School Boards Association, as authorized by board of education.
3. Operation of Plant.
- a. Use of school buildings by outside organizations. (See exception under ordinary contingent expenses for Teachers' Association and local PTA's.)
4. Auxiliary Agencies.
- a. Transportation and maintenance of interscholastic athletic teams.
 - b. Pupil uniforms whether for athletic activities or otherwise.
 - c. Cafeteria and school lunch operation, whether or not it is considered self-supporting. This means termination of the milk program and of the contract with the Education Department in connection with surplus foods. Surplus foods on hand will need to be returned but expense of returning such surplus foods is an ordinary contingent expense.

In conclusion it should be pointed out that even the statute itself does not give an exclusive remedy by submission to the Commissioner of Education because the statute says that the matter *may* be referred to the Commissioner, but there is no legal reason why the matter may not be subject to Court review in the first instance. Furthermore, there is, of course, the possibility that if a board's item of expense is illegal, board members may become personally liable for the amount so spent.

Again, it should be emphasized that the determination of what constitutes an ordinary contingent expense rests with the board of education except for those items which, by statute, specifically require the vote of the people. If the board's determination is challenged, an appeal may be made to the Commissioner (or to the Courts) for final determination. In the meantime, upon request, my office will continue to render opinions concerning the question as to whether or not specific items are or are not ordinary contingent expenses, so as to guide boards of education in making their determinations.

Dated April 1961

*City, Village and District Superintendents
of Schools and Supervising Principals*

TRANSPORTATION (Distance) (Route) (Public) (Nonpublic)
(Distance)—BOARD OF EDUCATION (Powers and Duties)
(Notice to)—BUDGET (Ordinary Contingent Expense).

No. 94

A number of questions have been presented concerning the effect of Chapter 1074 of the Laws of 1960, concerning transportation.

This statute has now been further amended by Chapter 959 of the Laws of 1961. As so amended, effective September 1, 1961, the statute now includes the following provisions:

1. Distances from home to school for the purpose of determining eligibility for transportation must be measured by the nearest available highway from home to school.

2. The cost of providing transportation for distances more than two miles, or three miles as the case may be, and less than ten miles must be considered an ordinary contingent expense of the district. (See also #6, below)

3. Door-to-door transportation is not required. Of course, transportation must be adequate and reasonable in relation to the age of the pupil and type of transportation facilities provided.

4. In the case of pupils attending parochial schools, transportation is required only to the nearest available parochial school of the denomination. In a case where transportation is requested to a parochial school outside the district, the parent making such request must show that any parochial school located in the district is not "available", viz. is filled to capacity with residents of the district.

5. Transportation for distances *less than two miles* in the case of children in grades kindergarten through 8 or *less than three miles* in the case of pupils in grades 9 through 12, and for *greater distances than ten miles* may be provided, and if provided must be offered equally to all children in like circumstances residing in the district.

a. This means that where school districts are providing transportation for public school pupils attending school *within the district* for distances which are shorter or longer, as the case may be, than those mandated such school district will need to provide transportation for pupils who are attending nonpublic school *in the district* and who reside comparable distances from such school.

b. The statute mandates further that where school districts are providing transportation for public school pupils attending school *outside the district* for shorter or longer distances than those required, it will need to provide transportation for nonpublic school pupils attending school *outside the district* where the distances from home to school are comparable.

6. The statute provides for a written notice to be given to the school trustees or board of education by the parent of a pupil for whom transportation is desired, not later than April 1 preceding the beginning of the next school year, except where families move into the district later than April 1, in which case the request should be made within thirty days after establishing residence in the district, but in no event later than August 1.

a. For the school year 1961-62 there is a special provision permitting the notice to be given on or before August 1.

b. Requests should contain detailed information concerning the age and grade of the pupil and the school attended. If made by a representative of the parent, written authorization of the parent must accompany the request.

c. It is recognized that most school districts presently provide transportation. Where a transportation appropriation is included in the budget, irrespective of whether notice is given by the parents prior to the specified dates, if such appropriation is rejected by the voters, transportation for distances between two and ten miles for elementary pupils and between three and ten miles for high school pupils, if it was included in the budget, must nevertheless be provided and the expenditure therefor is provided by this statute to be an ordinary contingent expense.

7. There is a right of appeal by the parent or his authorized representative from the action of the board of educa-

tion in failing to provide transportation authorized or required by the statute.

If such appeal from the failure of the district to provide transportation is brought by a representative of the parent or guardian there must be appended to his appeal the written authorization of the parent to represent him on the appeal. Full particulars must be given with respect to the transportation desired, the names and ages of the children for whom it is to be provided, the schools they attend and the distances from home to school by the nearest available highway route.

8. City school districts, except those which are central school districts or enlarged city school districts, are not required to provide transportation by this statute. In enlarged city school districts transportation is required only for pupils residing in the outside area or areas. However, city school districts may provide transportation in which case it must be provided to the same extent for both public and nonpublic school pupils.

Dated April 28, 1961

*City, Village and District Superintendents
of Schools and Supervising Principals*

TEACHERS (Salary) (Salary Schedule) (Salary Payments)
(Salary, 30 Hours Differential) (Salary, 60 Hours Differential)
(Certificates).

No. 95

The 1961 Legislature has revised the provisions of the Education Law in relation to teachers' salaries (Laws of 1961, Chapter 813).

In considering this new legislation, it must be borne in mind that the statute specifically provides that a school district must pay a teacher employed in the district on July 1, 1961 at all times a salary which is not less than the amount such teacher would have been entitled to under the laws in effect prior to July 1, 1961. It is pointed out that whatever schedule is in force on June 30, 1961 will determine such amount.

1. In General.

(a) Mandated salary schedules for teachers.

This act will take effect July 1, 1961. On and after that date in school districts employing fewer than eight teachers, the annual salary for teachers may not be less than \$4200.

In school districts employing eight or more teachers boards of education are required to adopt salary schedules

and compensate teachers in accordance therewith. Step 1 of the salary schedule may not be less than \$4200, the fifth step not less than \$5000 and the eleventh step not less than \$6200. The statute also provides that boards may adopt a higher schedule than the schedule prescribed by the statute by providing for higher salaries, greater increments, additional increments or more frequent increments. At least ten annual increments are required at not less than \$200 each.

Advancement on the schedule is automatic, provided a teacher has permanent certification. Under the statute, a teacher must be placed on the step corresponding to such teacher's years of service in the school district, including the school year 1961-62, plus any transfer credits which the board of education has heretofore granted such teacher. The fact, however, that a teacher is on a given step does not necessarily require that such teacher will receive the amount of salary specified by such step. The law provides that in the process of transition to the new schedule no school district can be required to grant a teacher a salary increase in excess of \$400 a year. (The \$300 salary differential payment if required is not included in the \$400 figure.) Each teacher, however, must receive at least a minimum salary of \$4200 a year regardless of the amount of increase required.

It must, however, be borne in mind that the statutory provisions in respect to salary schedules and the payment of teachers thereunder are in derogation of the common law right of a board to fix and determine the salary of any and all of its employees. Because of this there must be a strict construction of the statutory provisions. After the board has clearly complied with the minimum requirements of the statute both as to salary and amounts and number of increments, the board can set forth such amounts of salary and number and conditions of granting of increments as it determines in its discretion. It can single out one teacher and grant such teacher increases which do not necessarily have to be granted to other teachers. The board can determine the amounts of increments on steps above Step 11 and it can determine the conditions under which the increments are granted. Once a board adopts a salary schedule which contains conditions over and above the minimums, the schedule is enforceable as long as the board continues such schedule in force.

It will be observed that the statute now requires ten increments and specifies that no increment shall be less than \$200. When the original salary schedule law was enacted in 1923 a similar provision was contained, viz., the amount of the increment was specified as well as the number of increments. The same interpretation must,

therefore, be given to this statute which reinstates similar provisions.

There is nothing to prevent a board of education from adopting a salary schedule higher than the State minimum, but the schedule must contain at least ten increments and the amount of the increment must be at least \$200. Of course, the board, as indicated, could have more than ten increments and could have increments of more than \$200.

(b) Transfer credits.

If a teacher when employed is granted transfer credits he is placed at the step on the salary schedule in accordance therewith. He is entitled to annual increments thereafter.

(c) Assignment to higher step without transfer credits.

There is nothing to prevent a board of education from assigning a teacher to a step higher than the minimum even though no transfer credits are involved. Under such circumstances the board has the legal right to hold the teacher at the step thus assigned until his years of service catch up with the step.

(d) Reduction of salary schedule and salaries.

A board having adopted a schedule higher than the State minimum can always reduce such schedule toward or to the State minimum. A teacher would be placed upon the new schedule at the same step that the teacher is on under the old schedule. This could result in a reduction in salary. However, no teacher's salary can be reduced below that to which he was entitled on June 30, 1961, which, as indicated heretofore, is "frozen" for that purpose by this act. Nor could a board of education reduce the salary of a teacher below the amount he was given at the time he entered service for the district. The reason for the latter is that the salary thus given him is the inducement for him to accept the position which he might not have accepted otherwise. Once he accepts the position, however, he does so knowing full well that if the salary schedule then in effect is higher than the State minimum it can always be reduced. This latter means that he could then be held at the amount of money he was given at the time he entered service until his years of service catch up under the newly adopted schedule.

(e) Definition of teacher.

The mandated minimum salary applies to all teachers in all districts. The term "teacher" continues to include all members of the teaching and supervisory staff. This means that salary schedules for supervisors, principals, superintendents of schools etc. may not be less than the statutory schedules. There is no statute which requires a district to adopt a separate salary schedule for principals.

(f) Salaries for nonteaching employees.

Trustees and boards of education are required to adopt bylaws fixing salaries for all nonteaching employees as heretofore. This includes janitors, bus drivers, etc. No minimum salaries and no increments are specified by statute in connection with salaries of nonteaching employees, except in the case of employees of the Board of Education of New York City. There is nothing, however, to prevent a board of education from adopting schedules for such employees.

2. Filing.

The statute requires that each district employing eight or more teachers adopt bylaws fixing salary schedules for all full-time teachers and to file the same with the Commissioner of Education within 30 days after adoption thereof and not later than October 1, 1961. Such schedules are binding upon the district while in force, and if a board of education adopts a higher schedule it may always amend such schedule up or down and pay teachers accordingly, provided the provisions of the schedule are not less than those required by law. Any amendment must be filed within 30 days after adoption.

3. Salary Differential for Additional Preparation.

(a) Any teacher who has completed a fifth year of preparation, i.e., 30 semester hours of approved study beyond the baccalaureate degree (completed subsequent to the completion of the preparation necessary for a baccalaureate degree), immediately upon notifying the school authorities of such qualifications, is to be paid a differential of \$300 per annum above the salary schedule adopted by the board for those teachers who have the baccalaureate degree.

(b) Any teacher who has completed a sixth year of preparation, i.e., 30 semester hours of approved study beyond and subsequent to the fifth year of preparation (completed subsequent to the completion of the fifth year of preparation), immediately upon notification to the school authorities of such qualifications, is to be paid an additional differential of \$300 per annum above the salary schedule adopted by the board for those teachers who have completed a fifth year of preparation.

(c) The board of education of each district is the body which must approve the study for the payment of the salary differential. While the board has complete discretion in this matter, the board, however, would be required to approve study beyond

the baccalaureate degree or beyond and subsequent to the fifth year of preparation, provided that the 30 hours of approved study beyond the baccalaureate degree are hours of study which are taken in point of time after the baccalaureate degree has been earned or the 30 hours of approved study beyond and subsequent to the fifth year of preparation are hours of study which are taken and completed subsequent to the completion of the fifth year of preparation. In both cases the hours must be creditable toward a baccalaureate degree or a degree other than the degree held by the teacher, must be taken in a recognized educational institution and must be in the general field of the teacher's work or in the general field of education.

(d) Certificates which are permanent.

The statute provides that unless a teacher has permanent certification such teacher is not required to receive any increments in excess of \$4200. As to teachers employed in the City School District of the City of New York, and the City School District of the City of Buffalo, the school authorities of such school districts will need to be consulted as to which certificates or licenses issued by such school districts are deemed permanent within the meaning of the statute.

This means that a teacher is not required to receive more than \$4200 or \$4500, respectively, unless such teacher has permanent certification in the subject or subjects in which such teacher is teaching. Permanent certificates are certificates having validity for life and certificates issued under present regulations entitled "Permanent." A list of certificates which are now considered permanent follows:

LIFE CERTIFICATES

College Graduate Life	Permanent Special
College Graduate	Permanent Trade School
Permanent	Normal Certificate
Permanent Secondary	Permanent School Nurse
Permanent Endorsement	Permanent Dental
of a State Certificate or	Hygienist
of State Credentials	Permanent Medical
Normal Diploma (2- or 3-	Supervisor
year)	Permanent School
Endorsement of Normal	Librarian
School	Permanent Elementary
Permanent Equivalent	School Principal
Permanent Professional	Permanent Elementary
Elementary	School Principal under
Permanent Professional	Waiver
Elementary under	Permanent Secondary
Waiver	School Principal

Permanent Secondary
School Principal under
Waiver
Permanent School
Psychologist

Permanent Guidance
Permanent Vocational
Vocational Life

PERMANENT UNDER PRESENT REGULATIONS*

Permanent Academic
Permanent Common
Branch Subjects
Permanent Physically
Handicapped
Permanent Speech and
Hearing Handicapped
Permanent Special
Permanent Art
Permanent Industrial
Arts
Permanent Shop Subjects
—Trades
Permanent Technical and
Related Technical
Permanent Related Trade
Permanent Supervisor,
Elementary
Permanent Supervisor,
Secondary
Permanent Supervisor,
Vocational
Permanent Supervisor,
Industrial Arts

Permanent Supervisor,
Shop Subjects—Trades
Permanent Director's
Certificate
Permanent Principal,
Elementary
Permanent Principal,
Secondary
Permanent Principal,
Vocational
Permanent Principal,
Technical
Permanent Attendance
Teacher
Permanent Dental
Hygienist
Permanent Guidance
Permanent Medical
Supervisor
Permanent School
Nurse-Teacher
Permanent School
Psychologist

(e) Teachers not having permanent certification.

The statute provides that unless a teacher holds a permanent certification such teacher is not required to receive any increment above \$4200 a year. Once a teacher receives permanent certification, however, such teacher is immediately entitled to be paid in accordance with the salary schedule adopted by the board of education as if such teacher had acquired such permanent certification as of July 1, 1961. Thus, where a teacher acquires permanent certification after the effective date of this act, the teacher is to be immediately transferred and paid according to the salary schedule adopted by the board of education at the amount which would be the amount which such teacher would have been receiving had such teacher acquired permanent certification on or before July 1, 1961. Of course, where a teacher is appointed after July 1, 1961, the teacher

* Certain of these certificates are not mandated until September 1, 1962, but such certificates may be issued if the requirements have been met.

would be entitled only to be paid according to the years of service in the district, together with transfer credit granted such teacher.

4. Determination of Minimum Salaries for School Year 1961-62.

Where teachers are employed during the months of July and August 1961, it will be necessary that the board of education pay such teachers 1/10 of the salary such teachers will be entitled to receive under the provisions of the new law. The transition to the new schedules takes place on September 1, 1961, but where the teacher rendered services during the preceding July and August, while the transition will not take place until the September date, the teacher will be entitled to be paid for the services during July and August at the appropriate salary required by the new statute.

In districts employing fewer than eight teachers, the law specifies that each teacher must be paid not less than \$4200 a year.

In districts employing eight or more teachers, the statute requires that any teacher employed by these school districts after July 1, 1961, must be paid according to the new salary schedules adopted by the boards of education. The board of education may in its discretion recognize prior teaching experience outside the district, but the board of education is under no legal compulsion to do so. It should be pointed out that where the board of education does grant prior teaching experience, such "transfer credit" becomes a part of the teacher's years of service in the district and such grant may not thereafter be rescinded. The mere fact, however, that a teacher is employed at a salary in excess of that which is mandated by law will not establish that such teacher has been granted "transfer credit" within the meaning of the statute.

5. Statutory Schedule.

Step	Baccalaureate degree or less	Fifth year of preparation	Sixth year of preparation
1	\$4200	\$4500	\$4800
2	4400	4700	5000
3	4600	4900	5200
4	4800	5100	5400
5	5000	5300	5600
6	5200	5500	5800
7	5400	5700	6000
8	5600	5900	6200
9	5800	6100	6400
10	6000	6300	6600
11	6200	6500	6800

The above is the minimum schedule which may be utilized in ascertaining the minimum salary of each teacher.

6. Transition.

In the case of each teacher employed on or before July 1, 1961, who continues in the employ of the same district after July 1, 1961, the statute requires that the teacher's salary for the period September 1, 1961, to June 30, 1962, must be not less than the amount determined in accordance with the following procedure:

(a) Ascertain salary of teacher under salary schedule in effect June 30, 1961.

(b) Ascertain the teacher's years of service in the school district including the school year 1961-62, together with any transfer credits which may have heretofore been granted such teacher.

(c) Place the teacher on the step of the new schedule corresponding to the years of service computed in (b).

(d) The teacher is entitled to receive in salary a minimum of either

(1) \$4200, or \$4500 in the case of a teacher having a fifth year of preparation and \$4800 in the case of a teacher having a sixth year of preparation; or

(2) salary of step determined in (c) above, or if such salary would result in an increase of more than \$400, a minimum increase of \$400 over amount set forth in (a) above; or

(3) salary set forth in (a) above, whichever of these three amounts is greater.

(e) The salary thus arrived at represents the salary for such teacher beginning September 1, 1961.

(f) In no event may a teacher in the employ of any school district on July 1, 1961, be paid less than the salary to which such teacher would have been entitled under the applicable salary schedule on June 30, 1961.

(g) The teacher's salary is to be increased \$400, or part thereof, on September 1 of each succeeding year until the teacher is paid the salary required by such teacher's years of service.

Dated May 3, 1961
City and Village Superintendents of Schools
District Superintendents of Schools
Supervising Principals

CITY SCHOOL DISTRICT — BALLOT (Blank, Spoiled, Void) —
ELECTION LAW, Secs. 100, 105, 106—EDUCATION LAW,
Secs. 2034, 2038, 2608.

No. 96

This is to confirm our recent conversation in relation to the question as to whether or not check marks are acceptable at city school district elections, in city school districts of less than 125,000 inhabitants.

As indicated, section 2034, subdivision 2, paragraph d, of the Education Law requires cross X marks for school district meetings and elections. Under this provision check marks are not acceptable.

Section 2038 provides that the provisions of that article are applicable to city school districts of this type, except as otherwise provided in Article 53 of the Education Law.

The pertinent provision of Article 53 is section 2608 which states that the *form* of the ballots in question "shall conform substantially to the form of ballots used at general elections as prescribed in the election law". (Emphasis supplied)

Chapter 600 of the Laws of 1960 amended sections 105 and 106 of the Election Law so as to authorize the use of check marks for both election and proposition purposes.

Of interest here also is Election Law, section 100, which provides that the form of ballots used for the election of school district officers only, in effect, is not to be governed by the Election Law, in that "any form of ballot which may be adopted and used shall be legal".

There is, of course, a decided difference between the form of a ballot and the manner of marking the same. As to the latter, subdivision 4 of section 2608 merely states: "Such ballots shall have printed thereon instructions as to the marking of the ballots."

In view of all these provisions, it is my opinion that the use of check marks in city school districts of this type is not a proper manner of marking and, therefore, renders the ballot void, in accordance with Education Law, section 2034.

General confirmation of the underlying principles may also be found in the *Savage* case (13 Misc. 2d, 489; 8 AD 2d 650, 911; 7 NY 2d 706) in which petitioner claimed that the Election Law was paramount in various aspects of city school district elections of this type. It was the Department's position throughout that the Education Law contains a complete procedure for such city school district elections and that, consequently, reference to the Election Law would make Election

Law sections applicable only where specifically so stated in the Education Law and within the limits of such references (such as, for instance, the question of the form of a ballot referred to above). The Courts, however, sustained our position throughout.

Dated May 19, 1961
Mr. Sidney L. MacArthur
Superintendent of Schools
Park Street
Hornell, N. Y.

CITY (Incorporation) — CITY SCHOOL DISTRICT (Establishment) (Debt Limit) (Tax Limit) (Bonds)—DEBT LIMIT—TAX LIMIT—BONDS—EDUCATION LAW, Secs. 2501, 2601, 2701—LOCAL FINANCE LAW, Secs. 2.00, 11.00, 104.00.

No. 97

You are inquiring as to the possible results and procedures relating to your school district if, as and when the incorporated village of Newark should become incorporated as a city.

The most important and possibly quite serious result of such incorporation would be that, upon its effective date, your school district would immediately become subject to the constitutional tax and debt limitation of Constitution Article VIII, sections 4, 10 and 11. Presently, the district is not subject to any kind of tax limitation and is subject only to a statutory debt limitation found in Local Finance Law, section 104.00, paragraph d. This statutory limitation prohibits the issuance of bonds or bond anticipation notes which exceed 10% of the current true value, after deducting central school district building quota. The constitutional tax limit prohibits any district which has part of its territory located within a city of less than 125,000 (and presumably the City of Newark would be in that category) from raising a tax for current expenditures in excess of 1.25% of the five-year average of true value of taxable property of the district. This percentage does not, of course, include debt service, and there may be excluded from such percentage any item for which a direct budgetary appropriation is made for all or any part of the cost of an object or purpose for which a period of probable usefulness is contained in section 11.00 of the Local Finance Law. The appropriate provisions in this respect are Article VIII, sections 10 and 11 (b).

The constitutional debt limitation is 5% of the five-year average of true value of taxable property of the district. This

includes not only bonds and bond anticipation notes but also capital notes. This debt limit may be exceeded for a specific object or purpose, with the consent of 60% of the qualified voters present and voting at a school district meeting and with the consent of the Board of Regents of The University of the State of New York and of the State Comptroller.

The tax limitation referred to, instead of being at the rate of 1¼%, may also be 1½%, or 1¾%, or even 2%, depending upon the relation between the taxes subject to the limitation levied for such school district for the fiscal year during which the city becomes incorporated and the full valuation of taxable real estate of the district determined from the assessment rolls upon which the apportionment and levy of school taxes were respectively based at that time. The percentage will be the next higher of the percentages referred to above, beyond the ratio so ascertained. The maximum tax limitation, in any event, would be 2%.

It is my understanding that only a fairly small number of the 56 city school districts presently in this category (of cities of less than 125,000 inhabitants) is presently in the 2% bracket, while most of them, in about even percentages, are in the three lower categories. For the ascertainment of the initial tax limitation of your district in such case, see Education Law sections 2701, et seq. (Article 54).

The implementation of the debt limitation provision of the Constitution is found in Local Finance Law, section 104.00, paragraphs b and c, and section 2.00, paragraph 7-a.

During my tenure of office there have been only three cities incorporated (Long Beach, 1922; Peekskill, 1940 and Rye, 1942). There have been some others where incorporation has been discussed from time to time, without any action being taken. In this category are Ossining, the Tarrytowns and, currently under discussion, Mamaroneck. I understand that in at least some of these the results of such incorporation upon the school system have been decisive factors. Unless the district has an unusually high amount of valuation, I presume that the tax limitation might be a great deterrent, considering that no such limitation applies to central school districts. Likewise, the partial statutory debt limit of 10% might become quite restrictive at 5%, with its broad application.

If no special legislation is enacted in relation to your school district, Articles 51 and 53 of the Education Law would also become applicable to your district, as well as those provisions

of Article 13 of the Real Property Tax Law which apply to city school districts of cities of less than 125,000 inhabitants.

Since your district is a central school district, you would need to refer also to subdivision 1 of section 1804. Under this provision, which I believe would become applicable by implication, the district would be a city school district and would be subject to the provisions of Article 51 of the Education Law and to those provisions of Article 37 thereof "which are not inconsistent with the provisions of article fifty-one." This would mean that, for State aid purposes only, your district would remain a central school district, but would otherwise become a city school district. The election procedures of the new city school district would be those contained in section 2601 of the Education Law. You are also referred particularly, in relation to tax collection procedures, to Education Law, section 2506.

Dated June 5, 1961

Mr. Norman R. Kelley

Superintendent of Schools

625 Pierson Avenue

Newark, New York

HEALTH AND WELFARE SERVICE—DENTISTRY (Practice of)
—MEDICINE (Practice of) — BOARD OF EDUCATION
(Powers and Duties)—PUPIL (Jurisdiction over)—EDUCA-
TION LAW, Secs. 901-908, 910.

No. 98

July 1, 1961

SUBJECT: Responsibility of School Authorities for Financing
Medical and Dental Care for School Children

The Department is receiving inquiries with respect to the responsibility of school authorities for financing medical and dental care for school children. A brief review of the general subject may be helpful.

As you know, under the provisions of the Compulsory Attendance Law children are given over to the custody of the school authorities for one purpose only, and that is education in all its phases. Under the terms of the statute, boards of education do not have the legal right to make available to children, irrespective of their value, facilities or services which the board is not authorized to provide. The Education Law has limited the board of education to inspection, namely, the examination of the physical condition of the child in order to be sure that

the child is in proper physical condition to attend school (Education Law, sections 901-908, 910).

If, in the course of medical inspection, the child is found to need treatment, medical or dental, it is the duty of the school authorities to communicate that fact to the parents. If the parent is unable to provide the needed care or treatment, the school authorities may assist by advising how the matter may be handled through the appropriate welfare channels.

In addition, comment should probably be made on the proposals which are occasionally made in certain localities for the board of education to supply medical and dental care on a clinic basis. Boards of education are corporate bodies and may not legally practice either medicine or dentistry. When a board of education undertakes to provide medical or dental care and charge the children for such care, it is not only acting without legal authority, as indicated above, but it is also, in effect, practicing medicine or dentistry which is in violation of the sections of the Education Law regulating the practice of such professions.

Dated July 1, 1961

School Administrators and Their Health Service Staffs

TAXES (Assessment, Levy and Collection) (Exempt) (Property)
(Equalization) — CENTRAL HIGH SCHOOL DISTRICT—
EDUCATION LAW, Sec. 1908, TAX LAW, Sec. 4, subd. 21.

No. 99

This is to acknowledge your recent letter in which you ask about the effect on the apportionment of expenses under section 1908 of the Education Law, of Chapter 824 of the Laws of 1954, amending section 4, subdivision 21 of the Tax Law.

As you pointed out in your letter, our law provides for the apportionment of the amount to be raised based on the ratio that the assessed valuation in a component district bears to the total assessed valuation of all component districts in the central high school district. Subdivision 21 of section 4 of the Tax Law, as added by the 1954 law, provides in the second paragraph of paragraph (b) that the tax levied in the case of the Railroad Redevelopment Corporation where a new district has been formed shall not exceed the amount which could have been levied in the absence of such creation. The law also limits the amount of tax on the separately assessed parcels of such corporation, when it qualifies, to the amount of taxes determined

to be payable for the last fiscal year in which the corporation first qualified as a Railroad Redevelopment Corporation. It also provides that after qualification by the corporation, the amount of tax is not to exceed the amount for the fiscal year in which the corporation first acquired the property which is being separately assessed.

The method of computing the assessed valuation of these parcels is set forth in the fifth paragraph following the paragraph lettered "(b)", which provides for a reduction by multiplying the assessed value made under paragraphs (a) and (b) by the ratio which the limited amount of taxes levied thereon bears to the amount which could have been levied except for the chapter involved.

It would thus appear that in order for the central high school district to calculate the amount to be assessed to each component district, it would first be necessary to ascertain the assessed value of all taxable real property in the district, except for property owned by the Long Island Redevelopment Corporation.

To that would need to be added the property assessed in the name of the Long Island Railroad Redevelopment Corporation as computed on the following basis:

1. You ascertain the total assessed valuation of the Long Island Railroad property in the district.
2. You ascertain the amount of tax which the school district may levy upon such railroad property in the district in accordance with subdivision 21 of section 4 of the Tax Law as amended by Chapter 824, Laws of 1954.
3. You ascertain what the school tax would have been on such railroad property in the district except for the provisions of said subdivision 21, i.e., the tax which would result from applying the regular school tax rate to the assessed value ascertained under "1." above.
4. You divide the tax dollar amount of "2." above by the tax dollar amount of "3." above, and multiply the result of this division by the assessed dollar value of "1." above.
5. You add the result of this, which is the amount of the assessed valuation of railroad property in the district, to the amount of all the other assessed value of taxable real property in the district.

Thereafter, having done the above computation for each component district of the central high school district, you ascertain

the ratio of the assessed value of each component district, computed as indicated above, to the total assessed value of the high school district computed in a similar fashion. This then will be the ratio of the apportionment of expenses in accordance with section 1908 of the Education Law to each component district of the central high school district.

Dated October 15, 1958
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