

460, affirmed by the Court of Errors and Appeals in 71 L. 663. In that case the Court held this constitutional provision fixed the minimum of what must be done and did not define the maximum of the legislative power. It enjoined the Legislature to do that much but did not forbid it to do more. In speaking of this provision, the Court said (P. 70 L., at p. 412) :

"The injunction in the organic law that free public schools shall be established and maintained for all children between the ages of five and eighteen years does not exclude the legislative power to provide for the education of persons not within that class. The former must be provided for; the latter may be an object of legislative concern."

In my opinion, Article 8, Section 4, paragraph 1, fixes the minimum requirement. It was not intended to narrow or circumscribe the legislative power with respect to education and does not prevent the Legislature from providing for education outside the age range specified.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH A. MURPHY,
Assistant Deputy Attorney General.

JAM:MB

JULY 28, 1949.

HON. J. LINDSAY DEVALLIERE,
Director, Division of Budget and Accounting,
Department of the Treasury,
State House.

FORMAL OPINION—1949. No. 83.

DEAR MR. DEVALLIERE :

You have requested my opinion as to whether or not Mr. William Abbotts, the law reporter for the former Supreme Court, was entitled to receive any salary from the State as law reporter after September 15, 1948.

In my opinion, the answer is "no"; and if, as you have indicated, Mr. Abbotts was paid any money on that account after said date, the State should file a claim against him for refund of the same.

The Constitution of 1844, Article VII, Section II, par. 4, provided for the constitutional office of law reporter as follows :

"The law reporter shall be appointed by the justices of the supreme court, or a majority of them; and the chancery reporter shall be appointed by the chancellor.

"They shall hold their offices for five years."

The new Constitution of 1947 contains no provision for continuing the office of law reporter. Since the new Constitution supersedes the old (Art. XI, Sec. 1, par. 1), it necessarily follows that the office of law reporter, as a constitutional office created by the old but not continued on by the new Constitution or by statute, was abolished.

This conclusion is reinforced by Art. XI, Sec. IV, par. 3, which provided that the former Supreme Court and Court of Chancery, along with the Court of Errors and Appeals, should be "abolished when the Judicial Article of this Constitution takes effect." The law reporter under the old Constitution was appointed to report cases at law in the former Supreme Court and in the former Court of Errors and Appeals, while the chancery reporter was appointed to report equity cases in the former Chancery Court and in the Court of Errors and Appeals. With the abolition of separate courts of law and equity as of September 15, 1948, there was no reason for prolonging the existence of the offices of the respective reporters for the two systems.

Art. XI, Sec. III, par. 2 of the new Constitution provides in part:

"Unless otherwise specifically provided in this Constitution, all constitutional officers in office at the time of its adoption shall continue to exercise the authority of their respective offices during the term for which they shall have been elected or appointed and until the qualification of their successors respectively."

The above quoted provision does not apply to the instant case because the office of law reporter ceased to exist as of September 15, 1948. The provision in question can apply by its terms only to an office in which there will be successors who shall qualify, and there will be no successor to the last incumbent of the office of law reporter.

Since Mr. Abbotts no longer held this office after September 15, 1948, he was not entitled thereafter to receive the salary formerly provided by law for that position (N. J. S. A. 2:18-5).

I am informed that Mr. Abbotts has already been paid for the 450 copies of the last volume of the law reports, published after September 15, 1948, containing cases decided in the former Supreme Court and Court of Errors and Appeals before their abolition. This payment was made pursuant to an order of the Chief Justice of the former Supreme Court entered before September 15, 1948, in accordance with the statute then in force (2:18-4). In my opinion, the fact that Mr. Abbotts did not complete the publication and delivery of the last volume, as contemplated by said order of the Court, until after his office had become extinct, did not operate to continue that office in existence so as to warrant the payment of the salary formerly provided for the incumbent thereof.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.