FEBRUARY 18, 1952.

AARON K. NEELD, *Deputy Director,*
Division of Taxation,
State House.

FORMAL OPINION—1952. No. 1.

DEAR SIR:

You have asked this office to advise you on the following questions:

1. Is an elected assessor amenable to supervision and the rules and regulations of the Director of Taxation of the State of New Jersey?

2. May the director bring charges against such official for his removal for failure to discharge the duties of his office by not complying with published rules and regulations?

3. Is such elected assessor answerable to the governing body of the taxing district for failure to discharge his duties as assessor?

The answer to questions 1 and 2 is in the affirmative. The answer to question 3 is in the negative.

It is the opinion of this office that the Director of the Division of Taxation has the statutory right to prescribe basic rules for taxation. (See R. S. 54:4–26.)

The Legislature has provided two methods to remove an assessor whether he be elected or appointed. One method may be found in R. S. 54:1–36, which provides that where an assessor or other person, charged with reviewing assessments in a taxing district, shall wilfully or intentionally fail, neglect or refuse to comply with the constitution and laws relating to the assessment and collection of taxes, the county board of taxation shall thereupon make complaint to the commissioner (now the Director of the Division of Taxation) who may, upon a proper hearing, after due notice, dismiss him and declare his office vacant. Thereafter, the director shall cause a certified copy of his judgment to be transmitted to the county board of taxation which shall cause notice thereof to be given to the governing body of the taxing district or officer having power to elect or appoint such successor or other person. The governing body or officer referred to shall then appoint a successor who shall hold office for the then fiscal year.

The other method provided by the Legislature for the removal of an assessor who does not comply with the laws or constitution of the State may be found in R. S. 54:1–37, 38 and 39.

Where the Supreme Court is mentioned in the sections referred to hereinbefore, the said jurisdiction is now vested in the Superior Court of New Jersey, and all complaints for the removal of an assessor are now filed with the Superior Court.

Thus, by the express terms of the statute, the Director of the Division of Taxation, or the Superior Court, may after hearing remove an assessor, whether he be appointed or elected, for failing to obey the constitution and laws of the State of New Jersey.

We find no statutory provision for the removal of an elected assessor by the governing body, and it is our opinion that R. S. 54:1–36 and 54:1–37, et seq., are exclusive methods to be pursued in the removal of an assessor. As a general rule, statutory provisions are enacted by the Legislature for the removal of elected officials. There is no power to remove except that which is given by statute. The grant of power of removal from office, generally speaking, is to be strictly construed and whatever is not given in unequivocal terms is regarded as withheld; usually such power is not implied.

In creating an elective municipal office with a fixed term, the Legislature may condition the incumbent's tenure on good behavior in office and clothe the local governing body with the power of removal upon the ascertainment of facts demonstrating a breach of the condition. See *Finnegan* vs. *Miller,* 132 N. J. L., page 192, at page 195 (New Jersey Supreme Court, 1944). We find no legislative pronouncement relating to the removal of an assessor where he is elected.

It is, therefore, our opinion that the governing body of a taxing district cannot remove an elected assessor where he fails to obey the constitution and laws of this State.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: BENJAMIN M. TAUB,
Deputy Attorney General.

MARCH 3, 1952.

DANIEL BERGSMA, M.D., M.P.H.,
State Commissioner of Health,
State House,
Trenton, New Jersey.

FORMAL OPINION—1952. No. 2.

DEAR DR. BERGSMA:

Your letter of January 24, 1952, requesting an opinion as to whether the Board of Beauty Culture Control may require the public vocational schools which operate courses in beauty culture under curricula established by the State or local Boards of Education to submit to it reports of the time spent by beauty culture students has been received. The answer is No.

Licensed schools of beauty culture are required by R. S. 45:4A–10 to keep, among other things, a daily record of the attendance of each student and the Board of Beauty Culture Control requires that the licensed schools of beauty culture submit to it, each week, a report as to the number of hours each of its students spent in school the preceding week. The number of hours required under R. S. 45:4A–10 to complete a course in a licensed school of beauty culture is 1,000 and the Board of Beauty Culture Control checks on this requirement by means of the above-mentioned weekly reports.

Revised Statutes 45:4A–35 provides:

> "Nothing in this chapter shall limit in anyway the right of the State Board of Education or any local board of education to establish and operate courses in beauty culture, to employ teachers, to determine the standards for teaching and the qualifications of teachers, to determine courses of study, to determine the standards for the admission, progress, certification and graduation of students, to determine any and all standards and rules as to quarters, supplies, equipment and anything whatsoever pertaining to the