

The problem may be seen in clearer focus if we were to assume that the borough had already issued 12 consumption license certificates and a new application were now to be made by the Princeton Inn for a consumption license. In that case, it would be crystal clear that the borough, having reached its maximum limit of 12 consumption licenses, could not authorize the operation of a licensed business on that portion of the premises of the Princeton Inn located in its municipality. The fact that we are here concerned with the reverse situation does not, of course, change the result.

You are advised that the answer to your inquiry is that, in the indicated circumstances, the Borough of Princeton is precluded from issuing a new plenary retail consumption license.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: SAMUEL B. HELFAND,
Deputy Attorney General.

SBH: MF

JULY 24, 1952.

HONORABLE WALTER R. DARBY,
Director of Local Government,
Commonwealth Building,
Trenton 8, New Jersey.

FORMAL OPINION—1952. No. 23.

DEAR MR. DARBY:

Your letter of July 10, 1952 has requested our opinion as to the manner in which the governing body of a municipality shall make an emergency appropriation for a Chapter 6 School District after the amount thereof has been certified to the governing body by the Board of School Estimate under R. S. 18:6-56.

We are of the opinion that such appropriation must be made in the manner prescribed by R. S. 40:2-31.

The question arises from the necessity of construing R. S. 18:6-57, which provides:

"Upon receipt of the certificate of the board of school estimate delivered as required by section 18:6-56 of this Title, the governing body of the municipality shall immediately appropriate the sum or sums for the purpose or purposes and shall raise such sum or sums in the manner provided by law for the raising of such funds by the municipality in emergencies and the raising of the funds required by such certificate, in such a case, shall be considered an emergency."

The manner of raising of funds by a municipality in emergencies is provided for in R. S. 40:2-31, which sets forth two steps in the process: (1) making an appropriation, and (2) obtaining the money. The statute first authorizes the

governing body to make emergency appropriations only "by resolution adopted by two-thirds vote of all the members," declaring that an emergency exists requiring a supplementary appropriation. The resolution must be in the form and content prescribed by the Local Government Board, must set out the nature of the emergency in full, and a copy thereof must be filed with the Director of Local Government. The section further provides:

"Any county or municipality may borrow money and issue its negotiable notes to meet any such emergency appropriation. Each such note shall be authorized by resolution of the governing body, shall be designated an 'emergency note,' and may be renewed from time to time, but all such notes and any renewals thereof shall mature not later than the last day of the fiscal year next succeeding the fiscal year in which the emergency appropriation was made to meet which such notes were issued. The provisions of sections 40:2-40 and 40:2-41 and 40:2-43 to 40:2-46 of this Title shall apply to such notes as fully as though such notes were mentioned therein."

The sections cited in the quoted provisions refer to the interest rate, form, registration, execution, and other matters pertaining to the issuance of emergency notes.

It is plain that the emergency status of the appropriation for the board of education is determined by the Board of School Estimate, and that once such determination has been made, it is binding upon the governing body. Thus the finding of an emergency which the governing body must make in connection with emergency appropriations for municipal purposes is determined in advance, in the case of emergency appropriations for school purposes, by virtue of sections 18:6-56 and 18:6-57.

The narrow question for decision here is therefore reduced to one of procedure only.

Must the governing body, in making an emergency appropriation for school purposes, go through the procedure prescribed by section 40:2-31 for declaring an emergency and making an appropriation, including the passage of a resolution for this purpose by two-thirds vote of all its members? Or do the words "in the manner provided by law for the raising of such funds by the municipality in emergencies" as used in section 18:6-57 refer only to the issuance of emergency notes and similar steps necessary to obtaining the funds after they have been appropriated?

In my opinion, the sections above quoted imposed upon the governing body of the municipality the duty to make the emergency appropriation for school purposes in accordance with the procedure laid down in section 40:2-31 for emergency appropriations generally. The latter section, being the only specific law on this subject, is obviously the one intended by the phrase "in the manner provided by law," etc., as used in section 18:6-57. That quoted phrase in its context refers, in my opinion, both to the "appropriation" and the "raising" of the sums in question. Section 18:6-57 does not itself specify the manner in which such appropriation shall be made; but this omission is supplied if section 40:2-31 is deemed to apply as above suggested. Furthermore, there is nothing in section 18:6-57 which permits the governing body to dispense with the appropriation procedure set forth in R. S. 40:2-31 when the appropriation is for school purposes. Even though the governing body has no discretion in the matter, the procedure set up by the statute

must be complied with. This means that a mere majority vote of the members of a governing body in favor of the appropriation is not sufficient, and that such appropriation must be passed by at least two-thirds vote of all its members.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.

tpc:b

AUGUST 27, 1952.

DR. LESTER H. CLEE, *President,*
Civil Service Commission,
State House, Trenton, N. J.

FORMAL OPINION—1952. No. 24.

DEAR DOCTOR CLEE:

You have asked whether a State employee who has accepted a commission in the Regular Army Services should be considered on leave of absence without pension rights, or whether the acceptance of such commission is tantamount to a resignation from his civil position.

We feel that the answer to the above is "Yes," and that the acceptance of the commission was voluntary and was considered a waiver of all rights under the pension statute, and a waiver of the requirements of leave of absence.

Where, on the other hand, an individual goes into a component of the Reserve of the Army, the result would be otherwise, as being a leave of temporary expediency.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: JOHN W. GRIGGS,
Deputy Attorney General.

SEPTEMBER 8, 1952.

HON. J. LINDSAY DE VALLIERE,
Director, Division of Budget and Accounting,
Department of the Treasury,
State House,
Trenton, New Jersey.

FORMAL OPINION—1952. No. 25.

DEAR SIR:

You have requested our opinion as to whether funds in Account M 50 in the 1952 Appropriation Bill, which provides \$156,500 for the Rehabilitation Commission, may be used to defray general administration expenses of the commission. Account