February 18, 1954.

HON. FREDERICK M. RAUBINGER,
Commissioner of Education,
Trenton, New Jersey.

FORMAL OPINION—1954. No. 8

DEAR COMMISSIONER:

You have requested an interpretation of Section 13 of the Municipal Planning Act (N.J.S.A. 40:35-1.13; Ch. 433, P.L. 1953), regarding the jurisdiction of a planning board over a school construction project. The pertinent portions of that section read as follows:

> "Whenever the planning board after public hearing shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of one or more projects thereof, shall refer action involving such specific project or projects to the planning board for review and recommendation, and shall not act thereon without such recommendation or until forty-five days after such reference have elapsed without such recommendation. This requirement shall apply to action by a housing, parking, highway or other authority, redevelopment agency, school board, or other similar public agency, Federal, State, county or municipal.***"

> "Whenever the planning board, pursuant to this act shall have made a recommendation to another body, such recommendation may be overridden only by a majority of the full membership of such other body. Where the body which shall have overridden a recommendation of the planning board is a municipal body or agency, the action of such body shall not become final until the governing body of the municipality shall, by majority vote, approve its action in overriding the recommendation of the planning board."

Your specific question is whether the action of a board of education in overriding a recommendation of the planning board is final, or whether such action shall not become final without the approval of the governing body of the municipality.

In my opinion, the action of a board of education in overriding a recommendation of the planning board, pursuant to the above quoted statute, is final. The veto power of the governing body obtains only where the body which has overridden a recommendation of the planning board is "a municipal body or agency." A school board is not a municipal body or agency, within the meaning of the statute in question.

Section 2 of the statute (N.J.S.A. 40:55-1.2) defines "municipality," as used in this act, as meaning "any city, borough, town, township or village." Since the word "municipal" as used in Section 13 obviously refers to municipalities as defined in the act, it does not refer to school districts. The design of section 13 is that a body or agency which is subordinate to the governing body of a municipality should not, without the concurrence of the governing body, overrule the recommendation of its planning board. A school board, however, is itself an autonomous governing body, most of whose powers are exercised independently of the municipal authorities.

The distinction between municipalities and schools districts has been judicially recognized in connection with the Municipalities Act of 1917, which was incorporated in Subtitle 3 of Title 40 of the Revised Statues. Section 1 of that Act (R.S.

40:42-1) again defines the term "municipality" as meaning and including "city, town, township, village, borough, and any municipality governed by a board of commissioners, or improvement commission." In *Horton* v. *Board of Education of Oradell*, 6 N.J. Misc. 963, Justice Parker of the old Supreme Court held that "The Municipalities Act plainly does not include school boards; its scope is carefully defined in section 1 of article 1, and the phrase "governing body" is similarly defined in section 2. In neither is there any mention of a school district or board of education." (p. 964). It seems equally clear that a school board is not a municipal body or agency within the meaning of the Municipal Planning Act of 1953, particularly in view of the similar definition of "municipality" in both of the Acts mentioned.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By : THOMAS P. COOK,
Deputy Attorney General.

tpc:d

April 7, 1954.

HON. WILLIAM J. DEARDEN, *Director,*
Division of Motor Vehicles,
State House,
Trenton, New Jersey.

FORMAL OPINION—1954. No. 9

DEAR SIR:

We have a request for an opinion on the question whether a dealer licensed with an established place of business may under the same license operate branch agencies at different addresses.

It will be noted that the only statute with reference to this particular question is contained under Title 39, Motor Vehicles and Traffic Regulations, Chapter 10, which deals with purchase, sale and transfer of motor vehicles. R.S. 39:10-3 specifically provides for the interpretation of this chapter, to wit:

> "This chapter shall be so interpreted and construed as to effectuate its general purpose to regulate and control titles to, and possession of, all motor vehicles in this state, so as to prevent the sale, purchase, disposal, possession, use or operation of stolen motor vehicles, or motor vehicles with fraudulent titles within this state."

This particular statute has been construed by our courts in the case of *Chaiet* v. *City of East Orange*, 136 N.J.L. 375, (Sup. Ct. 1947), and the Court states in part:

> "Licensing of automobile dealers by the Commissioner of Motor Vehicles was a means of regulating the title, possession, sale and purchase of motor vehicles . . . .".

We have noted the foregoing observations so as to establish a basis for the determination of the Legislature's intention relative to licensing of dealers as applied to the question before us.