other general law" because in our opinion the language incorporates by reference the Civil Service Law. In *Davaillon v. Elizabeth,* 121 N. J. L. 380 (Sup. Ct. 1938) it was held that section 40:48-1 of the Revised Statutes granting the governing body of every municipality the authority

> " * * * to prescribe and define, *except as otherwise may be provided by statute,* the duties and *terms* of office of all officers, clerks and employees * * *".

did not permit a municipality to create for a fixed term and fill, without adherence to the Civil Service Law, the position of city clerk. At 121 N. J. L. 383 the Court said,

> "But the Civil Service act of 1908 (Comp. Stat. 1910, p. 3795; R. S. 1937, 11:1-1 et seq), adopted by the defendant municipality on November 4th, 1913, plainly falls into the category of general legislation, and therefore the qualifying phrase 'except as otherwise provided by law,' contained in section 40:48—1, R. S. 1937, serves to subject the exercise of the power so conferred to the provisions of that enactment."

The rationale of the *Davaillon* case dealing with the position of City Clerk is equally applicable to the case at hand wherein the position or office of Township Engineer is concerned.

Therefore, for all of the foregoing reasons, we advise you that under the facts presented the appointment of a Township Engineer for a fixed term without adherence to the Civil Service Law must be regarded as improper.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General,

By: JOHN F. CRANE,
Deputy Attorney General.

JFC:b

FEBRUARY 10, 1955.

DR. FREDERICK M. RAUBINGER,
Commissioner of Education,
175 West State Street,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 3.

DEAR COMMISSIONER:

You have requested our opinion as to whether school nurses who are employed without a certificate, pursuant to chapter 133 of the laws of 1947 (N. J. S. A. 18:14-56.3), qualify for placement on the minimum salary schedule for teachers established by chapter 249 of the laws of 1954.

In our opinion, the answer is in the affirmative.

The salary schedule referred to is for "teachers in this state", and the act provides that the term teacher "shall include any full-time member of the professional staff of any district or regional board of education or any board of education of a county vocational school, the qualifications for whose office, position, or employment are such as to require him to hold an appropriate certificate issued

by the State Board of Examiners in full force and effect in this State and who holds a valid permanent, limited or provisional certificate appropriate to his office, position, or employment". The narrow question here is whether school nurses fall within the classification of "teacher" as that term is used in Chapter 249, P. L. 1954.

Chapter 133 of the Laws of 1947 initiated the requirement of certification of school nurses by the State Board of Examiners, thus placing such nurses on a par with school teachers in this respect. However, that act contained the following section (N. J. S. A. 18:14-56.3) :

> "No board of education shall terminate the employment, or refuse to continue the employment or re-employment, of any nurse appointed prior to the effective date of this act for the reason that such nurse is not the holder of any such certificate and the State Board shall make no rule or regulation which will affect adversely the rights of any nurse under any certificate issued to her prior to the effective date of this act."

The plain intent of the above quoted section was to eliminate the requirement of certification in the case of nurses already employed at the time the law took effect, thus avoiding the disruption which would ensue if the certification requirement were retroactively applied to such nurses.

We have come to the conclusion that full-time school nurses who either hold a permanent, limited or provisional certificate issued by the State Board of Examiners, or who are employed without a certificate pursuant to N. J. S. A. 18:14-56.3, are "teachers" entitled to the benefits of Chapter 249, P. L. 1954.

Although one does not ordinarily associate the word "teacher" with the nursing profession, a school nurse is a special kind of nurse who, in addition to receiving her basic training in that profession, is qualified to—and frequently does—*teach* in the schools such subjects as personal hygiene, home nursing, first aid and nutrition. In order to obtain certification by the State Board of Examiners as a school nurse, she must have successfully completed courses in each of several specified fields including public school curriculum, materials and methods in health education, school health services and problems, and child growth and development. *See Rules Concerning Teachers' Certificates,* issued by the State Department of Education, 18th Edition (July 1, 1951), pages 64-65.

Full-time school nurses who do hold one of these prescribed certificates are literally included in the legislative definition of "teacher" as noted above. We find no reason to narrow, by construction, the broad sweep of that definition.

Nurses who hold their positions by virtue of Section 18:14-56.3 do not fall within the express terms of the definition, but neither are they excluded. The act provides, as we noted, that the word "teacher" shall "include" professional persons holding certificates, etc.; the word "include" denotes that other persons may also meet the description if the sense of the statute warrants it. See *State v. Rosecliff Realty Co.,* 1 N. J. Super. 94, 101 (App. Div. 1948).

Chapter 249 of the laws of 1954 must be read in conjunction with chapter 133 of the laws of 1947 in order to effectuate the general legislative policy, since the statutes are *in pari materia. Miller v. Board of Chosen Freeholders of Hudson County,* 10 N. J. 398, 415 (1952) ; *Lynch v. Borough of Edgewater,* 8 N. J. 279, 286 (1951). Moreover, in the interpretation of the statutes, "exceptions are implied to give effect to the general legislative intent shown by the context; they may arise by the law of reason, though not expressly mentioned." *Wright v. Vogt,* 7 N. J. 1, 7 (1951).

Applying these canons of construction, we are convinced that the law-makers did not intend that the benefits of chapter 249, P. L. 1954. should be available to nurses who hold the qualifying certificates and not to those who hold their positions by

virtue of the earlier statute without such certificates. There would be no reason to so discriminate against the older nurses who had acquired experience and even tenure before the 1947 act. In our opinion, that part of the definition of "teacher" which requires the holding of an appropriate certificate issued by the State Board of Examiners is intended to denote generally the classes of positions which require certification of an applicant who is now entering the school system for the first time.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.

MARCH 2, 1955.

HONORABLE ARCHIBALD S. ALEXANDER,
State Treasurer,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 4.

DEAR MR. TREASURER:

This will acknowledge receipt of your recent communication by which you request our opinion on the following question:

> Where a claim for repayment of money, in the custody of the State Treasurer pursuant to a custodial judgment entered under the provisions of Article 3, Chapter 37, Title 2A, N. J. S., is made as provided in Section 2A:37-32 N. J. S. may the State Treasurer delegate the duty of determining the validity of such claim to one or more subordinate officers or employees within the department of the Treasury?

The procedure by which a claim for the repayment of money, in the custody of the State Treasurer under the provisions of Article 3, Chapter 37, Title 2A N. J. S., is to be made and paid may be found in Section 2A:37—32 N. J. S. which provides in part:

> " * * * If a claim is made to the state treasurer within such period of 2 years, and he shall determine that the claim is valid, he shall pay the moneys so claimed to the person entitled thereto. If the state treasurer shall determine that the claim is not valid, he shall reject the claim. The claimant may thereupon apply to the superior court, chancery division, for a review of his determination, and the claim shall thereupon be heard and determined, de novo."

It is a general rule of law that, in the absence of a statute to the contrary, a public officer may delegate those powers which are ministerial in nature but not those which are discretionary. *The Law of Public Offices and Officers,* Mechem Sections 567, 568, *Public Officers,* Throop Section 570.

In 67 *C. J. S. Officers* Section 104, it is stated:

> "In the absence of statutory authority a public officer cannot delegate his powers, even with the approval of a court. An officer, to whom a power of discretion is intrusted, cannot delegate the exercise thereof except as prescribed by statute. He may, however, delegate the performance of a ministerial act, as where, after the exercise of discretion, he delegates to another the performance of a ministerial act to evidence the result of his own act of discretion."