

May 19, 1955.

HON. JOSEPH E. CLAYTON,
Assistant Commissioner of Education,
175 West State Street,
Trenton, New Jersey.

MEMORANDUM OPINION P-13

DEAR COMMISSIONER :

You have requested our opinion as to whether it is lawful for a State Teachers' College to enter into an agreement with an English college for an exchange professorship, whereby a professor in the State Teachers' College will be granted a leave of absence with full pay during the year of his teaching at the English college, while our State Teachers' College will receive during that same period the services of the professor from the English college at no cost to this State. Thus the two professors will exchange places for the academic year, with each continuing to receive his salary from the institution where he is a regular faculty member. The United States Office of Education is fostering such exchange professorships with foreign countries in cooperation with your department and with departments of education in other states.

In our opinion the arrangement above described would be legal and proper. While the statutes pertaining to State teachers' colleges are silent on this particular point, the control and management of these colleges are vested by R. S. 18:16-11 and 18:16-20 in the Commissioner of Education, subject to the approval of the State Board of Education. The latter section provides among other things that the Commissioner, subject to the approval of the State Board, shall "Appoint and remove principals, teachers and other employees, and fix the compensation of those whose compensation is not fixed by statute or otherwise determinable by authority of law." R. S. 18:16-21 provides:

"The commissioner, with the approval of the state board, may make regulations concerning leaves of absence and payment during such leaves for teachers employed in the state normal schools and state teachers' colleges."

We believe that the granting of a leave of absence with full pay in connection with an exchange professorship as above outlined falls within the powers vested in the Commissioner and the State Board by the statutes just cited, and particularly R. S. 18:16-21. Under this arrangement the State would receive, from the foreign professor, without added cost, services the same as or equivalent to those regularly performed by the faculty member of our teachers' college, while he in turn would be obtaining valuable experience and knowledge during his year abroad. For these reasons, the proposed exchange professorship would serve the interests of the State and may be entered into pursuant to the legal authority granted by R. S. 18:16-21.

A similar statutory provision is found in R. S. 11:14-1, which authorizes the Chief Examiner and Secretary of the Civil Service Commission to prepare regulations regarding leaves of absence with or without pay for employees in the classified service. In a memorandum opinion to the State Commissioner of Health, dated September 17, 1954, we held that under R. S. 11:14-1, employees of the Department of Health may be given special leaves of absence, with or without pay, for the purpose of training or education in fields related to the functions of that Department. We feel that that opinion should be followed by analogy here, since the experience of the New Jersey professor during his year abroad will give him training and education closely related to his functions in the State Teachers' College which regularly employs him.

OPINIONS

In order to literally comply with R. S. 18:16-21, we recommend that the exchange professorship be authorized in the form of a regulation of the Commissioner of Education, with the approval of the State Board.

Yours very truly,
 GROVER C. RICHMAN, JR.,
Attorney General.
 By: THOMAS P. COOK,
Deputy Attorney General.

tpc:b

June 2nd, 1955.

HON. ROBERT B. MEYNER,
Governor of New Jersey,
 State House,
 Trenton 7, New Jersey.

MEMORANDUM OPINION P-14

DEAR GOVERNOR MEYNER:

You have requested our opinion concerning the effect of the State Constitution of 1947 on P. L. 1942, c. 167, which vests in the Legislature the power to elect members of the South Jersey Port Commission.

By Article IV, Section V, Paragraph 5 of the 1947 Constitution, the Legislature is barred from the election or appointment of any executive or administrative officer except the State Auditor. While the Legislature may appoint commissions or other bodies whose main purpose is to assist it (Article IV, Section V, Paragraph 2), the South Jersey Port Commission is an administrative agency performing governmental functions in the development of port and transportation facilities along the Delaware Bay and tidal portions of the Delaware River.

The Constitution of 1947 preserves the force and effect of all statutes not "superseded, altered or repealed by this Constitution or otherwise" (Article XI, Section I, Paragraph 3).

Since the election or appointment of executive or administrative officers is ultra vires the Legislature, there is a repugnancy between the Constitution and P. L. 1942, c. 167, amounting to a repeal of the provision of that statute empowering the Legislature to elect the members of the South Jersey Port Commission.

Unlike the Constitution of 1844 (see *Ross v. Freeholders of Essex*, 69 N. J. L. 291 (E. & A. 1903)), the Constitution of 1947 vests exclusive appointive authority in the Governor except in those instances where some other provision for appointment is fixed in the Constitution or by law. Article V, Section I, Paragraph 12. "By law" means by a valid law. A law in effect prior to the new Constitution but repugnant thereto is constitutionally invalid. The Legislature cannot exercise prerogatives vested by Constitution in the Governor. Thus, election or appointment of members of the South Jersey Port Commission by the Legislature would be a nullity. In the absence of a valid law vesting the appointive power elsewhere, the Governor should nominate and appoint the members of the South Jersey Port Commission.

We are advised that, subsequent to the Constitution of 1947, nine appointments were made to the South Jersey Port Commission, all by Governor Driscoll.

Very truly yours,
 GROVER C. RICHMAN, JR.,
Attorney General.
 By: DAVID D. FURMAN,
Deputy Attorney General.