

judgment of the board of education with the consent of the commissioner, there are too few physically handicapped pupils to form a class in the district or whenever it is impracticable to transport a child because of distance or other good reason to a class referred to in subsections a, b, c or d."

Our opinion is that N.J.S.A. 18:10-29.35, read in the light of the entire State School Aid Act, was intended to provide State aid for all forms of authorized education given to atypical pupils at the expense of a local Board of Education. The supplementary instruction of 5 hours a week authorized by section 18:14-71.23(d) falls within the term "individual instruction * * * in school, by reason of the fact that there are too few mentally retarded or physically handicapped pupils in the district to form a class or by reason of the impracticability of transporting such a pupil to a class maintained in another district", and therefore one-half of the cost of such education, i.e., the supplementary education, must be paid to the school district under subdivision (b) of section 18:10-29.35.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

TPC :tb.

JULY 10, 1957

HON. JOSEPH E. McLEAN, *Commissioner*
Department of Conservation and Economic Development
State House Annex
Trenton, New Jersey

FORMAL OPINION, 1957—No. 9

DEAR COMMISSIONER McLEAN:

You have requested our opinion as to the eligibility of municipalities which have no organized planning board for Federal and State financial assistance under Title VII of the Federal Housing Act (Title 40 U.S.C.A., Sec. 461) and the State Appropriations Act (L. 1957, c. 113) in drafting master plans and zoning ordinances.

Title VII of the Federal Housing Act authorizes Federal contributions not exceeding fifty per centum of the estimated cost for planning assistance including surveys, land use studies, urban renewal plans, technical services and other planning work. The Federal funds are payable to State planning agencies for distribution to eligible municipalities with a population of less than 25,000. By a recent amendment (70 Stat. 1102, effective August 7, 1956), planning assistance may be furnished as well to municipalities with a population of 25,000 or more: "which have suffered substantial damage as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe which the President, pursuant to section 1855(a) of Title 42, has determined to be a major disaster".

The State Appropriations Act for 1957-58 provides an appropriation to the Division of Planning and Development in the amount of \$50,000 for an expanded and

regional planning program. This appropriation may be applied with Federal assistance under Title VII for planning grants to municipalities within the State of New Jersey. Chapter 448 of the Laws of 1948 (N.J.S.A. 13:1B-65) empowers the Department of Conservation and Economic Development, acting through the Commissioner, with the approval of the Governor, to serve as the State planning agency to apply for and accept the Federal planning grants.

Master plans for the physical development of a municipality are prepared in this State by planning boards (N.J.S.A. 40:55-1.10); no authority, statutory or otherwise, exists in the municipal governing body or any other local agency for the formulation of a master plan, in the absence of a planning board established pursuant to the Municipal Planning Act of 1953.

Zoning ordinances are promulgated under R.S. 40:55-33 by the municipal governing body or board of public works pursuant to the recommendations of a planning board or a zoning commission. The establishment of a planning board and its preliminary report is not prerequisite. As an alternative, the municipal governing body or board of public works may appoint a zoning commission from among citizens of the municipality to recommend appropriate zoning regulations and boundaries.

We therefore advise you that Federal and State financial assistance under Title VII of the Federal Housing Act and the State Appropriations Act for 1957-58 may be made available (1) for the drafting of master plans in municipalities in the population range fixed in the Federal act which have organized planning boards and (2) for the drafting of zoning ordinances in all municipalities eligible under the Federal act without regard to the existence of a municipal planning board.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

DDF:d

JULY 12, 1957

HONORABLE CHARLES F. SULLIVAN
Director of the Division of Purchase and Property
State House
Trenton, New Jersey

FORMAL OPINION, 1957—No. 10

DEAR DIRECTOR SULLIVAN:

You have requested our opinion concerning the power of the Division of Purchase and Property to secure additional building space for the Department of Agriculture by arranging for the erection of certain structures by private contractors either upon State-owned or privately-owned land. According to the proposed arrangement payment for the structures would be made over a period of time in the form of rentals with title to the structures (and to the land, in cases where it is not owned by the State) to remain in the contractor or other private party until the completion of all payments, whereupon it will vest in the State. The total payments under such plan