

The resolution of the issue "is largely one of legislative intent to be gathered from the language and plan of the particular statute under construction." *DeVita, supra*, at page 358. Where, as here, the statute provides job security during satisfactory performance, such a specific directive will prevail over the provisions of the general tenure legislation. *Ackley v. Norcross, supra*.

Reference should also be made to the principle embodied in the *Skladzien* case, *supra*, to the effect that the appointments of a non-continuous body, if the terms are not fixed pursuant to the permissive authority delegated to it by statute, are deemed to be co-terminous with the life of the appointing body. This principle, however, is subordinate to specific statutory provision to the contrary. In *Lohsen v. Borough of Keansburg*, 4 N.J. 498, 504 (1950), the statute protected the employee against discharge "as long as he shall perform the duties of his office to the satisfaction" of his employer. It was held that this "statutory direction is controlling" and that the principle of *Skladzien* was inapplicable.

We advise you, therefore, that although a chief executive officer may not be accorded the benefits of the veterans' tenure legislation he, nevertheless, possesses employment protection pursuant to the provisions of R.S. 30:4-13 and is thus not subject to annual appointment.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: EUGENE T. URBANIAK
Deputy Attorney General

JANUARY 29, 1958

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

MEMORANDUM OPINION—P-4

Re: Integration of Panzer College into the State Teachers College at Montclair.

DEAR GOVERNOR MEYNER:

You have requested our opinion as to the legality of the proposed integration of the Panzer College of Physical Education and Hygiene into the Montclair State Teachers College, as more fully described hereinafter. We respectfully advise you that, in our opinion, such integration may lawfully be undertaken on the terms proposed by the Trustees of Panzer College.

The college was originally organized on March 17, 1917 under the name of "Newark Normal School for Physical Education and Hygiene," for the following purposes as set forth in its Certificate of Incorporation:

"The purposes for which this corporation is formed are to offer a two years Normal course in Physical Education to both sexes in the State of New Jersey and in other States; to prepare them to teach the subject of Physical Education and Hygiene and to give degrees under the laws of the State of New Jersey for this purpose."

The name of the institution was changed on March 29, 1929 to "Panzer College of Physical Education and Hygiene"; but the original purposes of the college have never been changed, and it continues today to perform them.

Under the plan of integration, the State Board of Education would establish on the campus of the Montclair State Teachers College the Panzer School of Health and Physical Education, and would incorporate in the Montclair program as much as possible of the present program of the Panzer College. The student body now at Panzer would be matriculated at Montclair and would receive credit for work done at Panzer toward the degree of Bachelor of Science in education to be awarded at Montclair. The State Board of Education would employ in the Montclair program as many as possible of the faculty and staff of Panzer College. The Trustees of Panzer College would turn over to the State Board the library, laboratory and academic equipment of the institution, together with all its academic records including those of alumni, with the understanding that Montclair maintain these records in current order and make them available at any time for necessary reference by the alumni of Panzer. Finally, the Board of Trustees of Panzer would retain the title to and control of the real estate and all other assets of the college not previously mentioned, including endowment funds, but after discharging the obligations of the college, would utilize the income, or corpus, or both, of such remaining assets exclusively for the benefit of the program of the Panzer School at the Montclair State Teachers College or its successors, in such ways as seem most appropriate to the Board of Trustees and in accordance with the statutes of this State pertaining to education, and the approval of the State Board of Education.

Under R.S. 18:16-19 and 20, the Commissioner of Education, with the approval of the State Board, clearly possesses authority to establish in the teachers colleges a course or courses for the purpose of training teachers of physical education. The purpose of State Teachers Colleges, as written in R.S. 18:16-19, is "training and educating persons in the science of education and art of teaching." Physical education is one of the subjects which must be taught in all public schools, under the requirements of R.S. 18:14-93, et seq., and accordingly the commissioner, under his power to prescribe courses of study for the teachers colleges (R.S. 18:16-20), would be well within his authority in prescribing courses in the teaching of physical education as now proposed for Montclair.

The property offered by the Trustees may be accepted by the Commissioner, with the approval of the State Board of Education and yourself, by virtue of N.J.S.A. 18:3-21, the pertinent portion of which reads as follows:

"Subject to approval by the Governor and the State Board of Education, the Commissioner of Education may accept on behalf of the State and administer for the State any grant, conveyance, devise, bequest, or donation to be applied, principal or income, or both, for the purposes specified in such grant, conveyance, devise, bequest, or donation to the maintenance and use of any service in, or activity of, any division or bureau established in the State Department of Education, or of any teachers' college, school or institution of learning under the control of the Commissioner of Education and the State Board of Education; * * *"

The only legal question meriting further discussion is whether the Trustees of Panzer College could turn over to the State the assets of the college, including endowment funds, to be used for the benefit of the proposed program at Montclair. In answering this question, it is not the function of the Attorney General to advise

the Trustees as to their fiduciary duties; we point out that in case of doubt they may apply to the appropriate court for instructions.

The purpose of Panzer College, as already noted, is to train teachers of physical education and hygiene. Thus, the use of Panzer's assets for such training, even though given at a State Teachers College, would serve to accomplish its corporate purposes. In the absence of restrictions to the contrary in the terms of any gift to Panzer now administered by the Trustees, it matters not that the trust will be fulfilled by a somewhat different means.

This case bears a close resemblance to the recent Rutgers reorganization case, *Trustees of Rutgers College in N. J. v. Richman*, 41 N.J. Super. 259 (Ch. Div. 1956). There, one of the main questions was whether the Trustees would breach their fiduciary duties by agreeing to the plan of reorganization of Rutgers under which substantial managerial powers would be delegated to a new Board of Governors, a majority of whom would be appointed by the Governor of the State with the advice and consent of the Senate, in return for greater financial support from the State. The Superior Court upheld the validity of the plan as constituting no substantial departure from the purposes of the college and its charter, but rather "a most reasonable advance in the successful development of the institution" (p. 291). Judge Schettino's comprehensive opinion further declared (p. 292):

"It is clear that the purposes of the charter, namely, to establish a college 'for the education of youth in the learned languages, liberal and useful arts, and sciences,' is advanced and nurtured by the plan which seeks to effect greater financial support in order to bring the facilities of the university in line with the demands of modern society. The basic functions, purpose and role of the university as an educational institution remains unchanged. The mode or technique of internal management is changed. I find that the modifications are fair and reasonable and consistent with the purposes set forth in the charter and its subsequent amendments."

The Panzer plan would similarly delegate the management of its program to a State agency, i.e., the Department of Education, but would in turn make better facilities available and would pave the way for greater financial support from the State for the attainment of the ultimate purposes of the college. Thus, as in the *Rutgers* case, the plan now under consideration appears to present a fair and reasonable method of advancing the object of the trust administered by the Trustees in conformity with the purposes of the charter by making the trust property more effective than ever in meeting the increasing demand for physical education teachers.

We conclude, therefore, that the State may lawfully proceed with the proposed integration, subject to special conditions attaching to any particular gift, trust or other instrument which may be affected, and without prejudice to the rights and interests of any persons therein as may be determined in accordance with law, but without rendering any opinion upon the legal validity of the delegation or relinquishment of trust duties by the Trustees of Panzer College.

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: THOMAS P. COOK
Deputy Attorney General