

AUGUST 31, 1959

MRS. EDWARD L. KATZENBACH, *President*
State Board of Education
175 West State Street
Trenton 25, New Jersey

FORMAL OPINION 1959—No. 20

DEAR MRS. KATZENBACH:

You have requested an opinion clarifying the responsibilities of the State Board of Education in connection with the administration of the State Competitive Scholarship Act, L. 1959, c. 46, as amended by L. 1959, c. 150. Specifically, you ask to have defined the relationship between the State Board of Education, hereinafter called the "State Board" and the State Scholarship Commission, hereinafter called the "Commission" in view of section 3 of L. 1959, c. 46, as amended which states in part that:

"There is hereby created the State Scholarship Commission which is hereby allocated to the State Department of Education * * *."

The Commission, according to L. 1959, c. 46, as amended, consists of the Commissioner of Education, who by the terms thereof serves as chairman, together with 8 other persons appointed by the Governor. It is empowered to administer the competitive scholarship program by conducting annual examinations and awarding scholarships to qualified persons (Section 12). The Commission is authorized to carry out this plan by adopting appropriate regulations (Section 14). Additionally, it is given power to expend appropriations made by the Legislature for the program (Section 14).

The Commission was allocated to the State Department of Education in response to one of several constitutional infirmities outlined by Governor Meyner in his conditional veto message dated May 11, 1959. It was pointed out therein that Senate Bill 2 (which later became L. 1959, c. 46) creating the program and commission failed to fulfill the requirement of the *New Jersey Constitution, Art. V, Sec. IV, par. 1* that:

"All executive and administrative offices, departments, and instrumentalities of the State government, . . . and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, . . ."

The defect was cured by what was to become L. 1959, c. 150. This law effectively amended the prior legislation by the allocation of the commission to the Department of Education, thus filling the constitutional requirement requiring allocation.

The question of the relationship between various agencies performing executive functions and the principal departments in State government did not come under extensive discussion when the novel proposal was advanced in the 1947 Constitutional Convention. The purpose of consolidating as many agencies as possible into not more than 20 principal departments was to centralize responsibility for agency operation in a single executive. See remarks of Governor Driscoll. *V Convention Pro-*

ceedings 44. However, as pointed out by William K. Miller, Esq., some agencies that were to be placed in a department would be quasi-independent by their very nature and functions. V *Convention Proceedings* 371. Hence, the language of the Constitution that agencies be allocated "within" a department must be construed in the light of a recognition at the constitutional convention of 1947, that there were some agencies that would not be under the complete supervision of a principal department head, but because of the provisions of governing statute law would be in whole or in part autonomous.

In order to determine to what extent an agency is controlled by a principal executive department to which the agency is allocated, the intent and internal meaning of the particular department-agency legislation must be examined to determine the legislative purpose. An example of this is clear in *N.J. Turnpike Authority v. Parsons*, 3 N.J. 235 (1949). One of the questions presented there was whether revenue bonds issued by the Turnpike Authority did not create a debt or liability of the State in excess of the limitations prescribed by *Art. VIII, Sec. II, par. 3* of the *N. J. Constitution* because the Authority was "established in the State Highway Department," N.J.S.A. 27:23-3. The Supreme Court, in effect, held that the agency was not subject to control of the department by stating that it was "in but not of" the department. The legislation dealing with the powers of the Highway Commissioner was held not to be applicable to the Turnpike Authority. Additionally, the Turnpike Authority is supported entirely from its own revenues derived from tolls it collects, primarily from private users of the Turnpike, as distinguished from public appropriations.

Such is not the case here. A review of the State Competitive Scholarship Act, L. 1959, c. 46, as amended by L. 1959, c. 150, and the legislative powers and responsibilities authorized and conferred upon the State Board which serves as the head of the Department of Education, N.J.S.A. 18:2-1 exhibits a pattern of interrelationship that was sought to be avoided in the Turnpike Authority-Highway Department relationship.

While there is no express power over the Commission in the sense that the Legislature in L. 1959, c. 46 did not amend any prior legislation affecting the powers of the State Board so as to include a recognition of the commission as an agency directly under its supervision, the Scholarship Act primarily is designed to assist qualified students to receive higher education at institutions of this State. Higher education, public and private, is in several ways subject to the jurisdiction of the State Board. Cf. the relationship between Rutgers, the State University, and the State Board, N.J.S.A. 18:22-14.1 et seq.; *Trustees of Rutgers in N. J. v. Richman*, 41 N.J. Super. 259 (Ch. 1956). Among the specific powers conferred by N.J.S.A. 18:2-4 upon the State Board is the authority to advance the education of people of all ages (par. 1); establish standards of higher education (par. m); license institutions of higher education (par. n); approve the basis of conferring degrees (par. o); require from institutions of higher education such reports as may be necessary to enable the State Board to carry out its functions (par. p); survey the needs for higher education and the facilities available therefor and recommend to the Legislature procedures and facilities to meet such needs (par. q).

In this respect, the role of the Commissioner of Education is important. He serves under the direction of the State Board of Education, is the chief executive officer of the Department of Education, N.J.S.A. 18:3-7.1, and, at the same time, is the chairman by virtue of his office of the Commission, L. 1959, c. 46. The fact

that there is a liaison between the State Board and the Commission is indicative of a legislative intent to place the Commission within the Department and subject to its supervisory control. Equally significant is the fact that the 1959 Appropriation Act, L. 1959, c. 106 apportions to and authorizes the expenditures of funds out of the general treasury by the Department of Education (Account P 75, page 120) "For the purpose of providing a State-wide scholarship program * * *." It is concluded from this language that the over-all responsibility for the fiscal affairs of the Commission is placed in the State Board. The power expressed in L. 1959, c. 1, as amended by L. 1959, c. 150, section 14 which authorizes the expenditure of appropriations by the Commission is therefore subject to State Board supervision. State Board control should extend to a review and approval of budget requests, transfers of funds, and vouchers submitted by the Commission for payment.

The State Board also possesses the power to approve rules and regulations adopted by the Commission in their function of administering the Scholarship Program. A degree of control of this kind is necessary and proper in view of the interrelationship that has been outlined and because of the fiscal delegation that has been made by the Legislature to the Department of Education and, in turn, the State Board in the Appropriation Act. Such a conclusion is not designed to imply that the State Board has the right to award scholarships or, subject to the terms of the Scholarship Act, to determine who should receive the awards. The degree of control is general and supervisory in nature in order to permit the State Board to fulfill its statutory responsibilities and to insure that the Commission is administering the act according to law.

It is our opinion, therefore, that the State Scholarship Commission is within the Department of Education and, to the extent outlined above, under the supervision of the State Board of Education.

Very truly yours,

DAVID D. FURMAN

Attorney General

By: DAVID M. SATZ, JR.

Deputy Attorney General in Charge

SEPTEMBER 3, 1959

HON. GUY W. CALISSI
Prosecutor, Bergen County
Court House
Hackensack, New Jersey

FORMAL OPINION 1959—No. 21

DEAR PROSECUTOR CALISSI:

You have requested an opinion dealing with the scope of authority and functions of the Bergen County Police. Specifically, as chief law enforcement officer of Bergen County, N.J.S. 2A:158-1 et seq.; *State v. Winne*, 12 N.J. 152 (1953), you wish to have clarified the powers and duties of the county police as they relate to your responsibilities.

The Bergen County Police derives its existence by virtue of L. 1929, c. 205, now R. S. 40:22-1 et seq. That law authorized the board of chosen freeholders to