

MAY 25, 1959

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

MEMORANDUM OPINION 1959—P-5

DEAR COMMISSIONER:

You have requested our opinion as to whether or not it is mandatory for a local board of education to pay the dues provided for membership in the State Federation of District Board of Education.

In our opinion the answer is yes.

R.S. 18:9-1 provides that "All boards of education of the various school districts shall constitute a 'state federation of district boards of education.'"; and R.S. 18:9-2 provides that each of the district boards "shall select annually one of its members as a delegate to the State federation." The functions of the State Federation are to investigate such subjects relating to education as it may think proper, and to "encourage and aid all movements for the improvement of the educational affairs in this State." (R.S. 18:9-3.) R.S. 18:9-6 provides as follows:

"For the purpose of defraying the necessary expenses of the State Federation, the various district boards may pay the necessary expenses incurred by its delegates, and may appropriate annually such sums for dues as may be assessed by the Federation at any delegate's meeting, which assessment of dues shall be made only upon two-thirds vote of the delegates present at such delegate's meeting, after notice of the taking of such vote shall have been given to each district board in writing at least sixty days before such delegate's meeting. The aforesaid dues shall be assessed upon a graduated scale according to the size of the school district, but in no case shall the dues for any one district exceed the sum of one hundred fifty dollars (\$150.00) for any one year. Dues shall be payable by the custodian of school moneys of the school district to the treasurer of the State Federation."

We read the above quoted section as requiring the payment of dues, once they have been assessed in accordance with the procedures and limitations set forth in R.S. 18:9-6. It is to be observed that the dues "shall be assessed upon a graduated scale" etc., and that "dues shall be payable by the custodian of school moneys * * * to the treasurer of the State Federation." Reading this language together with the sections requiring all boards of education to be members of the State Federation and requiring each board to select a member as a delegate to the State Federation, we believe that the word "shall" as above twice quoted from R.S. 18:9-6 should be given its usual mandatory significance. See *Union Terminal Cold Storage Co. v. Spence*, 17 N.J. 162, 166 (1954); *Foley v. Orange*, 91 N.J.L. 554, 555 (E. & A. 1918). Moreover, it would be somewhat anomalous for one or more local boards to be members of the Federation, as they must by law, without paying the dues contemplated by R.S. 18:9-6. For these reasons, we would construe the provision of Section 18:9-6 that the various district boards "may appropriate annually such sums for dues as may be assessed" as a grant of power which each board will be under a duty to

exercise when the assessment has been effected in accordance with the statute. *City of Bayonne v. North Jersey etc. Commission*, 30 N.J. Super. 409, 417 (App. Div. 1954); *Clark v. Elizabeth*, 61 N.J.L. 565, 581-582 (E. & A. 1898). In the case last cited, the Court of Errors and Appeals set forth the rule as follows (pp. 581-582):

"Words which, in their ordinary acceptation and when interpreted exclusive of the context and the subject-matter, imply a discretion or power, such as 'may,' 'it shall be lawful,' and the like, become in the construction of statutes mandatory where such is the legislative intent. The general rule is stated as follows: 'Where a statute confers authority to do a judicial, or, indeed, any other act, which the public interest or even individual right many demand, it is imperative on those so authorized to exercise the authority when the case arises, and its exercise is duly applied for by a party interested and having a right to make the application. In giving one person the authority to do an act the statute impliedly gives to others the right of requiring that the act be done, the power being given for the benefit not of him who is invested with it, but of those for whom it is to be exercised. * * * When, therefore, the language in which the authority is conferred is only directory, permissive or enabling—for instance, when it is enacted that the person authorized "may," or "is empowered," or "shall if he deems it advisable," or that "it shall be lawful" for him to do the act—it has been so often decided as to have become an axiom that such expressions have a compulsory force, unless there be special grounds for a different construction.'"

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

MAY 25, 1959

SALVATORE A. BONTEMPO, *Commissioner*
Department of Conservation and Economic Development
205 West State Street
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-6

DEAR COMMISSIONER BONTEMPO:

You have requested our opinion as to whether a veteran who has a total of 13 years of public service and who has been injured in the course of his employment, would be eligible for a disability pension pursuant to N.J.S.A. 43:4-1 et seq. This question must be answered in the negative.

N.J.S.A. 43:4-1 reads as follows:

"This chapter shall apply to and include persons serving in and honorably discharged from the military or naval service of the United States, including nurses, in any war in which the United States is or has been engaged and in connection with the American punitive expedition or other intervention