

L. 1962, c. 70 further provides relief by amending Section 19 of The Emergency Transportation Tax Act. This section had required the assignment by New Jersey residents to the State of New Jersey of their claims for refunds of tax moneys paid to the State of New York. As amended, Section 19 still provides that New Jersey residents may satisfy their obligations to pay the New Jersey tax by assigning and transferring to the State of New Jersey their claims for refunds of tax moneys paid to and held by another taxing state. L. 1962, c. 70, § 6. It is now provided, however, that if any residents or class of residents of the State of New Jersey, who are taxable under The Emergency Transportation Tax Act, are liable for a tax upon the same income by "another critical area state" and are thereby entitled to the credit allowed by Section 16(B) of the Act against the tax otherwise due, and if the credit would be substantially sufficient in amount to offset such taxes, such New Jersey residents may be relieved from filing any returns under The Emergency Transportation Tax Act. Specific authorization to excuse the filing of returns shall be made by regulation of the Division of Taxation based upon an opinion of the Attorney General of this State indicating the residents or class of residents who might be relieved from the filing requirements of The Emergency Transportation Tax Act. L. 1962, c. 70, § 6(b).

Accordingly, we advise you that New Jersey residents earning their income within the State of New York, at the present time, are subject to the New York Personal Income Tax Law and are not entitled to any credit or offset against that tax by virtue of any tax liability under New Jersey law; that since such New Jersey residents are liable for and must pay the tax imposed by the State of New York under its Personal Income Tax Law, which tax is substantially similar in amount to that of New Jersey, such New Jersey residents are entitled to credit their New York income taxes against their tax liability to the State of New Jersey under The Emergency Transportation Tax Act. Therefore, by an appropriate regulation promulgated by the Division of Taxation, such New Jersey residents who actually pay the income taxes imposed by the State of New York may be relieved from filing any tax returns with the State of New Jersey.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: ALAN B. HANDLER
Deputy Attorney General

AUGUST 23, 1962

HONORABLE FREDERICK M. RAUBINGER
Commissioner, Department of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION 1962—No. 2

DEAR COMMISSIONER RAUBINGER:

You have asked whether local boards of education are empowered by statute to enter into contracts with an educational television station to receive programs

within a given school at a proposed per pupil cost of fifty cents. The facts which we have been able to obtain indicate the following:

WNBT, Channel 13, in the immediate future will broadcast its programs on an open circuit so that anyone with a television set may tune in. The station intends to broadcast programs which may be used by both elementary and secondary school pupils. Participating school districts would use the programs broadcast by Channel 13 as a supplement to classroom study. The programming is set up by WNBT with the cooperation and guidance of educational consultants. Although a tentative schedule of programs is available, the final schedule has not yet been determined.

Representatives of WNBT have indicated that manuals will be furnished to classroom teachers in contracting school districts for use in guiding students during the programs. These manuals will not be available unless the school district has contracted with the station to receive the programs. We have not been able to obtain the manuals for inspection, having been advised by WNBT that they are not yet in print but are expected to be in print during the first week in September.

In addition, the station will supply to participating school districts kinescope recordings of programs for use on school projectors. There is no assurance that these films will be available to all participating school districts. In fact, our information is that the films will deal only with high school level subjects.

From a review of Title 18 it would appear that an implied power exists for boards of education under appropriate circumstances to enter into contracts with a television station for educational programs.

Art. IV, § 7, par. 11 of the 1947 Constitution of New Jersey provides:

"The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law."

Although this section of the Constitution does not expressly mention school districts, the reasoning behind it applies to boards of education which are autonomous bodies on a municipal level. *Botkin v. Westwood*, 52 N.J. Super. 416 (App. Div. 1958), aff'd, 28 N.J. 218 (1958); *Merry v. Board of Education of the City of Paterson*, 100 N.J.L. 273 (Sup. Ct. 1924); R.S. 18:6-21; R.S. 18:7-54. Therefore, in determining whether or not school boards are authorized to enter into a contract with an educational television station, not only the express powers granted under Title 18 should be considered, but also those powers which may be fairly implied from or incidental to the powers expressly conferred.

School districts operating under chapter 6 of the school laws are authorized to "do all acts and things necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district." R.S. 18:6-17. Moreover, R.S. 18:6-18 provides that the board of education shall have the supervision, control and management of the public schools and public school property in the district. It may purchase, lease or sell real or personal property in its corporate name. N.J.S.A. 18:6-24. Boards of education are authorized to make rules and regulations for the government and management of the public schools and public school property. R.S.

18:6-19. No course of study may be adopted or altered nor textbooks selected without a majority vote of the whole number of the board. R.S. 18:6-20.

School districts operating under chapter 7 of Title 18 are likewise authorized to make rules and regulations for the government of the public schools and public school property in the district. N.J.S.A. 18:7-56. A board may receive, lease and hold in trust for the district any and all real or personal property. N.J.S.A. 18:7-76. R.S. 18:7-57 deals with the miscellaneous powers of the board. Subsections (c) and (d) authorize the board to:

“(c) select the textbooks and provide the textbooks and other necessary school supplies;

“(d) prescribe, in connection with the county superintendent of schools, the course of study to be pursued in the schools.”

R.S. 18:7-58 prohibits the adoption or alteration of any course of study and the selection of any textbooks without a majority vote of the whole number of the members of the board.

Regional boards of education generally have the same powers as are possessed by the boards of chapter 7 school districts. R.S. 18:8-14.

What is sought to be accomplished here is the adoption or alteration of a course of study as a supplement to classroom work in the schools. Since there is a clearly expressed power to prescribe the course of study, there necessarily exists the concomitant power to enter into agreements to effectuate the course of study adopted in accordance with the statutes. Cf. *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills*, 13 N.J. 172, 179 (1953); *Sleight v. Board of Education of Paterson*, 112 N.J.L. 422, 426 (E. & A. 1933); *Hankin v. Board of Education of Hamilton Township*, 47 N.J. Super. 70, 78 (App. Div. 1957), *pet. for cert. denied*, 25 N.J. 489 (1957); *Merry v. Board of Education of City of Paterson*, *supra*. In each of the foregoing cases cited, the courts found implied powers existing in boards of education.

In *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills*, *supra*, Justice Brennan held that a board of education had an implied power to make reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgment when voting upon a proposal concerning the building of new schools. The court said that this power was implied from R.S. 18:7-77.1(b) which permitted the board to include in its annual budget the “building, enlarging, repairing or furnishing of a schoolhouse or schoolhouses.” However, the court found that the board failed to make a fair presentation of the advantages and disadvantages in the proposed building program so that the expenditure of funds by the board was not within the implied power and, therefore, was not lawful.

In *Hankin v. Board of Education of Hamilton Township*, *supra*, the court found that there was an implied authority for the board of education to incur reasonable expenses for obtaining such expert opinion as was necessary to furnish a basis for an accurate estimate of the costs of two proposed elementary schools. Thus, the board had acted properly when it employed architects to do the sketches and cost study for new schools prior to the submission of the proposition to the voters. This was true even though the voters later rejected the proposal. The court reasoned that in order for the voters to intelligently exercise their suffrage, it was necessary that they be properly informed by way of having an estimate of the costs and models

of the proposed buildings available. The court stated that the board of education had an implied power to contract for these preliminary services, citing *Sleight v. Board of Education of Paterson, supra*, which also concerned the payment by a board of architects' fees for drawing plans and specifications for a new school building.

In *Merry v. Board of Education of Paterson, supra*, the court found that a board of education had an implied power to employ counsel to prosecute and defend cases in view of the express statutory authority of the board to sue and be sued.

Should a school board desire to enter into an agreement for educational television, consideration should be given to the prohibitions found in Art. VIII, § 3, par. 2 and par. 3 of the New Jersey Constitution of 1947. There are, respectively:

"2. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation."

"3. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever."

Moreover, in *Commissioners of Public Instruction v. Fell*, 52 N.J. Eq. 689 (Ch. 1894), the court in holding that school districts were included within the statutory phase "other municipalities," stated at p. 691:

"The fact that towns and townships are classified as municipal corporations goes very far towards including school districts. A school district is a part of the machinery of government, as much so, to all intents and purposes, as a town or township. When the moral and intellectual interests of the people are considered, a school district may well be regarded as ranking as high in importance as that of any other territorial division. Through its agents it deals both with the property and the liberty of citizens; more than this, towns and townships do not do."

See also *State v. Troth*, 34 N.J.L. 377, 386 (Sup. Ct. 1871), rev'd on other grounds, 36 N.J.L. 422 (E. & A. 1872).

These prohibitions must be noted because the programs in question will be broadcast on open circuit television and may be picked up by anyone with a television set whether or not he has contracted for the services. The school district should determine factually whether or not adequate consideration is offered by WNDT to support this use of public funds. *Wilentz v. Hendrickson*, 133 N.J. Eq. 447 (Ch. 1943), aff'd, 135 N.J. Eq. 244 (E. & A. 1944).

In this opinion we are not concerned with the wisdom of adopting a televised course of study since this is essentially a matter for the discretion of the school board and the State Department of Education and is not a legal question. Nor have we considered when or how moneys to pay for the services will be allocated by the local board of education. From the data available to us it would appear that, besides the per capita cost outlined in the form contract submitted by WNDT (50c per pupil, grades K-12), costs for television sets and their maintenance will be considerable for many school districts. These and many other considerations must be taken into account by the local board of education before entering into a contract with WNDT.

It is to be noted that elements of control by way of supervision or prescription are retained by the Commissioner of Education through statutory authority contained in Title 18. For example, with the advice and consent of the State Board he may prescribe a minimum course of study for the elementary schools and for high schools. N.J.S.A. 18:3-17. In the past the Commissioner has exercised this power in regard to secondary schools only. However, the Commissioner could require that educational programs which will be carried into classrooms as part of a "course of study" be approved by him initially.

The question answered in this opinion differs from a question dealing with educational television which was raised some time ago. It is our understanding that at that time the question was whether various boards of education could participate in the organization, operation and maintenance of a noncommercial, nonprofit educational television station in order to utilize its services. Assembly Bill No. 300 of 1962 was aimed at expressly permitting school districts to do this. This Opinion only concerns the power of a local school board to utilize under contract the services of an educational television station in the manner previously described.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: THOMAS F. TANSEY
Deputy Attorney General

DECEMBER 10, 1962

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1962—No. 3

DEAR MR. KERVICK :

You have requested our opinion with respect to the effect of the recent decision of the New Jersey Supreme Court in *Switz v. Kingsley*, 37 N.J. 566 (1962) upon certain existing property tax exemptions, specifically the exemptions now accorded to veterans, senior citizens, household property and parsonages. We have concluded that the Supreme Court's decision requires that these exemptions be computed by deducting the amount of the exemptions from the true value of the taxable property. Our reasons follow.

I. VETERANS' EXEMPTION

The recent *Switz* case involved the constitutionality of Chapter 51, Laws of 1960. This statute relates to the taxation of real and personal property for the use of local government. It provides, *inter alia*, that all real property subject to assessment and taxation for local use shall be assessed according to "the same standard of value, which shall be the true value," but that the assessment shall be expressed in terms of the "taxable value." The "taxable value" is defined as that "percentage" of true value which each county board of taxation may establish for the taxing districts