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Authority. The opinion was further expressed that "... if the State were to insist that all future leases with the Authority contain provisions authorizing the State to vacate at will and thus terminate the leases, it would appear beyond peradventure that the State would incur no obligation thereon except to pay for current use through current appropriations. We assume that the propriety of incurring such obligation would be acknowledged universally." 13 N.J. at p. 73-74.

October 8, 1965

MR. JOSEPH F. REGAN
Commissioner of Registration
Bergen County Board of Elections
Bergen County Court House
Hackensack, New Jersey

FORMAL OPINION 1965—NO. 3

Dear Mr. Regan:

You have requested our opinion as to whether a registered voter who does not vote at any election during four consecutive years except at a school election must re-register before being allowed to vote at any subsequent election.

In our opinion, a registered voter who has not voted at any election except at a school election during four consecutive years must re-register in order to vote at any subsequent election.

The last paragraph of N.J.S.A. 19:31-5 provides that if any registered voter "does not vote at any election during 4 consecutive years his original and duplicate permanent registration and record of voting forms shall be removed to the inactive file and he shall be required to register before being allowed to vote at any subsequent election." N.J.S.A. 19:1-1 defines election as follows: "'Any Election' includes all primary, general, municipal and special elections, as defined herein."

The latter statute in turn defines "general election" as meaning the annual election to be held on the first Tuesday after the first Monday in November and "primary election" as meaning the procedure whereby political party members nominate candidates to be voted for at general and party elections. It is obvious that a school election falls into neither of these categories.

A "municipal election" is defined by N.J.S.A. 19:1-1 as "an election to be held in and for a single municipality only, at regular intervals". The same statute defines "municipality" as including "any city, town, borough, village, or township." In New Jersey, school districts of every classification, whether or not they are coterminous with municipal boundaries, are and have been local government units governed by a board of education. As such, they are legal entities separate and distinct from the municipality. See R.S. 18:7-82; 18:6-49 *et seq.*; *Board of Education of the City of Hackensack v. City of Hackensack*, 63 N.J. Super. 560 (App. Div. 1960); *George W. Shaner & Sons v. Bd. Ed. Millville*, 6 N.J. Misc. 671 (Sup. Ct. 1928); *Merrey v. Bd. Ed. Paterson*, 100 N.J.L. 273 (Sup. Ct. 1924); *Bd. Ed. Long Branch v. Bd. of Commissioners, Long Branch*, 2 N.J. Misc. 150 (Sup. Ct. 1924); *Montclair v. Baxter*, 76 N.J.L. 68 (Sup. Ct. 1909); *Falcone v. Bd. of Ed., Newark*, 17 N.J. Misc. 75 (C.P.

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1939). Furthermore, a school district's independent entity is preserved, whether its governing board is appointed by the chief executive of the municipality, R.S. 18:6-1 *et seq.*; *Gualano v. Bd. of Estimate of Elizabeth School Dist.*, 39 N.J. 300 (1963), or whether the board is elected by the voters of the district, R.S. 18:7-1, 18:8-1; *Botkin v. Westwood*, 52 N.J. Super. 416 (App. Div. 1958), *appeal dismissed*, 28 N.J. 218 (1958); but see, *Roman Catholic Diocese of Newark v. Ho-Ho-Kus Borough*, 42 N.J. 556 (1964). In *Botkin v. Westwood*, *supra*, the court discussed this dichotomy with specific reference to elections as follows:

“... Not only are the members of the board of education elected by the voters at separate school elections held at different times and places than municipal, primary or general elections, but the annual amounts of money to be raised by taxation, the purchase of land, the erection of buildings and the issuance of bonds must all be submitted to and affirmatively authorized by the voters at such elections.” *Botkin v. Westwood*, *supra*, 52 N.J. Super. at 425, 426.

Furthermore, the statutory provisions relating to municipal elections are found in Title 40, which deals with the subject of municipalities, as well as in Title 19 (Elections), *e.g.* N.J.S.A. 19:1-2 and 3; 19:3-1(c). School elections, on the other hand, are completely controlled by Title 18 (Education) with only infrequent and mechanical references to certain provisions of Title 19. It is therefore clear that a school election does not fit within the statutory definition of the phrase “municipal election”. See *Botkin v. Westwood*, *supra*.

A “special election” is defined by statute as “an election which is not provided for by law to be held at stated intervals”. N.J.S.A. 19:1-1. School board elections are by statute required to be held at stated intervals. R.S. 18:7-14; N.J.S.A. 18:8-16. Therefore, a regular school board election cannot qualify as a “special election” within the statutory definition.

On the other hand, there are provisions for school elections which are not necessarily held at stated intervals, *e.g.* R.S. 18:7-61, 78 and 85; N.J.S.A. 18:7-107.1; 18:8-16.1, 26. While these elections might otherwise qualify as “special elections”, it should be noted that N.J.S.A. 18:7-46 provides that “all such elections shall be called in the manner provided for the calling of the annual school election, . . .” and “the qualification of voters, conduct of the election, and establishment of voting districts together with polling places therein shall be governed in all respects by the provisions of the law regulating the annual school election . . .”. Thus, special school elections are wholly regulated by the provisions of Title 18 and, as shall be demonstrated below, are subject to the supervision of the Commissioner of Education rather than any election official. In addition, there are significant reasons to indicate that a special school election or any school election for that matter is not within the statutory definition of “any election” as it appears in N.J.S.A. 19:1-1.

As heretofore noted, the Legislature defined “any election” by using the term “includes”. The use of this word implies that the definition is broader than the specific examples enumerated therein. See *Cuna v. Board of Fire Com'rs, Avenel*, 42 N.J. 292, 304-5 (1964); *Levitt & Sons, Inc. v. Division Against Discrimination, etc.*, 31 N.J. 514, 526 (1960); *Central R.R. Co. of N.J. v. Division of Tax Appeals*, 8 N.J. 15, 28 (1951); *State v. Rosecliff Realty Co.*, 1 N.J. Super. 94, 100 (Sup. Ct. 1948). Despite the requisite broad interpretation of the definition here considered, an

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analysis of the mechanics of school elections demonstrates that the Legislature did not intend that the phrase "any election" was to encompass school elections.

When a person votes at any school election he must first sign a "poll list". N.J. S.A. 18:7-35.5. The signatures on this poll list are then compared with the signatures on the "signature copy register" which is maintained by the appropriate county election officials. N.J.S.A. 18:7-35.6. After the election is completed, the poll list is sealed with the ballots and forwarded to the county superintendent of schools who is directed by law to preserve the poll list for only one year. N.J.S.A. 18:7-45. As a result, county boards of election have no record whatsoever of whether or not a person has in fact voted in a school election. Further, assuming that election officials have the burden of examining the poll lists and assuming that county superintendents of schools have the right to make these records available to such officials, at the expiration of one year such records are no longer available to anyone. If the Legislature had intended that a person who has voted only in school elections during any four consecutive years need not re-register, it would have provided a system whereby registrars could verify that such a vote was cast.

It has long been settled that school elections are *sui generis* and wholly subject to the jurisdiction of the Commissioner of Education. Not only have the courts so held, *Buren v. Albertson*, 54 N.J.L. 72 (Sup. Ct. 1891), but both the Commissioner and the State Board of Education, in a long line of school law decisions, have continually ruled to the same effect. *Shearn v. Middlesex Borough Annual School Election*, 1928 S.L.D. 971 (Supp. 1931); *Joseph Flack in re: Madison Borough Annual School Election*, 1938 S.L.D. 176 (1935); *Koven v. Stanley*, 84 N.J.L. 446 (1913). Long standing administrative interpretation of the scope of an administrative agency's own powers is entitled to great weight in the area of statutory construction. *In re Glen Rock*, 25 N.J. 241, 250 (1957).

For the foregoing reasons we conclude that a school election is not "any election" as defined by N.J.S.A. 19:1-1 and, hence, when a registered voter fails to vote during four consecutive years at any election except school elections he shall be required to re-register in order to vote in any subsequent election.

Very truly yours,

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By: JOSEPH A. HOFFMAN

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