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fee basis, and thus arguably performed by an "independent contractor" for his client? Only the actual or reasonably equivalent amount to compensate for the former is includable. The policy underlying our pension laws does not oblige the public to bear the financial burden of pension credit afforded to fees which a lawyer essentially charges to his client — at least over and above the normal retainer for professional services arising out of the occupancy of the statutory and usually mandatory office of municipal attorney.

5. As indicated above (see footnote 3, *supra* and accompanying text), it may be necessary in specific instances for the Board of Trustees to evaluate the factual circumstances applicable to the rendition of professional services to determine whether or not a bona fide employer-employee relationship existed within the meaning of the principles set forth above.

October 26, 1976

FRED G. BURKE
Commissioner of Education
Department of Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 28 — 1976

Dear Commissioner Burke:

The Department of Education has asked whether a local board of education must obtain the approval of the legal voters of its district at a public referendum for the construction of school facilities paid for in its entirety by federal grant moneys. You have indicated that this question was generated by the recent enactment of the Local Public Works Capital Development and Investment Act of 1976.* This law authorizes the Secretary of Commerce, acting through the Economic Development Administration, to make direct or supplemental grants to any State or local government for local public works projects which will stimulate employment. Pursuant to this law and the regulatory scheme implementing it, local school districts within the State of New Jersey may apply for direct grants for the construction of educational facilities.

The basic question involved herein is whether Type II or regional school districts applying for federal moneys for school construction must obtain voter approval for such projects. Local boards of education are political subdivisions created by the Legislature and empowered by it to provide, maintain and supervise local school districts. N.J.S.A. 18A:33-1 requires each local school district to provide "suitable educational facilities including proper school buildings and furniture and equipment" for children resident within the district.

Pursuant to this statutory requirement, local districts must prepare acceptable building proposals and financing plans which include, where necessary, the borrowing of funds and the issuance of bonds to finance such projects. The authority for such borrowing is found in N.J.S.A. 18A:20-4.2 which provides:

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“The board of education of any school district may, for school purposes:

“(a) purchase, take and condemn lands. . . .

“(b) grade, drain and landscape lands owned or to be acquired by it and improve the same in like manner;

“(c) erect, lease for a term not exceeding 50 years, enlarge, improve, repair or furnish buildings;

“[d] *borrow money therefor, with or without mortgage; in the case of a type II district without a board of school estimate, when authorized so to do at any annual or special school election and in the case of a type II district having a board of school estimate, when the amount necessary to be provided therefor shall have been fixed, determined and certified by the board of school estimate, and in the case of a type I district when an ordinance authorizing expenditures for such purpose is finally adopted by the governing body of a municipality comprised within the district, . . .*”

(Emphasis added)

In order to answer the present inquiry, it is necessary to ascertain whether the Legislature intended the referendum requirement contained in N.J.S.A. 18A:20-4.2 (d) to apply to each of the subsections contained therein or whether this requirement is restricted to subsection (d). It is this latter provision which specifically authorizes local boards of education to borrow money in order to accomplish the various activities necessary for the construction of education facilities.

It is a general rule of statutory construction that qualifying words or phrases refer solely to the last antecedent which consists of the last word, phrase or clause that can be made an antecedent without impairing the meaning of the sentence. *State v. Wean*, 86 N.J. Super 283 (App. Div. 1965); *State v. Congdon* 76 N.J. Super. 493 (App. Div. 1962); 2A Sutherland, *Statutory Construction* (Sands, 4 ed. 1973), § 47.33 at 159. Consistent with this principle, the referendum requirement should be construed as applying solely to subsection (d) of N.J.S.A. 18A:20-4.2. Although the utilization of punctuation to set off the referendum requirement may be viewed as indicative of a “contrary intention,” *Gudgeon v. County of Ocean*, 135 N.J. Super. 13 (App. Div. 1975), the language and underlying purpose of the provision indicates a legislative intent to restrict the referendum requirement solely to the borrowing of money in subsection (d).

The statute specifically requires that in a type II school district *with* a board of school estimate, the board of school estimate shall fix, determine and certify the “amount necessary to be provided therefor.” In a type I district, the governing body of a municipality must finally adopt an ordinance “authorizing expenditures for such purposes.” It follows by analogy that a public referendum would be necessary in a type II district without a board of school estimate only when it similarly will incur a substantial expenditure of local moneys to finance capital school construction.

Furthermore, a statute is to be interpreted in accord with related statutes. *Key Agency v. Continental Casualty Co.*, 31 N.J. 98, 103 (1959); *Bashwiner v. Police and Firemen’s Retirement System of New Jersey*, 68 N.J. Super. 1 (App. Div. 1961). N.J.S.A. 18A:20-4.2 is therefore to be construed with reference to that statutory system of which it is a part. 2A Sutherland *Statutory Construction* (Sands, 4 ed. 1973), § 51.02. Significantly, N.J.S.A. 18A:22-39 which governs the formation of a

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public question to be submitted to referendum pursuant to N.J.S.A. 18A:20-4.2 provides in pertinent part:

“Whenever the undertaking of any capital project or projects to be paid for from a special district tax or from the proceeds of an issue or issue of bonds is submitted to the voters of a type II district at an annual or special school election for their approval or disapproval, the board shall frame the question or questions to be submitted so that each project is submitted in a separate question, or all or any number of them are submitted in one question, which shall state the project or projects so submitted and the amounts to be raised for each of the projects so separately submitted. . .” (Emphasis added).

Additionally, N.J.S.A. 18A:14-3 which authorizes special elections specifically requires that:

“...no more than two special school elections shall be called by any board of education within any period of six months to submit to the legal voters of the district for their adoption or rejection any proposal, resolution or question authorizing the raising of a special district tax or the issuance of bonds of the district, for the same purpose, unless the commissioner shall first have certified in writing the necessity therefor.” (Emphasis added)

It would appear to have been the probable legislative purpose to require voter approval of those long term capital construction projects with a substantial financial commitment through the issuance of bonds or the imposition of a special tax. It is therefore clear that the necessity of voter approval spelled out in subsection (d) consistent with this overall legislative purpose has application only to borrowing in that subsection and does not apply to subsections (a), (b) and (c) where a long term financial commitment is not mandated. In fact, at the time of the enactment of N.J.S.A. 18A:20-4.2 the Legislature could not have envisioned that total funding of a capital project may be received from federal sources not involving a financial commitment by the district, and it would be incongruous to assume a need for voters' approval under subsection (d) under these circumstances.

This conclusion is entirely consistent with N.J.S.A. 18A:20-4 which permits the acceptance of gifts or grants of money or land by a board of education “without additional authorization or authority. Such moneys may thereafter be expended for the construction of buildings for school purposes so long as such expenditures are “authorized” in the manner prescribed by law for the construction of buildings for school purposes or additions thereto.” Pursuant to this statutory provision if the construction of a school facility requires the expenditure of grant moneys and local moneys to be raised either by a special tax or bond issue, the authorization of such project would have to include voter approval in either Type II district without a board of school estimate or a regional district as required by N.J.S.A. 18A:20-4.2 (d). However, in cases similar to those under consideration, where school construction is entirely financed by grant moneys, voter approval would not be a necessary element in the authorization of such project. These projects would be properly authorized by appropriate board action following the receipt of the requisite approvals for school construction.

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We are informed that proposed projects may at some point require local expenditures either in the form of preparatory construction cost such as architectural fees or possible cost overruns. In this regard, it should be pointed out that the expenditure of any *local* moneys for purposes of school construction must be governed by the applicable provisions of Title 18A and those regulations and directives implementing such provisions. The fact that the actual construction of the school facility is basically funded by federal moneys does not relieve a school district from conformity with those statutory or regulatory requirements governing expenses which (a) might be incurred by the local district prior to the receipt of the federal grant and which are not reimbursable thereunder or (b) might be incurred by the local district after the expenditure of the total federal grant in order to complete the facility.

You are therefore advised that there is no legal requirement** that the anticipated construction of educational facilities by Type II school districts without a board of school estimate or by regional districts be submitted for voter approval where such construction is to be entirely financed with federal moneys. This conclusion does not concern Type I school districts, or Type II districts with boards of school estimate since such districts are not required by statute to obtain voter approval for construction projects under any circumstances.

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

BY MARY ANN BURGESS

Deputy Attorney General

* Public law 94-369, 42 USCA §6701, effective July 22, 1976.

** Pursuant to N.J.S.A. 18A:14-3, a local district could voluntarily choose to submit a question concerning the application and possible expenditure of federal moneys to its electorate at a special election. Consistent with this statutory provision, a board may take such action "at any time when in its judgment the interests of the schools require it."

October 28, 1976

HONORABLE CORNELIUS P. SULLIVAN

Acting Prosecutor, Burlington County

Burlington County Prosecutor's Office

49 Rancocas Road

Mt. Holly, New Jersey 08060

FORMAL OPINION NO. 29 - 1976

Dear Prosecutor Sullivan:

You have requested advice as to whether the Open Public Meetings Act requires a public body to provide 48 hour advance written notice before conducting a meeting in closed session.