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2. The first sentence of the textual statement by the Senate Law, Public Safety and Defense Committee, *supra*, noted only the requirement that the identification of persons performing special police functions must state their organizational affiliation. Although the second sentence went on to explain that the purpose of the statute is to facilitate the public's ability to distinguish such persons from regular and permanent police forces, nevertheless the statement did not explicitly acknowledge the further requirement imposed by the statute that persons performing special functions must also "clearly distinguish" their separate status. This omission should not be interpreted as the Committee's belief that the mere listing of organizational affiliation will always suffice to "clearly distinguish" such separate status. For example, the special policeman is arguably affiliated with his local police department, even though he is not a member thereof, by virtue of his obligations to obey the local police department rules and to subject himself to the supervision of the chief of police. *N.J.S.A.* 40A:14-146. Nevertheless, his separate status must clearly be distinguished on his identifying insignia.

Accordingly, the Committee's statement, *supra*, should certainly not be interpreted as an endorsement of the proposition that mere affiliation with a police department automatically removes an officer from the ambit of the statute.

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FRED G. BURKE, *Commissioner*
Department of Education
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Dear Commissioner Burke:

The question frequently arises whether the Commissioner of Education and the State Board of Education have the authority under the Public School Education Act of 1975, *N.J.S.A.* 18A:7A-1 *et seq.* (hereafter Act), to direct a local board of education to undertake a capital project after the voters of a school district have rejected referenda for the issuance of bonds to finance such a project. In particular, the issue arises in circumstances where it has been administratively determined that the school district does not offer a thorough and efficient education to its students and that nothing short of capital improvement would bring the district into compliance with the Education Clause of the 1947 New Jersey Constitution.

Initially, it is clear that the courts of this State have always considered the Commissioner of Education to have broad powers to effectuate constitutional and statutory goals. For example, in *Booker v. Plainfield Bd. of Educ.*, 45 N.J. 161 (1965), the court held that where the Commissioner determined that a local board had taken insufficient action to correct *de facto* segregation, it was within his power to remand the matter to the local board and order that it submit a remedial plan or prescribe a plan of his own. He could take that action notwithstanding that no statute specifically provided him with such authority. The court referred to his broad responsibility to decide controversies under the school laws pursuant to *N.J.S.A.* 18A:6-9 and New Jersey's strong policy against racial segregation expressed in Article I, paragraph 5 of the 1947 New Jersey Constitution and in the education laws.

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Similarly, in *Elizabeth Bd. of Educ. v. Elizabeth City Council*, 55 N.J. 501 (1970), and *East Brunswick Bd. of Educ. v. East Brunswick Township Council*, 48 N.J. 94 (1966), the court found that N.J.S.A. 18A:6-9 and the Education Clause armed the Commissioner with power to restore cuts made in a board of education budget by a governing body. Again, there existed no statutory warrant for such administrative action other than the Commissioner's overall responsibility for supervision of the schools of the State. In *Elizabeth Bd. of Educ. v. Elizabeth City Council*, *supra*, the court said:

“ . . . [I]t is the duty of the Commissioner to see to it that every district provides a thorough and efficient school system. This necessarily includes adequate physical facilities and educational materials, proper curriculum and staff and sufficient funds.” 55 N.J. at 506.

Then in *Jenkins v. Morris Township School Dist.*, 58 N.J. 483 (1971), the court held that not only could the Commissioner properly refuse to allow termination of a sending-receiving relationship between districts, but he could also direct a district to proceed toward regionalization. That power was based not in the literal words of any statute, but in the wide grant of authority given the Commissioner to implement State educational policy.

Thus, from this judicial precedent it can be seen that the Commissioner possessed adequate authority to direct capital improvements even prior to the enactment of the 1975 law. However, the 1975 Act has now unequivocally confirmed the pervasive and comprehensive authority of the Commissioner and the State Board to direct a local board to undertake capital improvements, even where a proposal for the issuance of bonds to finance such a project has been rejected by the voters.

Passed in response to the Supreme Court's demand that the Legislature define the content of the education which the Constitution requires and provide some means to compel local districts to raise the moneys necessary to meet that obligation, *Robinson v. Cahill*, 62 N.J. 473, 519-20 (1972), *cert. den.* 414 U.S. 976 (1973) (hereafter *Robinson I*), the Act establishes a legislative framework for the delivery of a thorough and efficient education. It gives the Commissioner and State Board broad powers to ensure that that mandate is met locally.

Section 4 of the Act, N.J.S.A. 18A:7A-4, contains a statement of the Act's goal. It is:

“ . . . to provide to all children in New Jersey, regardless of socioeconomic status or geographic location, the educational opportunity which will prepare them to function politically, economically and socially in a democratic society.”

Section 5 sets out the elements of which a thorough and efficient education is comprised:

- a. Establishment of educational goals at both the State and local levels;
- b. Encouragement of public involvement in the establishment of educational goals;
- c. Instruction intended to produce the attainment of reasonable levels of

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- proficiency in the basic communications and computational skills;
- d. A breadth of program offerings designed to develop the individual talents and abilities of pupils;
 - e. Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs;
 - f. *Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies;*
 - g. Qualified instructional and other personnel;
 - h. Efficient administrative procedures;
 - i. An adequate State program of research and development; and
 - j. Evaluation and monitoring programs at both the State and local levels.” (Emphasis added.)

Section 6 requires that the State Board, after consultation with the Commissioner, establishes goals and standards, consistent with sections 4 and 5 of the Act and applicable to all public schools in the State. Under section 7, each school district must establish its own goals, objectives and standards pursuant to State Board rules and, pursuant to section 11, report on its progress in conforming to those goals, standards and objectives.

Sections 14 through 16 are crucial to the whole plan. They delegate to the Commissioner and State Board the responsibility for maintaining a constant awareness of what constitutes a thorough and efficient education and for ensuring that each child in the State receives the education which the Constitution guarantees. *Robinson v. Cahill*, 69 N.J. 449, 459-60 (1976) (hereafter *Robinson V*). If, after reviewing the evaluations of local districts, the Commissioner finds that any district has failed to make sufficient progress toward either standards set by the State or those set locally, he shall so advise the local board and direct that a remedial plan be submitted. If that plan as well is insufficient, the Commissioner shall then order the local boards to show cause why he should not direct that corrective action be taken. Section 14. If, after a plenary hearing, the Commissioner determines that corrective action is necessary, under section 15 he may order budgetary changes or further training of school personnel, or both. Should he find that even these measures are insufficient, section 15 also empowers him:

“ . . . to recommend to the State board that it take appropriate action. The State board, on determining that the school district is not providing a thorough and efficient education, notwithstanding any provision of law to the contrary, shall have the power to issue an administrative order specifying a remedial plan to the local board of education, which plan may include budgetary changes or other measures the State board determines to be appropriate”

Finally, if a local board refuses to comply with such an order, the State Board shall apply to the Superior Court for an order directing compliance. Section 16.

The court in *Robinson V* aptly summarized the effect of the scheme:

“ . . . The Constitution imposes upon the Legislature the obligation . . . to provide for the maintenance and support of a thorough and efficient

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system of free public schools’ The imposition of this duty of course carries with it such power as may be needed to fulfill the obligation. The statutory language [of the Act] constitutes a delegation of this power to the State Commissioner of Education as well as to the State Board of Education to see that the constitutional mandate is met. They have for this purpose been made legislative agents. They have received a vast grant of power and upon them has been placed a great and ongoing responsibility.”

The court also confirmed that the power given the Commissioner and State Board to direct budgetary changes includes the power to compel increases in the local school budget. Otherwise, the legislative scheme would be frustrated and the State would be powerless to compel a local district to meet its constitutional obligation. Thus, in the court’s view, the Act was responsive to the demand it made in *Robinson I* that some means be afforded “by which local districts could be *compelled* to raise the necessary funds.” *Robinson V, supra* at 463 (emphasis original); see *Robinson I, supra* at 513, 519.

Although the 1975 Act and our Supreme Court did not address the specific authority of the Commissioner to direct capital expenditures at the local level, this authority may be readily inferred from the pervasive and comprehensive authority given to the Commissioner by the Act and the Education Clause of the Constitution. An administrative agency has not only the express powers delegated to it but also those implied and incidental powers necessary to allow it to achieve its purposes. It is thus reasonable to assume that in addition to the express authority to order budgetary adjustments or additional training of personnel to insure an adequate educational system, the Commissioner and the State Board may also compel local districts to correct more profound deficiencies which result from inadequate capital facilities. N.J.S.A. 18A:7A-15. Furthermore, the statute should be construed in a manner consistent with the general object of the Education Clause. The Supreme Court has stated the preeminence of the Clause over other expressions of constitutional or statutory public policy. This was demonstrated in *Robinson v. Cahill*, 69 N.J. 133, 154 (1975), where it was contended that a redistribution of State aid to schools, in the absence of legislative action, would violate the Appropriations Clause. N.J. Const. art. VIII, §2, par. 2. The court discerned no such conflict, but added that if one existed, the Education Clause would control. For these reasons, it is our opinion that under the Education Clause of the State Constitution and the Public School Education Act of 1975, the Commissioner and the State Board are authorized to direct a local district to undertake a capital project where such a project is deemed essential to a constitutionally mandated thorough and efficient educational system even though the issuance of bonds for such expenditures may have been disapproved by the voters.

Very truly yours,

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