

legislature intended the tax to be a lien. Whether the courts will carry that implication to its logical conclusion, based on the statements in the cases,²² is at best a matter of conjecture. The writer submits that in view of these considerations, it is the legislature's duty to the public to enact a more definite, complete and accurate law for the taxation of personalty if such is its intent, or to repudiate the implications raised by the cases in construing the present statutes if they are contrary to its intent.

TEACHERS TENURE.—In New Jersey, as elsewhere the legislature has provided an intermediate system of courts to hear and determine the litigation of causes arising under the School Laws. As a result, the various adjudications of the intermediate boards of appeal seldom reach the attention of the average practitioner, especially since few of the matters are taken into the regular courts on certiorari. It is the purpose of this note to clarify some of the fundamental requirements underlying one aspect of the School Law—the tenure of teachers in the public schools of the state.

The School Law of New Jersey provides that the “services of all teachers . . . of the public schools in any school district . . . shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive calendar years in that district . . . or

22. “Personal property taxes . . . become a lien upon assessment.” *Spark v. LaReine Hotel Corp.*, *supra* note 13. “The lien of municipal taxes on personal property . . . does not depend upon the tax being due or delinquent, nor upon a distress warrant and levy after delinquency, but is imposed by the statute and comes into being with the assessment.” *Chase Brass and Copper Co. v. Bart Reflector Co.*, *supra* note 11. “A tax on personal property is superior to the lien of a prior chattel mortgage.” *Pasquariello v. Arena Twine & Cordage Co.*, *supra* note 12. “We must attach some significance to that part of the section” (513) “which declares that ‘the same shall be and remain a first lien upon the property and persons, and collectible in a manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance.’ We think this language is sufficiently explicit to constitute a tax or assessment . . . against personal property, a first lien. . . .” *Cranberry Twp. v. Chamberlin and Barclay, Inc.*, *supra* note 7.

after employment for three consecutive academic¹ years, together with employment at the beginning of the next succeeding academic year. . . .”²

The effect of this statute is to give to those coming within its terms a status of indefinite employment, continuing during good behavior and efficiency, and is a restriction on the general powers of a board of education to make rules and regulations governing the engagement and employment of teachers, the terms and tenure of the employment, the promotion and the dismissal of teachers, and their salaries and mode of payment.³

To understand fully the meaning and effect of tenure under this statute, it is necessary to examine the requirements and prerequisites to its acquisition.

Certificates

The first, and probably most important, requirement, is the possession of a teacher’s certificate.⁴ Under the School Law, the State Board of Education has power “to make and enforce rules and regulations for the examination of teachers and the granting of certificates or licenses to teach.”⁵ Examinations are held and certificates are granted by the State Board of Examiners,⁶ the county board of examiners⁷ and the city boards

1. An academic year is defined as the period between the time school opens in the district after the general summer vacation until the next succeeding summer vacation. N. J. P. L. 1935, c. 27.

2. P. L. 1909, c. 243; N. J. COMP. STAT., 4763, § 106a, as amended by N. J. P. L. 1934, at 461, and by N. J. P. L. 1935, at 64.

3. N. J. P. L. 1903 (2nd Spec. Sess.) at 42. 4 N. J. COMP. STAT., at 4762, § 106. In *Gowdy v. State Board*, 84 N. J. L. 231, 86 Atl. 948 (Sup. Ct. 1913) a teacher’s salary had been payable in ten monthly installments. After the teacher had acquired tenure, the board changed its rules regarding payment, providing for twelve monthly payments. The court held the rule to be ineffective as to the tenure teacher since it constituted a reduction in salary.

4. The TEACHERS’ TENURE ACT specifically states, in the proviso, that “the service of any principal or teacher may be terminated without charge or trial who is not the holder of a proper teacher’s certificate in full force and effect.” 4 N. J. COMP. STAT., at 4764, § 106c.

5. 4 N. J. COMP. STAT., at 4727, § 3 V. For the rules governing the requisites for the teachers’ certificates, see “Rules Governing Teachers’ Certificates” issued by the State Commissioner of Education.

6. 4 N. J. COMP. STAT., at 4731, § 29.

7. 4 N. J. COMP. STAT., at 4732, § 30.

of examiners,⁸ but in each case under rules and regulations prescribed by the State Board of Education. The Rules of the State Board recognize four types of certificates as valid: (1) Certificates of Normal Schools or Teachers Colleges, (2) Certificates of the State Board of Examiners, (3) Certificates of city board of examiners issued prior to July 1, 1930, and (4) certificates issued formerly by county board of examiners.⁹

Graduates from the State Normal Schools and Teachers Colleges receive a limited certificate which qualifies the holder to teach certain subjects, depending on the courses taken.¹⁰ The initial certificate issued by the State Board of Examiners to a candidate in any department of school work is limited in character and expires three years from the first day of January or July next following its issuance.¹¹ The certificate may be renewed for four years, on certain conditions.¹² Permanent certificates are granted only upon satisfactory proof of successful service in the New Jersey public schools for a total of at least six years, and of the completion of a certain amount of additional credits of approved study.¹³ A permanent certificate is valid for the life of the holder unless unused for six or more consecutive years.¹⁴

As a result of these rules, even if a teacher is employed for a period of three consecutive years, such teacher's right to tenure terminates with the expiration of the certificate.¹⁵ It, therefore, becomes clear that the only tenure of any real validity to the individual teacher is that acquired under a permanent certificate. In the case of any certificate other than a permanent one, the right to tenure ends with its expiration unless the certificate has been renewed.

8. 4 N. J. COMP. STAT., at 4732, § 31.

9. RULES GOVERNING TEACHERS' CERTIFICATES (State Board of Education of N. J., 15th ed., 1935) rule 28.

10. *Id.*, rule 29.

11. *Id.*, rule 33.

12. *Id.*, rule 34. The applicant for renewal must show evidence of three years' successful experience in N. J. in the type of public school work for which the certificate was issued.

13. *Id.*, rule 34.

14. *Ibid.*

15. *Supra* note 4. In *McAuley v. Board of Education of Prospect Park*, 1928 *Compilation of School Law Decisions*, at 210 (State Board of Education, 1916) where the teacher had served for more than three consecutive years, a dismissal by the board of education was upheld, on the ground that her certificate had expired, and had not been renewed.

A teacher holding a city certificate which qualifies him for daily substitute teaching only will not acquire rights of tenure under the New Jersey Act, even though the holder may, because of the absence of regular teachers, serve for a period of three full years. Substitute teachers are not, in practice, hired by the year, on regular scheduled salaries but are hired for short periods, with a *per diem* compensation.¹⁶

Tenure rights, once acquired, only protect the tenure teacher in those positions for which he is qualified by certificate. An employing board may at any time abolish in good faith, the position in which a teacher has acquired tenure, and create a new one which includes subjects for which the tenure teacher is not qualified.¹⁷ But where one is employed under a general contract to teach certain grades, the mere fact that the special class to which the teacher is assigned is assimilated by others does not deprive such teacher of any accrued tenure rights.¹⁸ The assignment to a special class does not change the general contract into a specific one.¹⁹

Employment

The next requirement for tenure, after the acquisition of the certificate, is that there must be service for three consecutive years in the school district.²⁰ This requirement of the original statute was construed to mean

16. *Waters v. Board of Education of Newark*, 1928 Compilation of School Law Decisions, at 884 (State Board of Education, 1932). In the decisions by the State Commissioner in *Waters v. Newark*, there is some dicta that a regular substitute under full time employment who serves more than three consecutive years has tenure rights, as long as the employing board continues the service of full time substitutes. However, the point has never directly been passed upon, and the accuracy of the statement is doubtful, since boards of education do not in practice, employ full time substitutes.

17. *Weidner v. Board of Education of High Bridge*, 112 N. J. L. 289, 170 Atl. 631 (Sup. Ct. 1934). Prosecutor was qualified to teach only physical training and had acquired tenure rights. A subsequent abolition of the position by the employing board, in good faith, and its creation of a new position for the teaching of both, Physical Training and English, to which a non-tenure teacher was appointed, was upheld as within the powers of the board. Since the prosecutor was not qualified to teach English she had no claim for employment under the new position.

18. *Sidal v. Board of Education of Ventnor City*, 110 N. J. L. 31, 164 Atl. 901 (Sup. Ct. 1932).

19. *Supra*, note 2.

20. *Carroll v. State Board*, 8 N. J. Misc. 859, 152 Atl. 339 (Sup. Ct. 1930).

three consecutive *calendar* years²¹ and not *academic* years.²² Shortly thereafter the act was amended in conformity with this construction.²³ The legislature recently provided an alternative requirement of employment for three consecutive academic years, together with employment at the beginning of the next succeeding academic year.²⁴

The three years service must be consecutive. The recent case of *Chalmers v. State Board*²⁵ demonstrates forceably that this requirement is to be complied with strictly. In that case, the prosecutor was notified in her third year that she would not be reemployed since it was contrary to the board's policy to allow tenure to married people. She resigned at once on the promise that she would be reemployed. It was held that her reemployment did not entitle her to tenure, since her resignation constituted an interruption in her service, and she could not be said to have been employed for three consecutive years, even though she did not, in fact, miss a single school day throughout the period. It is evidence of the strictness of this requirement that, although it may well be argued that such resignation, to acquire reemployment, is tantamount to an evasion of the statute, the court refused to hold that there had been a sufficient compliance.

The form of teacher's contract recommended by the State Commissioner to local boards contains a clause providing that the "contract may at any time be terminated by either party giving to the other — days notice in writing of intention to terminate."²⁶ Such clause is interpreted to mean that both parties have the right to terminate, by one of them giving notice to the other, and not that both mutually should agree on termination.²⁷

21. The court in so construing the statute applied § 10 of the Statute on Statutes, 4 N. J. COMP. STAT., at 4973, which provides "That the word 'month,' when used in any statute shall be construed to mean a calendar month, and the words, 'a year', shall be construed to mean a calendar year."

22. *Supra* note 1.

23. N. J. P. L. 1934, at 461.

24. N. J. P. L. 1935, at 64.

25. 11 N. J. Misc. 781, 168 Atl. 236 (Sup. Ct. 1933).

26. "New Jersey School Laws With Blanks and Forms For School Officers." (1931 ed.) at 475.

27. *Goble v. Easthampton Board of Education*, 1928 Compilation of School Law Decisions, at 86 (Commissioner of Education, 1926); *Breder v. Board of Education of Egg Harbor City*, 1928 Compilation of School Law Decisions, at 145 (Commissioner of Education, 1917).

Where this right is exercised by the employing board, before the teacher has served three full years, it is obvious that the teacher is not entitled to tenure.²⁸ In such case, any future employment is part of a new three year period and is not linked with the old period. This affords another effective method of evading the spirit of the tenure act.

Having once acquired tenure, a teacher does not acquire an extra tenure as to additional salaries, paid as compensation for extra work for three years.²⁹ The statute contemplates no such double protection. The prohibition against the reduction in salary applies to a permanent scheduled salary and not to a temporary increase for extra work done. On the other hand, the statute does not require that there shall be a three year period of service for each type of position. The result is that if one employed in the position of teacher is promoted to that of principal, the time served as a teacher is added to the period served as principal, provided that the service is continuous. The status of one so promoted is not affected by the fact that part or all of the time has been served in another position for both are positions specifically included in the Tenure Act.³⁰

Repeal of Tenure Acts

It is not the purpose of this note to deal with the amount of protection afforded to those who come within the terms of the Teachers' Tenure Act, but it is pertinent to consider the effect of a total or partial repealer of the statute under which the tenure rights were obtained.

The primary question presented is whether a repeal of the statute such as to effect tenure already acquired violates the constitutional prohibitions against laws impairing the obligations of contract.³¹ The courts are almost unanimous in holding that the position of a teacher is that of an employee, and is not that of a public officer.³² The next, and determining, question

28. *Goble v. Easthampton Board of Education*, *supra* note 28. The employing board terminated the contract shortly before the expiration of the third year.

29. *Reed, et al. v. Board of Education of City of Trenton*, 1928 Compilation of School Law Decisions, at 150 (State Board of Education, 1918).

30. *MacNeal v. Board of Education of Ocean City*, 1928 Compilation of School Law Decisions, at 152 (Commissioner of Education, 1926), *aff'd* by State Board of Education, 1927, *aff'd* by Sup. Ct., 1928 (without written opinion).

31. N. J. CONST., Art. IV, § 7, par. 3; U. S. CONST., ART. I, § 10.

32. *Kennedy v. Board of Education*, 82 Cal. 483, 22 Pac. 1042 (1890); *Lymell v. Johnson*, 105 Cal. App. 694, 288 Pac. 858 (1930); *Seymour v. Over-River School*

is whether the provisions of the tenure law in existence at time of hiring become a part of that contract so that a repeal would impair the obligation of the contract. It has been held in New Jersey and Massachusetts that the statute does not automatically become a part of the contract.³³

In *Phelps v. State Board*,³⁴ it was argued that after three years of contract service teachers are entitled to indefinite tenure; that tenure is contractual; and that the Legislature is powerless to interfere with it, or to authorize a board of education to interfere. The court passed directly on the question of a partial repealer and held that the "status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute like that of the incumbent of a statutory office, which the Legislature at will may abolish or whose emoluments it may change."³⁵ The reasoning was based on the case of *Vroom v. Board of Education*,³⁶ where it was held that a rule of a board of education that principals and teachers should hold their positions during good conduct and efficiency does not become a term of the contract of hiring, but is in the nature of a legislative act.

Since the tenure act is not a term incorporated in the contract of a tenure teacher, a repeal of the law does not constitute an impairment of the contract. The tenure act, as is pointed out above³⁷ operates as a

Dist., 53 Conn. 502, 3 Atl. 552 (1886); *Board of Education v. Bacon*, 22 Ga. App. 72, 95 S. E. 753 (1918); *Spear v. Cummings*, 23 Pick. (Mass.) 224, 34 Am. Dec. 53 (1839); *Steinson v. Board of Education*, 165 N. Y. 431, 59 N. E. 300 (1901); *Alexander v. School Dist.*, 84 Oregon 172, 164 Pac. 711 (1917); *Com. v. Frank*, 4 Pa. Co. Ct. 618 (1888); *Lander v. Seaver*, 32 Vt. 114, 76 Am. Dec. 156 (1859); *State ex rel. O'Neil v. Blied*, 188 Wisc. 442, 206 N. W. 213 (1925). *Contra*: *Eason v. Majors*, 111 Neb. 288, 196 N. W. 133 (1923); *cf. State ex rel. Lewellen v. Smith*, 49 Neb. 755, 69 N. W. 114 (1896); *Morley v. Power*, 5 Lea (Tenn.) 691 (1880).

33. *Phelps v. State Board of Education*, 115 N. J. L. 310, 180 Atl. 220 (Sup. Ct. 1935); *Paquette v. City of Fall River*, 179 N. E. 588 (Mass., 1932). But see *Klein v. Board of Education*, 37 Pac. (2d) 74 (Sup. Ct. of Cal. 1934) and *Gastoneau v. Meyer*, 22 Pac. (2d) 31, 131 Cal. App. 611, which state that a repeal of the tenure act can not affect tenure rights which vested before the repeal.

34. *Supra* note 33. The statute under consideration which effected a partial repeal of the TENURE ACT was N. J. P. L. 1933, at 24, empowering boards of education to cut teachers' salaries, on the ground of emergency, without regard to tenure.

35. The distinction apparently is that although a teacher's position is based on contract, and is not an office, yet the status of indefinite tenure granted by the statute is in the nature of a privilege and not a right.

36. 79 N. J. L. 46, 74 Atl. 262 (Sup. Ct. 1909).

37. *Supra* note 3.

restriction on the powers of a board of education, but it does not create a contract right.

TORTS—ACTIONS BY UNEMANCIPATED INFANT AGAINST PARENT—PERSONAL INJURIES.—The right of an unemancipated infant to sue its parents in tort for personal injuries has generally been denied. It appears that no action of this kind had been brought until a comparatively recent date. From the outset, the courts took the view that the common law never permitted this type of action. In 1891, in *Hewlett v. George*,¹ it was said that the common law did not allow such an action (citing no authorities) and, since the legislature had not made provision for it, it could not be allowed. This case has been frequently cited by cases following as an authority for the common law. From its nature it is not a type of action which is apt to arise often. But recently, with the popularity of the automobile, the problem occurs with greater frequency. The precise question has not been adjudicated in many of our states but, where it has, the majority view has given no right of action to the infant. In New Jersey, in *Mannion v. Mannion*,² Circuit Court Judge Ackerson held that an unemancipated minor child could not maintain a suit against its parent for injuries caused by the parent's negligent operation of an automobile.³ That decision has been followed by the courts in New Jersey⁴ and in a recent case, *Reingold v. Reingold*,⁵ the Court of Errors and Appeals adopted that view as being the sounder and in accord with the weight of authority.

Various reasons have been assigned by the courts for the denial of the right of action: the disruption of domestic tranquillity,⁶ the necessity for maintaining parental discipline and control,⁷ the unfairness of enrich-

1. 68 Miss. 703, 9 So. 885, 13 L. R. A. 682 (1891).

2. 3 N. J. Misc. 68, 129 Atl. 431 (C. C. 1925).

3. *Ibid.* It was held that the action could not be maintained at least during minority. Cf. McCurdy, *Torts between Persons in Domestic Relations* (1929) 43 HARV. L. REV. 1056, 1074.

4. *Damiano v. Damiano*, 6 N. J. Misc. 849, 143 Atl. 3 (Sup. Ct. 1928), holding that the administrator could not sue for wrongful death; *Goheen v. Goheen*, 9 N. J. Misc. 507, 154 Atl. 393 (Sup. Ct. 1931).

5. 115 N. J. L. 532, 181 Atl. 153 (E. & A. 1935).

6. *Small v. Morrison*, 185 N. C. 577, 118 S. E. 12, 31 A. L. R. 1135 (1923).

7. *Ibid.*; *Roller v. Roller*, 37 Wash. 242, 79 Pac. 788, 68 A. L. R. 193 (1905); *Matarese v. Matarese*, 47 R. I. 131, 131 Atl. 198, 42 A. L. R. 1360 (1925).