



See In re Application of McGlynn, 58 N.J. Super. 1 (1959).

**Newspaper Articles:**

"Citing Frugality, Meyner Would Expand State College On Pay-As-You Go Basis," Trenton Evening Times, 1-22-59, p.2.

"Compromise Scholarship Plan May Be In Making," Trenton Evening Times, 3-24-59, p.2.

"Meyner Pledges Early Scholarships Decision," Trenton Evening Times, 5-8-59, p. 1.

"Scholarship Bill Vetoed," Trenton Evening Times, 5-11-59, p.1.

"Only Two Choices On Scholarship Bill," Trenton Evening Times, 5-15-59, p. 3.

"Scholarship Control In Education Department," Trenton Evening Times, 9-9-59, p. 24.

**Reports from previous (1958) legislative session:**

**974.90 C697 1958b** Memorandum from S.J. Flink, consultant to Committee on Appropriations re: A-8 (state competitive scholarships for undergraduate study)

**974.90 c697 1958c** Memorandum from S.J. Flink, consultant to Committee on Education re: Assembly bill no. 50 (state competitive scholarship loans)

LAW

(CORRECTED COPY)

Filed with Sec. of State 5-29-59Ret'd. by Gov.  
with recom'ds 5-11-59

SENATE, No. 2

Passed 5-25-59

Governor's Objections Notwithstanding

**STATE OF NEW JERSEY**

INTRODUCED JANUARY 13, 1959

By Senators HILLERY, FOX, CRANE, LYNCH, COWGILL,  
HARPER, JONES and DUMONT

(Without Reference)

AN Act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State of New  
2 Jersey:

1 1. This act shall be known and may be cited as the "State Competitive  
2 Scholarship Act."

1 2. All scholarships, except work scholarships, provided by statute or  
2 through State appropriation, shall be awarded in accordance with the pro-  
3 visions of this act. Nothing herein contained shall affect the renewal or con-  
4 tinuance of individual scholarships awarded prior to the effective date hereof.

1 3. There is hereby created the State Scholarship Commission consisting  
2 of the Commissioner of Education, who shall be its chairman, and 8 other  
3 members to be appointed by the Governor as follows:

4 One representative of Rutgers the State University;

5 One representative of the State Colleges;

6 Three representatives of non-tax-supported institutions of higher educa-  
7 tion in the State;

8 Three other residents of the State.

9 The terms of office of the appointed members shall be 4 years except that  
10 the terms of first members shall be fixed by the Governor in such manner as

11 will provide for the expiration each year of the terms of  $\frac{1}{4}$  of such appointed  
12 members. Any vacancy in the commission shall be filled by the Governor by  
13 the appointment of a person who shall hold office for the balance of the un-  
14 expired terms.

1 4. There are hereby created State competitive scholarships which shall  
2 be maintained by the State and awarded and administered pursuant to this  
3 act, and used by the holders thereof for undergraduate study in institutions  
4 of higher education.

1 5. The number of State competitive scholarships to be awarded annually  
2 shall equal 5% of the total number of students who graduated from ap-  
3 proved high schools in the State during the school year preceding the date  
4 of the examination for the award of such scholarships.

1 6. State competitive scholarships shall be awarded without regard to  
2 race, religion, creed, or sex.

1 7. No person shall be awarded a State competitive scholarship unless

2 (a) He has been a resident of New Jersey for a period of not less than  
3 12 months immediately preceding the date of his application for such scholar-  
4 ship.

5 (b) He has been or will be graduated from high school within a period  
6 not greater than 1 year from the date of his application for such scholar-  
7 ship, except that time spent in the Armed Forces of the United States shall  
8 not be included in computing such period. Awards may be made tentatively  
9 to prospective high school graduates, dependent upon actual graduation at the  
10 end of the then current school year.

11 (c) He has demonstrated financial need for such scholarship as deter-  
12 mined by standards and procedures to be established by the State Scholarship  
13 Commission.

14 (d) He has demonstrated high moral character, good citizenship, and  
15 dedication to American ideals.

16 (e) He has applied for a State competitive scholarship and has been de-  
17 termined, by competitive examination, to be eligible for such scholarship.

18 (f) He has complied with all rules and regulations adopted pursuant to  
19 this act by the State Scholarship Commission for the award, regulation, and  
20 administration of State competitive scholarships.

1 8. Each State competitive scholarship shall entitle the recipient thereof  
2 to \$400.00 per year, or the amount charged for tuition for a regular academic  
3 year by the institution where the scholarship is used, whichever is the smaller  
4 amount. The particular institution a student elects to attend and the par-  
5 ticular charges made by that institution shall not be factors used in deter-  
6 mining financial need nor, except as otherwise provided in this section, the  
7 amount of the stipend. Payments under this act shall be made by the State  
8 Treasurer on the order of the chairman of the State Scholarship Commis-  
9 sion in accordance with rules regulating the same adopted by the commission.

1 9. Each State competitive scholarship is for a period of 4 academic years,  
2 but shall remain in effect only during such period as the holder thereof  
3 achieves satisfactory academic progress and is regularly enrolled as a full-  
4 time student in an institution of collegiate grade as described in section 10.

1 10. A State competitive scholarship may be used in any institution of  
2 collegiate grade in New Jersey which is accredited by the State Board of  
3 Education.

1 11. No State competitive scholarship shall be held by any person at the  
2 same time he is receiving any other scholarship, other than a work scholar-  
3 ship, which is paid out of funds provided by the State.

1 12. The State Scholarship Commission shall provide for the conduct of  
2 annual competitive examinations for State competitive scholarships. On the  
3 basis of the results achieved on the required examinations the commission  
4 shall award scholarships to qualified applicants for whom financial need has  
5 been established.

1 13. Initial awards of not fewer than 10 State competitive scholarships  
2 shall be made in every year to residents of each county of the State or of  
3 such lesser number as may qualify for the award thereof. All other such  
4 scholarships shall be awarded on a State-wide basis without regard for geo-  
5 graphical, political or other subdivisions.

1 14. The State Scholarship Commission may employ such persons, con-  
2 tract for such services, and adopt such rules and regulations as may be nec-  
3 essary or appropriate for effectuating the provisions of this act.

1 15. This act shall not be construed as granting any authority to control  
2 or influence the policies of any educational institution involved in the State  
3 scholarship program, nor to require any such institution to admit into such  
4 institution or once admitted to continue in such institution, any scholarship  
5 holder.

1 16. Section 18:16-33 of the Revised Statutes is repealed.

1 17. This act shall take effect immediately.

STATE OF NEW JERSEY

INTRODUCED JANUARY 13, 1959

By Senators HILLERY, FOX, CRANE, LYNCH, COWGILL and HARPER

(Without Reference)

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1 5. The number of State competitive scholarships to be awarded annually  
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4 of the examination for the award of such scholarships.

1 6. State competitive scholarships shall be awarded without regard to  
2 race, religion, creed, or sex.

1 7. No person shall be awarded a State competitive scholarship unless

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3 12 months immediately preceding the date of his application for such scholar-  
4 ship.

5 (b) He has been or will be graduated from high school within a period  
6 not greater than 1 year from the date of his application for such scholar-  
7 ship, except that time spent in the Armed Forces of the United States shall  
8 not be included in computing such period. Awards may be made tentatively  
9 to prospective high school graduates, dependent upon actual graduation at the  
10 end of the then current school year.

11 (c) He has demonstrated financial need for such scholarship as deter-  
12 mined by standards and procedures to be established by the State Scholarship  
13 Commission.

14 (d) He has demonstrated high moral character, good citizenship, and  
15 dedication to American ideals.

16 (e) He has applied for a State competitive scholarship and has been de-  
17 termined, by competitive examination, to be eligible for such scholarship.

18 (f) He has complied with all rules and regulations adopted pursuant to  
19 this act by the State Scholarship Commission for the award, regulation, and  
20 administration of State competitive scholarships.

1 8. Each State competitive scholarship shall entitle the recipient thereof  
2 to \$400.00 per year, or the amount charged for tuition for a regular academic  
3 year by the institution where the scholarship is used, whichever is the smaller  
4 amount. The particular institution a student elects to attend and the par-  
5 ticular charges made by that institution shall not be factors used in deter-  
6 mining financial need nor, except as otherwise provided in this section, the  
7 amount of the stipend. Payments under this act shall be made by the State  
8 Treasurer on the order of the chairman of the State Scholarship Commis-  
9 sion in accordance with rules regulating the same adopted by the commission.

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1 14. The State Scholarship Commission may employ such persons, con-  
2 tract for such services, and adopt such rules and regulations as may be nec-  
3 essary or appropriate for effectuating the provisions of this act.

1 15. This act shall not be construed as granting any authority to control  
2 or influence the policies of any educational institution involved in the State  
3 scholarship program, nor to require any such institution to admit into such  
4 institution or once admitted to continue in such institution, any scholarship  
5 holder.

1 16. Section 18:16-33 of the Revised Statutes is repealed.

1 17. This act shall take effect immediately.

**ASSEMBLY, No. 2**

**STATE OF NEW JERSEY**

INTRODUCED JANUARY 13, 1959

By Assemblymen McGOWAN, MUSTO, HAUSER, KESSELHAUT  
and MATTHEWS

Referred to Committee on Appropriations

**AN ACT providing for the creation of State competitive scholarships for undergraduate study in institutions of higher education in this State and providing for the awarding and administration of the same.**

1 **BE IT ENACTED** *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. This act shall be known as the "State Competitive Scholarship Act."

1 2. There are hereby created State competitive scholarships which shall  
2 be maintained by the State and awarded and administered pursuant to this  
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4 of higher education.

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6 not greater than 1 year from the date of his application for such scholarship,  
7 except that time spent in the Armed Forces of the United States shall not be  
8 included in computing such period. Awards may be made tentatively to pro-  
9 spective high school graduates, dependent upon actual graduation at the end  
10 of the then current school year.

11 (c) He has demonstrated financial need for such scholarship as deter- 6  
12 mined by standards and procedures established by the State Board of Edu- 7  
13 cation. 8

14 (d) He has demonstrated high moral character, good citizenship, and 9  
15 dedication to American ideals. 10

16 (e) He has applied for a State competitive scholarship and has, by com- 11  
17 petitive examination, been determined to be eligible for such scholarship. 1

18 (f) He has complied with all rules and regulations of the State Board of 2  
19 Education for the award, regulation, and administration of State competitive 3  
20 scholarships. 4

1 4. The amount of each scholarship shall be \$400.00 per year, or the 5  
2 amount charged for tuition by the institution where the scholarship is used, 6  
3 whichever is the smaller amount. The particular institution a student elects 7  
4 to attend and the particular charges made by that institution shall not be 1  
5 factors used in determining financial need nor, except as otherwise provided 2  
6 in this section, the amount of the stipend. Payments under this act shall be 3  
7 made by the State Treasurer on the order of the Commissioner of Education 4  
8 in accordance with rules regulating the same adopted by the State Board of 5  
9 Education. 6

1 5. No competitive State scholarship may be held by any person at the  
2 same time he is receiving any other scholarship which is paid out of funds  
3 provided by the State.

1 6. A State competitive scholarship may be used in any institution of col-  
2 legiate grade in New Jersey if such institution offers a college curriculum  
3 leading to the baccalaureate degree and is accredited by the State Depart-  
4 ment of Education.

1 7. Each competitive scholarship is for the period of 1 academic year. The  
2 State Board of Education may provide by appropriate rules and regulations  
3 for such reports, accounting, and statements from the scholarship holder  
4 and institution of attendance pertaining to the use or application of the award  
5 as it may deem proper. A competitive scholarship may be renewed annually,

6 after the initial award, without an additional competitive examination until  
7 the award winner has received 4 annual awards or until he has been gradu-  
8 ated from such an institution in an undergraduate course. The scholarship  
9 shall remain in effect only during the period that the holder thereof achieves  
10 satisfactory academic progress and is regularly enrolled as a full-time stu-  
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1 8. The Commissioner of Education shall provide annual competitive ex-  
2 aminations for State competitive scholarships. On the basis of the results  
3 achieved on the required examinations the commissioner shall award schol-  
4 arships for the next ensuing academic year to qualified applicants for whom  
5 financial need has been established. The commissioner also shall determine  
6 which of the current scholarship holders are making satisfactory academic  
7 progress and are entitled to an annual renewal of their scholarships.

1 9. The State Board of Education from time to time shall adopt such  
2 rules and regulations as may be necessary or appropriate for effectuating the  
3 provisions of this act.

1 10. This act shall not be construed as granting any authority to control  
2 or influence the policies of any educational institution involved in the State  
3 scholarship program. Nothing contained in this act shall be interpreted to  
4 require any such institution to admit into such institution, or once admitted  
5 to continue in such institution, any scholarship holder.

1 11. State competitive scholarships shall be awarded without regard to  
2 race, religion, creed, or sex.

1 12. Such part of the funds appropriated for the year 1958 59 for State  
2 scholarships to carry out the program established hereunder as may be nec-  
3 essary for the purpose of conducting examinations and for other expenses  
4 incidental to the administration of this act may be applied to such purposes.

1 13. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO  
**ASSEMBLY, No. 2**

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**STATE OF NEW JERSEY**

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ADOPTED JANUARY 26, 1959

Amend page 2, section 6, line 2, delete the words "in New Jersey".

Amend page 2, section 6, line 3, after the word "accredited" insert the words  
"or approved".

ASSEMBLY, No. 2

STATE OF NEW JERSEY

INTRODUCED JANUARY 13, 1959

By Assemblymen McGOWAN, MUSTO, HAUSER, KESSELIHAUT  
and MATTHEWS

Referred to Committee on Appropriations

AN Act providing for the creation of State competitive scholarships for undergraduate study in institutions of higher education in this State and providing for the awarding and administration of the same.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
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1 1. This act shall be known as the "State Competitive Scholarship Act."

1 2. There are hereby created State competitive scholarships which shall  
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1 3. No person shall be awarded a State competitive scholarship unless:

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7 except that time spent in the Armed Forces of the United States shall not be  
8 included in computing such period. Awards may be made tentatively to pro  
9 spective high school graduates, dependent upon actual graduation at the end  
10 of the then current school year.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

11 (c) He has demonstrated financial need for such scholarship as deter- 6  
12 mined by standards and procedures established by the State Board of Edu- 7  
13 cation. 8

14 (d) He has demonstrated high moral character, good citizenship, and 9  
15 dedication to American ideals. 10

16 (e) He has applied for a State competitive scholarship and has, by com- 11  
17 petitive examination, been determined to be eligible for such scholarship. 12

18 (f) He has complied with all rules and regulations of the State Board of 13  
19 Education for the award, regulation, and administration of State competitive 14  
20 scholarships. 15

1 4. The amount of each scholarship shall be \$400.00 per year, or the  
2 amount charged for tuition by the institution where the scholarship is used,  
3 whichever is the smaller amount. The particular institution a student elects  
4 to attend and the particular charges made by that institution shall not be  
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6 in this section, the amount of the stipend. Payments under this act shall be  
7 made by the State Treasurer on the order of the Commissioner of Education  
8 in accordance with rules regulating the same adopted by the State Board of  
9 Education. 16

1 5. No competitive State scholarship may be held by any person at the  
2 same time he is receiving any other scholarship which is paid out of funds  
3 provided by the State. 17

1 6. A State competitive scholarship may be used in any institution of col-  
2 legiate grade [in New Jersey] if such institution offers a college curriculum  
3 leading to the baccalaureate degree and is accredited or approved by the State  
4 Department of Education. 18

1 7. Each competitive scholarship is for the period of 1 academic year. The  
2 State Board of Education may provide by appropriate rules and regulations  
3 for such reports, accounting, and statements from the scholarship holder  
4 and institution of attendance pertaining to the use or application of the award  
5 as it may deem proper. A competitive scholarship may be renewed annually, 19

6 after the initial award, without an additional competitive examination until  
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8 ated from such an institution in an undergraduate course. The scholarship  
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3 achieved on the required examinations the commissioner shall award schol-  
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5 financial need has been established. The commissioner also shall determine  
6 which of the current scholarship holders are making satisfactory academic  
7 progress and are entitled to an annual renewal of their scholarships.

1 9. The State Board of Education from time to time shall adopt such  
2 rules and regulations as may be necessary or appropriate for effectuating the  
3 provisions of this act.

1 10. This act shall not be construed as granting any authority to control  
2 or influence the policies of any educational institution involved in the State  
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4 require any such institution to admit into such institution, or once admitted  
5 to continue in such institution, any scholarship holder.

1 11. State competitive scholarships shall be awarded without regard to  
2 race, religion, creed, or sex.

1 12. Such part of the funds appropriated for the year 1958-59 for State  
2 scholarships to carry out the program established hereunder as may be nec-  
3 essary for the purpose of conducting examinations and for other expenses  
4 incidental to the administration of this act may be applied to such purposes

1 13. This act shall take effect immediately.

ASSEMBLY AMENDMENT TO

**ASSEMBLY, No. 2**

[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED FEBRUARY 2, 1959

Amend page 1, Title, line 2, omit "in this State".

**ASSEMBLY, No. 2**

**STATE OF NEW JERSEY**

INTRODUCED JANUARY 13, 1959

By Assemblymen MCGOWAN, MUSTO, HAUSER, KESSELHAUT  
and MATTHEWS

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1 13. This act shall take effect immediately.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

May 11, 1959

SENATE BILL NO. 2

To the Senate:

A basic constitutional infirmity and some fundamental defects in operational fairness compel me, pursuant to Article V, Section I, paragraph 14(b) of the Constitution, to return Senate Bill No. 2 for reconsideration, with my objections.

This bill would establish a general college scholarship program administered by a new commission of 9 members. Scholarships would be \$400.00 a year or the tuition, whichever is less. The number of scholarships awarded annually would equal 5% of the number of high school graduates. The grants would be based mainly on financial need and the result of a single competitive examination.

This does not mean that the scholarships would go to the top 5% of the graduates. The 5% provision merely fixes the number.

At present, 250 new scholarships are given at Rutgers and 200 at the six State colleges each year. Since these are public colleges, the public pays for the scholarships. These programs would be cancelled by the bill.

The history of public school systems in this country shows that the reason for providing public facilities was that private schools were not able to meet expanding educational needs. Offering an opportunity for a good education to those youngsters who are blessed with talent is essential to the growth, progress and security of our State and Nation. Where instituted, however, public programs have been designed to function side-by-side with private programs.

It is interesting to note that of those New Jersey students who went on to college in 1956, over 67% went to private colleges in and out of the

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

Senate Bill No. 2

- 2 -

State, but of those going to college within the State, about 48% went to private schools. In other states with similar scholarship programs, such as California, Illinois, Massachusetts and New York between 25% and 30% of the students use their scholarships at public colleges, and 70% to 75% at private colleges. These figures indicate that in New Jersey a little over half of the college facilities for its youngsters are provided by the State.

Moreover, our school population is growing. Where some 15,000 of our students entered college in 1956 with some 6,000 attending schools in New Jersey, it is estimated that 5 years hence there will be 25,000 going on to college and 11,000 of these attending schools within the State.

The State Board of Education several years ago recognized that a scholarship program should be adopted to make available tuition for needy, apt students who might choose to go to private colleges. This was in close accord with my own views, as I firmly believe that the sound evolution of our society depends upon extending educational opportunities to those who have the capacity for advancement but lack the financial means. For this reason I have twice recommended to the Legislature the adoption of a scholarship program. In principle, I see no reason why the winners of such new scholarships should not be allowed to use them at private colleges as well as public ones.

Since all these questions are of critical importance, I decided to hold a public hearing so that I might learn the views on all sides. It was generally agreed by those who spoke at the hearing, including those who felt that the bill should be signed as it stands, that Senate Bill No. 2 does present a number of difficult problems. It was urged by some that the defects could be cured by subsequent legislation. The oral presentations, as well as the expressions sent to me by mail, have been most helpful as a guide in reaching a decision.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

Senate Bill No. 2

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I have concluded that it is in the public interest to adopt a new scholarship law. A patent constitutional infirmity, however, precludes me from accepting this bill in its present form.

We have just experienced with last year's Sunday Closing law the difficulties which such a course presents. The constitutional question there was at least debatable in view of the conflicting severability clauses. I there urged legislative correction of the bill, but no action was taken. Here, the infirmity is clear and obvious. I would be doing less than my sworn duty if I were to sign this bill when it contains provisions flatly prohibited by the Constitution. It would be a grave disservice if I were to launch a program so important to so many into prolonged litigation to ascertain its validity. It is the duty of each branch of government to comply with the Constitution. If the Legislature had itself held public hearings, these defects might have been revealed and corrected before passage.

1. Administration

The bill establishes a scholarship commission with no attachment to the administrative structure of State government. Article V, Section IV, paragraph 1 of the Constitution contains a mandatory requirement that all administrative offices shall be allocated by law among and within the principal executive departments. I am obliged by my oath of office to see that this requirement is met. More than 5 years of experience as Chief Executive convinces me that sound administrative practice requires that there be a clear chain of command and someone directly responsible to the Executive for the proper performance of the duties of a commission such as this.

At the 1947 Constitutional Convention, Governor Alfred E. Driscoll made his views very clear on this point. He considered it one of the

"most important recommendations that has been made," to have the Constitution itself provide "for a limited number of departments so that we may have a workable family group." In order of importance, he placed this ahead of "strengthening the Governor's veto power" and "the term of the Governor", as well as "the right of succession". He conceived each department as "headed by a single individual" who would be the "representative of the Governor" and who would be "responsible for the general over-all operation of the department". He pointed out that before the present Constitution there were "better than a hundred individual departments, agencies, and commissions with whom the Governor must work" and urged that there be "no more than 20 principal departments", within which there should be distributed "all the functions" of the Executive branch, so that in enacting legislation, the Legislature and the Governor "would be forced" to inquire as to what "established agency of government is this new function of government most closely related?" The result would be to "allocate this new duty to that particular department within the Executive branch where it can be strengthened by the experience of the old activity" and bring "a new point of view to the old activity". (Proceedings, Constitutional Convention of 1947, Vol. V, pgs. 42-45.)

The importance of this aspect was also emphasized by the Commission to Study Organization and Operation of the Executive Branch of the State Government. In its January 10, 1956 report, that Commission, headed by Hon. Thomas J. Hillery, presented a set of charts showing the then organization and noted, of the charts:

"They provide an immediate tool for appraising proposed new legislation affecting organization in the Executive Branch. In fact, it can be said that from now on no such legislation should be enacted until its relationship to existing organization has been studied." (Report, p. 7)

After reviewing that set of charts I think it is clear that the proposed commission should be established as an advisory commission to the State Board of Education and within the Department of Education.

Since there is no choice but to return the bill, it is desirable that other defects revealed by the hearing and by a study of the bill should be made at the same time.

2. Effect on present programs

Should the present State scholarship programs be abolished, with students going to Rutgers or to the State colleges applying for scholarships as part of a new system? I see no objection, and in fact consider it desirable, to treat all scholars alike and on an equal basis, whether they are to go to a public or a private college. The present bill, however, presents 4 difficult problems:

(a) Notices have already gone out from Rutgers and the State colleges as to scholarships for this Fall under present programs. While the bill protects the "renewal or continuance" of scholarships already awarded, it does not clearly protect those who will receive their "initial" awards this Fall.

(b) The program at the six State colleges is designed to meet a different need, namely to attract students into the teaching profession in which we would otherwise risk a serious shortage. This program ought not to be cut off by the new one, as this bill does.

(c) The present program at Rutgers includes a small but important number of scholarships at the Rutgers Law School. Under the bill, this program would end as the scholarships could only be used in an undergraduate school. In the process of trying to help more students, we ought not to reduce the help we are already giving.

(d) The State now provides a number of scholarships, or assistance of like nature, as part of the program carried out by the State Rehabilitation Commission. These are by way of training of physically handicapped persons so as to help them to engage in remunerative occupations. This program should not be affected.

### 3. Size of the program

The bill fixes the number of initial awards at 5% of the previous year's high school graduating classes. This does not mean that the scholarships would go to the top 5% in each graduating class, as many who have written me believe. Since only 15% of the number graduated each year go to New Jersey colleges, the bill would actually provide scholarships to 33 1/3% of them. I also note that the figure of 5% would mean about 3,000 scholarships for 1960 and nearly 5,000 for 1975.

The citizens of New Jersey should understand that under our Constitution, the Legislature and the Governor cannot pass a law binding future Legislatures or Governors as to the appropriation of State funds. No money may be drawn from the State Treasury except under appropriations made by law; appropriations may be made only year by year; and the total appropriations in any year may not exceed the State's anticipated revenue. Article VIII, Section II, para. 2.

Hence, to attempt to fix the number of scholarships on a formula of this kind may amount to an illusory promise. It would justifiably lead the public to expect that 3,000 or 5,000 new scholarships would be awarded in a given year (four times that number to include renewals), only to find the number to be less if the funds were not appropriated. I do not think it wise or desirable to have the bill make any promise as to the number of scholarships to be awarded each year. That number will always be determined by the dollar amount available for appropriation, and by the number of eligible students.

One of our major objectives should be to try to reach the students who are qualified but who wouldn't otherwise attend college. Education today is probably the most effective way in which a democracy can furnish equality of opportunity. Since the early 1900's, when persons up to age 21 were a large part of the labor force, the professions, business, commerce and industry have largely abandoned apprenticeship methods and have looked to the colleges to provide the talent of the future. Our educational system acts as a screening force by which the most able persons are brought into important positions

in American life. Too many of these able people do not go on to college, for a variety of reasons. In some cases the reason is financial. A sound scholarship program should aim to induce that able group to undertake their further education.

We lack data and experience with which to judge how many of them are in need in this State. Such statistics as are available now are not sufficiently up-to-date, nor precise enough to be reliable. Sound judgment is difficult. We know, for example, that many capable young women, often at the head of the class, enroll in secretarial courses in high school. While they are desirable college material, they either did not take courses to qualify them for college, or else are not interested. They are not necessarily in financial need, and a scholarship program will not reach them.

Although it will be difficult to get much of a start for the college year beginning this September, it will be worth while if we can persuade at least some who could go on, but lack the funds, to enter college. Our study and experience under the program will disclose what shape it should take thereafter.

#### 4. Limitation to New Jersey colleges

I realize that some supporters feel strongly that the scholarships should be used only at New Jersey colleges. In 3 of the 4 states with similar programs, this restriction is imposed. In the fourth, the scholarship may be used at a public college only within the State, but at a private college in or out of the State.

If we are to do our best to help the student, he should be allowed to make the best choice he can, and a restriction to in-State colleges cannot be justified here, although it may be justifiable elsewhere. Thus, in California, where there is such a restriction, about 90% of the students go to California colleges anyway. The facilities are in fact within the State and there are no other large ones nearby. Similarly, in New York, which has the same restriction, 75% go to New York colleges. Again, the fact is that the colleges are located mainly within the State, with some additional facilities in nearby states. Those two States have facilities which are ample, not only as to size but also as to variety of educational specialty.

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The physical facts in New Jersey are much different. In the southern area, we have meager college facilities within the State, but there are extensive choices just across the river in Philadelphia. To the north, our western counties are conveniently located near excellent schools in Pennsylvania, and our eastern counties are within a short distance of the great facilities in New York City. For those students who live in one of these areas, it would be distinctly unfair to prevent attendance out of state. If financial need is present, it is obvious that the cost of a college education may well be less of a burden if he is allowed to attend the nearest college of his choice, even though it be in another state. I recommend that out of the number of scholarships provided by appropriation, one-sixth be permitted to go to colleges outside New Jersey. Further experience will indicate if this ratio should be changed.

5. Financial Need

The bill properly requires a showing of financial need as well as of scholastic promise. However, as it is drawn, it fails to take account of 3 situations which, while they may not be frequent, are important.

If a student does not have need when he first enrolls in college, he cannot thereafter receive a scholarship under this bill even though his need should become great, as, for example, if his father should die after the boy starts college.

Conversely, if a student shows financial need before he starts college, then even if he should have no need later on, the bill would require continuance of the scholarship for the full 4 years.

Lastly, in the most impecunious cases the student must often work for 2 or 3 years after high school before he can think of going to college even with a scholarship. Such a student cannot obtain a scholarship under the present bill.

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It has also been pointed out that while the bill forbids a student from receiving a scholarship if he is receiving another one from the State, it does not prohibit double scholarships where the other one is a private scholarship. This may or may not be important, but in the absence of full facts it is difficult to resolve the question now. If the question of need is reviewed annually, the effect of the private scholarship can be taken into account in weighing need.

6. The scholastic factor

Assuming that financial need is shown, the bill would grant or deny scholarships solely on the basis of a single competitive examination. It would make no difference whether the applicant had been a good student or a poor student in high school, nor would his aptitude for college work be a permitted factor.

I am satisfied that the scholastic factor cannot be tested solely on the basis of a single competitive examination. Provision should be made to take account of other relevant factors, as well as to establish standards of relative weight to be given to the scholastic factor and the financial need factor.

In view of the need for the changes outlined above, a number of other changes can be made by way of clarification and accuracy of expression, and these are included with my major recommendations outlined above.

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I accordingly return Senate Bill No. 2 for reconsideration and recommend it be amended as follows:

On page 1, title, lines 2, 3 and 4: delete "for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes"

On page 1, section 2, line 1, after "All", insert "undergraduate", and after "except" insert: "scholarships under section 18:16-33 of the Revised Statutes, scholarships based on a major factor other than scholastic standing and financial need, and"

On page 1, section 2, line 2: After "awarded" insert: "and administered"

On page 1, section 2, line 3: Before "renewal" insert: "initial award,"

On page 1, section 2, line 4: After "scholarships" insert: "applied for or"

On page 1, section 3, line 1: After "Scholarship" insert: "Advisory", and after "Commission" insert: "in the Department of Education"

On page 1, section 3, line 6: Delete "non-tax-supported" and substitute "private"

On page 1, section 3, line 7: After "State" insert: "at which scholarships awarded under this act may be used, and which are conducted not for profit"

On page 2, section 3, line 14: At the end of section 3, add: "The Commission shall meet at the call of the chairman, or at the request of a majority of the commission, and shall gather information as to college attendance, college costs, scholarship programs and other financial aids to students, and other data relevant to the state competitive scholarship program, and shall advise the State Board of Education of its views from time to time with respect to such program. The State Department of Education shall furnish the Commission with such research and clerical assistance as may reasonably be required to fulfill its functions."

On page 2, section 4, line 3: After "for" insert: "an approved course of", and after "in" insert: "eligible"

On page 2, section 5, line 2: After "shall" delete the remainder of the line and all of lines 3 and 4 and substitute: "be determined by the number of qualified applicants and the amount of the appropriations made available for the purpose from time to time."

On page 2, section 7, line 5: Delete: "has been or"

On page 2, section 7, line 6: After "year" insert: ", or was so graduated within 3 years,"

On page 2, section 7, line 8: After "period" insert: ", or is an undergraduate enrolled in an approved course of undergraduate study in an eligible institution of higher education"

On page 2, section 7, lines 12 and 13: Delete "Scholarship Commission" and substitute: "Board of Education, which shall provide for the relative weight to be given to such need in relation to scholastic eligibility and other relevant factors"

On page 2, section 7, line 17: After "examination," insert: "aptitude, previous scholastic achievement and other relevant factors,"

On page 3, section 7, line 19: Delete "Scholarship Commission" and substitute "Board of Education"

On page 3, section 8, line 2: After "charged" insert: "him"; also, delete "a regular" and insert "the"

On page 3, section 8, line 3: Before "institution" insert: "eligible"

On page 3, section 8, line 4: Before "institution" insert "eligible"

On page 3, section 8, lines 8 and 9: Delete "chairman of the State Scholarship Commission" and substitute "Commissioner of Education"

On page 3, section 8, line 9: Delete "commission" and substitute: "State Board of Education"

On page 3, section 9: Delete the entire section and substitute the following:

"Each State competitive scholarship is to be awarded for the period of 1 academic year. It may be renewed annually after the initial award, without an additional competitive examination, until the holder has received a scholarship for a total of 4 academic years or until he has received a baccalaureate degree from an eligible institution, whichever occurs first. The scholarship may remain in effect only for a year in which the holder is regularly enrolled as a full-time student in such institution in a course of study leading to a baccalaureate degree, maintains academic progress meeting standards established by the State Board of Education, and continues to demonstrate financial need. The State Board of Education may provide by rules and regulations for the making of reports and statements by the scholarship holder and the institution he is attending as to enrollment, use or application of the award, academic progress, financial need, and other data needed to determine continued eligibility. Any portion of an annual award which is not used shall be refunded to the State Department of Education."

On page 3, section 10: Delete the entire section and substitute the following:

"An eligible institution is an institution of collegiate grade which offers a college curriculum leading to or accreditable toward a baccalaureate degree and which is accredited or approved by the State

Department of Education. A State competitive scholarship may be used in any eligible institution except that of the total number of scholarships available for initial award in any year, not more than 1/6 of that number may be used in eligible institutions located outside the State."

On page 3, section 12, line 1: Delete "Scholarship Commission" and substitute "Commissioner of Education"

On page 3, section 12, line 2: After "examinations", delete "for" and substitute: "and for the determination of financial need and other factors governing the award and renewal of"

On page 3, section 12, line 3: After "examinations" insert "and other relevant factors", and at the end of the line, delete "commission" and insert "commissioner"

On page 3, section 12, line 5: At the end of section 5 add: "The commissioner shall also determine which holders of scholarships previously awarded are eligible for the renewal of such scholarships."

On page 3, section 13: Delete section 13 in its entirety.

On page 4, section 14, line 1: Delete "14" and substitute "13", and also delete "Scholarship Commission" and substitute "Board of Education"

On page 4, section 15, line 1: Delete "15" and substitute "14"

On page 4, section 15, lines 2 and 3: Delete the phrase "involved in the State scholarship program"

On page 4, section 15, line 3: Delete "such" and substitute "eligible"

On page 4, section 16, line 1: Delete section 16 in its entirety and substitute:

"15. Such part of the funds appropriated for the current fiscal year for State scholarships of the kind provided for by this act as may be necessary may be applied to the expense of administering the provisions of this act."

On page 4, section 17, line 1: Delete "17" and substitute "16".

Respectfully,

ROBERT B. MEYNER

GOVERNOR

[SUAL]

Attest:

Dorothy G. Smith

Acting Secretary to the Governor

THE FOLLOWING IS A COPY OF SENATE BILL NO. 2  
WITH ALL OFFICIAL DOCUMENTS PRESENTED TO THE  
STATE LIBRARY BY THE SECRETARY OF STATE OF  
NEW JERSEY.

**SENATE, No. 2**

**STATE OF NEW JERSEY**

**AN Act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.**

**1     Be IT ENACTED by the Senate and General Assembly of the State of New  
2 Jersey:**

**1     1. This act shall be known and may be cited as the "State Competitive  
2 Scholarship Act."**

**1     2. All scholarships, except work scholarships, provided by statute or  
2 through State appropriation, shall be awarded in accordance with the pro-  
3 visions of this act. Nothing herein contained shall affect the renewal or con-  
4 tinuance of individual scholarships awarded prior to the effective date hereof.**

**1     3. There is hereby created the State Scholarship Commission consisting  
2 of the Commissioner of Education, who shall be its chairman, and 8 other  
3 members to be appointed by the Governor as follows:**

**4     One representative of Rutgers the State University;**

**5     One representative of the State Colleges;**

**6     Three representatives of non-tax-supported institutions of higher educa-  
7 tion in the State;**

**8     Three other residents of the State.**

**9     The terms of office of the appointed members shall be 4 years except that  
10 the terms of first members shall be fixed by the Governor in such manner as**

11 will provide for the expiration each year of the terms of  $\frac{1}{4}$  of such appointed  
12 members. Any vacancy in the commission shall be filled by the Governor by  
13 the appointment of a person who shall hold office for the balance of the un-  
14 expired terms.

1 4. There are hereby created State competitive scholarships which shall  
2 be maintained by the State and awarded and administered pursuant to this  
3 act, and used by the holders thereof for undergraduate study in institutions  
4 of higher education.

1 5. The number of State competitive scholarships to be awarded annually  
2 shall equal 5% of the total number of students who graduated from ap-  
3 proved high schools in the State during the school year preceding the date  
4 of the examination for the award of such scholarships.

1 6. State competitive scholarships shall be awarded without regard to  
2 race, religion, creed, or sex.

1 7. No person shall be awarded a State competitive scholarship unless

2 (a) He has been a resident of New Jersey for a period of not less than  
3 12 months immediately preceding the date of his application for such scholar-  
4 ship.

5 (b) He has been or will be graduated from high school within a period  
6 not greater than 1 year from the date of his application for such scholar-  
7 ship, except that time spent in the Armed Forces of the United States shall  
8 not be included in computing such period. Awards may be made tentatively  
9 to prospective high school graduates, dependent upon actual graduation at the  
10 end of the then current school year.

11 (c) He has demonstrated financial need for such scholarship as deter-  
12 mined by standards and procedures to be established by the State Scholarship  
13 Commission.

14 (d) He has demonstrated high moral character, good citizenship, and  
15 dedication to American ideals.

16 (e) He has applied for a State competitive scholarship and has been de-  
17 termined, by competitive examination, to be eligible for such scholarship.

18 (f) He has complied with all rules and regulations adopted pursuant to  
19 this act by the State Scholarship Commission for the award, regulation, and  
20 administration of State competitive scholarships.

1 8. Each State competitive scholarship shall entitle the recipient thereof  
2 to \$400.00 per year, or the amount charged for tuition for a regular academic  
3 year by the institution where the scholarship is used, whichever is the smaller  
4 amount. The particular institution a student elects to attend and the par-  
5 ticular charges made by that institution shall not be factors used in deter-  
6 mining financial need nor, except as otherwise provided in this section, the  
7 amount of the stipend. Payments under this act shall be made by the State  
8 Treasurer on the order of the chairman of the State Scholarship Commis-  
9 sion in accordance with rules regulating the same adopted by the commission.

1 9. Each State competitive scholarship is for a period of 4 academic years,  
2 but shall remain in effect only during such period as the holder thereof  
3 achieves satisfactory academic progress and is regularly enrolled as a full-  
4 time student in an institution of collegiate grade as described in section 10.

1 10. A State competitive scholarship may be used in any institution of  
2 collegiate grade in New Jersey which is accredited by the State Board of  
3 Education.

1 11. No State competitive scholarship shall be held by any person at the  
2 same time he is receiving any other scholarship, other than a work scholar-  
3 ship, which is paid out of funds provided by the State.

1 12. The State Scholarship Commission shall provide for the conduct of  
2 annual competitive examinations for State competitive scholarships. On the  
3 basis of the results achieved on the required examinations the commission  
4 shall award scholarships to qualified applicants for whom financial need has  
5 been established.

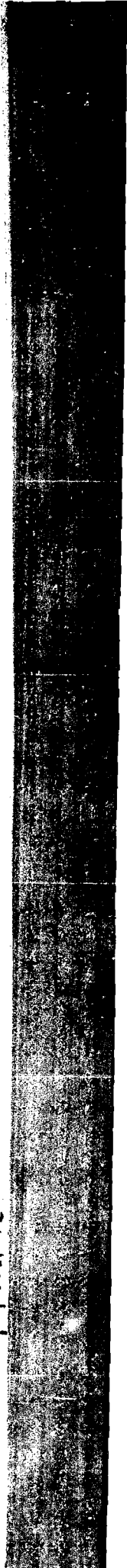
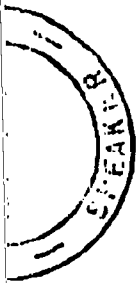
1 13. Initial awards of not fewer than 10 State competitive scholarships  
2 shall be made in every year to residents of each county of the State or of  
3 such lesser number as may qualify for the award thereof. All other such  
4 scholarships shall be awarded on a State-wide basis without regard for geo-  
5 graphical, political or other subdivisions.

1 14. The State Scholarship Commission may employ such persons, con-  
2 tract for such services, and adopt such rules and regulations as may be nec-  
3 essary or appropriate for effectuating the provisions of this act.

1 15. This act shall not be construed as granting any authority to control  
2 or influence the policies of any educational institution involved in the State  
3 scholarship program, nor to require any such institution to admit into such  
4 institution or once admitted to continue in such institution, any scholarship  
5 holder.

1 16. Section 18:16-33 of the Revised Statutes is repealed.

1 17. This act shall take effect immediately.



SENATE No.

SENATE,

May 18, 1957

This bill having been returned by the Governor, with his objections, to the Senate, in which it originated, on May 11, 1957, and the objections having been entered at large on its Journal, the Senate proceeded to reconsider said bill; and by a two-thirds vote of all of the members thereof

RESOLVED, That the same do pass,

the objections of the Governor to

the contrary notwithstanding;

15 members voting for, and

0 members voting against, the pas-

sage of the bill.

By order of the Senate.

Walter H. Gandy  
President of the Senate.

GENERAL ASSEMBLY,

MAY 25, 1959

This bill having been sent to the General Assembly by the Senate, together with the objections of the Governor thereto, the General Assembly proceeded to reconsider said bill; and by a two-thirds vote of all of the members thereof

RESOLVED, That the same do pass,

the objections of the Governor to

the contrary notwithstanding;

41 members voting for, and

4 members voting against, the pas-

sage of the bill.

By order of the General Assembly.

Walter H. Gandy  
Speaker of the General Assembly.

SECRETARY OF STATE.

SENATE,

*January 19<sup>th</sup>* 1959

This bill having been three times read in the Senate,

RESOLVED, That the same do pass.

By order of the Senate.

*Walter H. Garce*  
President of the Senate.

GENERAL ASSEMBLY,

MAY 4 - 1959 1959

This bill having been three times read and compared in the General Assembly,

RESOLVED, That the same do pass.

By order of the General Assembly.

*William K. Kelly*  
Speaker of the General Assembly.

SENATE,

..... 1959

This bill having been three times read in the Senate,

RESOLVED, That the same do pass as amended.

By order of the Senate.

.....  
President of the Senate.

GENERAL ASSEMBLY,

*May 25* 1959

This bill having been three times read and compared in the General Assembly,

RESOLVED, That the same do pass as amended *by Senate #264*

By order of the General Assembly.

*William K. Kelly*  
Speaker of the General Assembly.

SENATE No. 2

AN Act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.

MAY 18 1959

*Assembly*  
MAY 25 1959  
*Reconsideration*  
*the Governor's Veto*  
*not withdrawing*  
*4 & 5*  
6 MAY

FILED  
MAY 28 1959  
*Edmund J. J. [Signature]*  
SECRETARY OF STATE

SENATE RECORD

Introduced \_\_\_\_\_  
Ref'd to \_\_\_\_\_  
1st Read. \_\_\_\_\_  
2d Read. \_\_\_\_\_  
3d Read. JAN 19 1959  
Passed—Yeas \_\_\_\_\_ Nays \_\_\_\_\_

ASSEMBLY RECORD

Rec'd JAN 19 1959  
Ref'd to \_\_\_\_\_  
2d Read. REPORT BY \_\_\_\_\_  
DATE JAN 26 1959  
3d Read. MAY 4 1959  
Passed—Yeas 39 Nays 3

**NEW JERSEY SENATE**  
**OFFICE OF THE SECRETARY**  
**TRENTON**

May 28, 1959

Honorable Edward J. Patten  
Secretary of State  
State House

My dear Mr. Patten:

I deliver to you at this time Senate Bill No. 2, which was passed over the Governor's veto by the required two-thirds vote of all of the members of the Senate. The vote was 15-0 on May 18, 1959, according to my jurat.

This bill was then passed by the required two-thirds vote of all of the members of the General Assembly on May 25, 1959. The vote was 48-6 according to the Jurat of the Speaker of the General Assembly.

This bill became law on May 25, 1959, in the form originally passed by the two houses of the Legislature.

Very truly yours,

*Wesley L. Lance*  
Wesley L. Lance  
President of the Senate

**FILED**  
MAY 29 1959  
*Edward J. Patten*  
SECRETARY OF STATE



NEW JERSEY SENATE  
OFFICE OF THE SECRETARY  
TRENTON

May 29, 1959

Honorable Edward J. Patten  
Secretary of State  
State House

My dear Mr. Patten:

Will you please inform me as to the chapter number which was assigned to Senate Bill No. 2.

This is the bill which was passed over the Governor's veto in the Senate on May 18, 1959, and then was passed over the veto of the Governor on May 25, 1959, in the General Assembly.

Senate Bill No. 2 became law on May 25, 1959, in the form originally passed by the two houses of the Legislature.

Very truly yours,

*Wesley L. Lance*  
Per J.B.

Wesley L. Lance  
President of the Senate

FILED  
MAY 29 1959  
*Edward J. Patten*  
SECRETARY OF STATE

May 29, 1959

Honorable Wesley L. Lance  
President of the Senate  
State House  
Trenton, N.J.

Dear Senator Lance:

In reply to your letter of May 29th,  
please be advised that Senate Bill #2, has been assigned Chapter  
#16 of the Laws of 1959.

Sincerely yours,

SECRETARY OF STATE

KCF:ep

**Constitution—Cont'd**  
Amend.

10—58 N.J.Super. 427

**UNIFORM LAWS**  
**ANNOTATED**

**Uniform Conditional Sales**  
**Act**

Sec.

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# NEW JERSEY SUPERIOR COURT REPORTS

VOLUME 58

IN THE MATTER OF THE APPLICATION OF EDWARD R. McGLYNN, ROBERT E. KROUSE AND BENJAMIN C. LONDA, APPLICANTS, FOR AN ORDER OF ADJUDICATION, *ETC.* RE: *CHAPTER 46, LAWS OF 1959, ETC.*, PURSUANT TO *CHAPTER 7 OF TITLE 1 OF REVISED STATUTES.*

Superior Court of New Jersey  
Appellate Division

Argued July 1, 1959—Decided July 1, 1959.

## SYNOPSIS

Proceeding on an application pursuant to the statute for an adjudication that the State Competitive Scholarship Act was not made effective in the manner provided by the Constitution and that hence it was void. The Superior Court, Appellate Division, Goldmann, S. J. A. D., held that the statute authorizing a judicial inquiry into the regularity of the passage of any statute permits an attack only upon the procedure of making laws and not on the constitutional validity thereof, that the applicants failed to establish that the act was not regularly passed and that the court in its consideration of the regularity of passage was not limited to the certification by the Speaker of the House but could consult the Assembly minutes showing facts contrary to the speaker's certificate.

Application dismissed.

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(1)

## 1. Constitutional law ↯46(3)

The statute authorizing a full judicial inquiry into the regularity of passage of any statute permits an attack upon the procedure of making laws on the machinery of enactment and not upon the constitutional validity of the law itself. *N. J. S. A. 1:7-1 et seq.*

## 2. Statutes ↯35

The paragraphs of the Constitution dealing with powers and duties of the Governor with regard to bills with respect to conventional and qualified vetoes was intended to take care of the situation where Governor does not wholly agree with the bill, but approves of it in principle or is willing to accept only portions thereof, and if, on reconsideration, both Houses of the Legislature agree with the Governor and include his recommended amendments, a majority vote of all the members of the respective Houses is all that is required. *Const. 1947, Art. V, § I, par. 14(a, b).*

## 3. Statutes ↯35

Where Governor's message dealing with objections to the state competitive scholarship bill was received in the Senate on May 11, read and entered at large on the journal, reconsidered and passed over the Governor's objections and the bill was then sent to the General Assembly accompanied by the Governor's message and was received in that House and was before the Assembly when the vote to reconsider the bill was taken and more than two-thirds of the Assembly was recorded in favor of passing the bill as it stood, and then the bill was returned together with the Governor's message to the Senate, the requirements of paragraph 14(a) of the Constitution were fully met; the provision requiring intervention of a full calendar day following second reading of the bill being inapplicable. *Const. 1947, Art. IV, § IV, par. 6; Art. V, § I, par. 14(a).*

## 4. Statutes ↯35

Provisions of the Constitution dealing with the powers and duties of the Governor with regard to bills with respect

to conventional and qualified vetoes do not require that reconsideration of a bill returned by the Governor with his objections and recommendations of specific amendments is necessarily limited to amending the bill as recommended and returning it to the Governor, as long as two-thirds of both branches of the Legislature vote to override, the words "with his objections" in paragraph 14(b) with respect to return of the bill by the Governor for reconsideration being exactly those used in 14(a) dealing with a straight veto, and should have the same meaning attributed to them, for what the Governor is, in effect, doing is to veto the bill on condition. *Const. 1947, Art. V, § I, par. 14(a, b).*

## 5. Statutes ↯35

Under the constitutional provisions dealing with the powers and duties of the Governor with regard to bills with respect to conventional and qualified vetoes and in paragraph 14(b) providing with respect to Governor's recommendation for amendment accompanied by a veto message that "and in such case the Legislature may amend and re-enact the bill," Legislature is permitted a choice, and it may accept the recommended amendments and re-enact the bill with them, or it may override the conditional veto. *Const. 1947, Art. V, § I, par. 14(a, b).*

## 6. Statutes ↯35

The Governor's use of a conditional veto of the Competitive Scholarship Act under paragraph 14(b) of the Constitution could not destroy the Legislature's basic rights to repass the bill in a form sent to the Governor by the constitutional two-thirds vote of all members of each house. *Const. 1947, Art. V, § I, par. 14(a, b).*

## 7. Statutes ↯18

Where Senate 2, known as the State Competitive Scholarship Act, and Senate 264, providing for creation and administration of state competitive scholarships, were contained in two separate documents enacted upon by each House in

separate steps and by separate vote and Senate 2 was given individualized attention, and after it had been repassed Senate 264, an entirely distinct piece of legislation, was likewise acted upon separately, there was no integration of Senate 2 with 264 so as to constitute in legal contemplation a single enactment and hence a new bill, it being immaterial that Senate 264 followed directly after the action on Senate 2. *Const. 1947, Art. V, § I, par. 14(a, b); N. J. S. A. 1:7-1 et seq.*

## 8. Statutes ⇄37

Since the Constitution does not require presiding officers of the two legislative houses to sign bills, signatures are not essential and the bill may become a law even without them, since they are no part of the legislative process and are designed solely to verify the passage of the bill. *Const. 1947, Art. IV, § IV, par. 6; Art. V, § I, pars. 14, 15.*

## 9. Statutes ⇄37

Where Assembly minutes following the voting record on the passage of Senate 2, establishing Competitive Scholarship Act, read that the speaker should sign the bill and the clerk carry it to the Senate and inform the Senate that the General Assembly had passed the same without amendment, and exactly the same language appeared after the Assembly vote on Senate 264, there was no authority for the speaker to insert language in the so-called certification to each bill allegedly establishing the integration of the two bills so as to make the certification binding upon the court. *Const. 1947, Art. IV, § IV, par. 6; Art. V, § I, pars. 14, 15.*

## 10. Statutes ⇄37

Where speaker's certification of Senate bill as having been three times read and compared in the General Assembly was an error shown by the minutes of the Assembly, court in a proceeding under the statute authorizing a full judicial inquiry into the regularity of the passage of any statute was not limited to the certification, but it could be attacked by

reference to the minutes of either House of the Legislature, if necessary. *N. J. S. A. 1:7-1 et seq.; Const. 1947, Art. IV, § IV, par. 6; Art. V, § I, pars. 14, 15.*

## 11. Statutes ⇄284

The statute authorizing a full judicial inquiry into the regularity of passage of any statute affords the court a wide scope in the matter of evidence. *N. J. S. A. 1:7-1 et seq.*

## 12. Statutes ⇄37

Rules of the General Assembly adopted pursuant to the Constitution authorizing each House to determine the rules of its proceedings, did not authorize the speaker to certify to things which had never happened, such as that a Senate bill had been three times read and that "the same do pass as amended by Senate #264," where the minutes of the Assembly showed the facts to be to the contrary. *N. J. S. A. 1:7-1 et seq.*

## 13. Statutes ⇄286

Applicants who challenge the validity of a statute as not having been passed in the manner provided by the Constitution, must establish the truth of what they assert by clear and convincing evidence. *N. J. S. A. 1:7-3.*

## 14. Constitutional law ⇄48

Under the statute authorizing a full judicial inquiry into the regularity of the passage of any statute, courts will not set aside the actions of the Legislature unless the unconstitutionality of what has been done is manifest. *N. J. S. A. 1:7-3.*

## 15. Statutes ⇄286

In proceeding for an adjudication that the State Competitive Scholarship Act was not made effective as a law in the manner provided by the Constitution and hence was void, applicants failed to discharge the burden of proof resting upon them. *N. J. S. A. 1:7-4.*

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On motions to dismiss application.

Before Judges GOLDMANN, FREUND and HANEMAN.

*Mr. Walter H. Jones* argued the motion for the Senate of New Jersey.

*Mr. Elmer M. Matthews* argued the motion for the General Assembly of New Jersey, and for himself individually.

*Mr. Frederick J. Gassert* argued the motion for New Jersey Association of Private Colleges and Universities, and for himself individually (*Messrs. Gassert, Murphy & Gassert*, attorneys; *Mr. Thomas H. Gassert*, of counsel).

*Mr. Joseph M. Nolan* argued on behalf of applicants in opposition to motions to dismiss (*Mr. Martin C. Conant*, on the brief).

*Mr. Wesley L. Lance*, appeared *amicus curiae*.

The opinion of the court was delivered by

GOLDMANN, S. J. A. D. The applicants, three citizens of the State of New Jersey, have applied to the Appellate Division, pursuant to *N. J. S. A. 1:7-4*, for an adjudication that the statute now known and designated as *chapter 46* of the *Laws of 1959* was not made effective as law in the manner provided by the Constitution, and is therefore void.

On June 3, 1959 notice was served on the Attorney General that the application would be presented to this court and an order sought defining and determining the procedure to be followed. The matter was set down for June 15, at which time the applicants were directed to give public notice, by publication in eight designated newspapers throughout the State, that any citizen might appear in defense of the purported law, and subpoena and examine and cross-examine witnesses. See *N. J. S. A. 1:7-2* and 5. Notice of inten-

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tion to do so was to be filed on or before June 26. The notice was duly published, but no citizen responded.

On June 15 the following were, on application, permitted to intervene in defense of the purported law: *Walter H. Jones*, on behalf of the Senate of New Jersey; *Elmer M. Matthews*, on behalf of the General Assembly of New Jersey, and for himself individually; and *Frederick J. Gassert*, on behalf of the New Jersey Association of Private Colleges and Universities, and for himself individually. Senate President *Wesley L. Lance* was permitted to appear as *amicus curiae*, as was the Attorney General of New Jersey. A full hearing of the matter was set down for July 1, at which time the court would inquire summarily into the circumstances to determine whether the constitutional and statutory provisions relating to the enactment and approval of laws had been complied with. See *N. J. S. A. 1:7-2* and 3.

In the meantime, each of the three intervenors moved to dismiss the application for failure to state a cause of action upon which the relief sought could be granted, claiming that the admissible factual allegations of the application failed to establish that *chapter 46* was not enacted in a valid manner, but on the contrary showed that it had been duly passed by both Houses of the Legislature and made effective as law in the manner required by the Constitution. The motions were argued June 22, 1959, at which time we determined that they be held until the scheduled hearing of July 1 had been concluded and the record closed. Counsel were instructed that the court particularly desired further information "regarding the factual basis for the final certification to Senate Bill No. 2 (which became Chapter 46) by the Speaker of the House of Assembly, and also as to whether the Senate, in sending that bill to the General Assembly, failed to accompany it with the objections of the Governor."

The matter was fully heard, argued and decided on July 1. This opinion amplifies the oral conclusions we made at that time, resulting in a dismissal of the application.

## I.

The argument advanced by the applicants, summarized in II below, makes necessary a brief review of the legislative history of *Senate Bill No. 2* as well as two other bills, *Senate 259* and *Senate 264*, intended as amendments of *Senate 2*.

*Senate 2* was introduced January 13, 1959. The title of the bill was:

"An Act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes."

It passed on third reading on January 19, 1959 by a vote of 20-0, and on the same day was sent to the House of Assembly, where it was finally passed on May 4, 1959 by a vote of 39-3. The bill then went to the Governor, who returned it to the Senate on May 11, 1959 for reconsideration, with his objections, pursuant to *Art. V, Sec. I, par. 14(b)* of the State Constitution.

*Senate 2*, to be known as the State Competitive Scholarship Act, established a general college scholarship program to be administered by a newly created State Scholarship Committee consisting of the Commissioner of Education and eight other members to be appointed by the Governor. Scholarships would be \$400 or the amount charged for tuition, whichever was less. The grants would be based mainly on financial need and the result of a single competitive examination. The number of scholarships to be awarded annually was to equal 5% of the total number of students graduating from approved New Jersey high schools during the school year preceding the examination. Each scholarship was to be for a period of four academic years, conditioned upon the holder achieving satisfactory academic progress and being regularly enrolled in an institution of collegiate

grade in New Jersey, accredited by the State Board of Education.

In his conditional veto message to the Senate the Governor stated it to be his firm belief that "the sound evolution of our society depends upon extending educational opportunities to those who have the capacity for advancement but lack the financial means." For this reason, he said, he had twice recommended to the Legislature the adoption of a scholarship program. He noted that at a public hearing he had called to learn the views of all interested in the matter, it had generally been agreed by those who spoke, including those who felt the bill should be signed as it stood, that *Senate 2* presented a number of difficult problems. The Governor declared it to be "in the public interest to adopt a new scholarship law." His message then called attention to a patent constitutional infirmity which precluded him from accepting the bill in its then form, as well as certain other features of the legislation which, in his view, required correction.

The constitutional infirmity to which the Governor referred was that the bill established a scholarship commission with no attachment to the administrative structure of the State Government, contrary to the mandate of *Art. V, Sec. IV, par. 1* of the State Constitution requiring that all administrative offices be allocated by law among and within the principal executive departments. It was his recommendation that the proposed commission be established as an advisory commission to the State Board of Education and within the Department of Education.

The Governor then proceeded to point out that (1) under the proposed legislation scholarships to the six State colleges and to Rutgers Law School, as well as those given as part of the program carried out by the State Rehabilitation Commission, would be cut off. This he considered undesirable. (2) The attempt to fix the number of scholarships on a formula of 5% of the previous year's high school graduating class was unwise; the number ought to be deter-

mined by the dollar amount available for appropriation, and by the number of eligible students. (3) Restricting use of the scholarships to in-state colleges was not justifiable because of New Jersey's proximity to the colleges of Pennsylvania and New York and because we did not presently have educational facilities of the size and variety enjoyed by other states, like California and New York. (4) The bill properly required a showing of financial need as well as scholastic promise, but failed to take into account certain situations (which the Governor described) where need should be more realistically assessed. (5) Finally, the scholastic factor could not fairly be tested solely on the basis of a single competitive examination; other relevant factors should be taken into account and standards established as to the relative weight to be given scholastic promise and financial need.

In the light of these observations the Governor recommended to the Senate that it make 35 amendments to the bill. Some of these were of a major character; others were intended by way of clarification and accuracy of expression, or were merely formal.

The conditional veto message was received and read in the Senate on May 11, 1959. On May 18 *Senate 2* was reconsidered and passed by a vote of 15-0, "the objections of the Governor to the contrary notwithstanding."

On the same day there was introduced *Senate Bill No. 259* entitled:

"An Act to amend and supplement 'An Act concerning higher education, providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.'"

The bill was at once advanced to third reading as an emergency measure by a vote of three-fourths of all the members of the Senate (1947 *Const.*, *Art. IV, Sec. IV, par. 6*), and passed 16-0. However, three days later, on May 21, the

bill was reconsidered and placed back on second reading for further consideration. No further action was thereafter taken on the bill.

After *Senate 259* had been placed back on second reading, there was introduced *Senate Bill No. 264*, entitled

"An Act to amend the title and body of 'An Act concerning higher education providing for the creation, award and administration of State competitive scholarships for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16-33 of the Revised Statutes.'"

The bill was read the first time by its title, advanced to second reading without reference, passed on second reading, and ordered to have a third reading. Four days later, on May 25, the bill was considered and passed by a vote of 16-0.

*Senate 264* was sent to the Assembly on May 25. After passing on second reading, it was advanced to third reading as an emergency measure, under a resolution adopted by more than a three-fourths vote of all the members of the Assembly.

At this point the Assembly, instead of finally voting on *Senate 264*, took up *Senate 2* which had been sent over from the Senate that day with a message that it had been reenacted, "the Governor's objections thereto notwithstanding," and requesting Assembly concurrence. It was then regularly moved that *Senate 2* "be reconsidered and that it become a law, the Governor's objections thereto notwithstanding." The motion was adopted by a vote of 48-6 (later changed to 47-7 when an assemblyman requested that his affirmative vote be recorded in the negative).

Directly after this action the Assembly took up *Senate 264* on third reading under the emergency resolution and passed the bill by a vote of 47-3.

Following the passage of *Senate 2* in the Assembly over the Governor's veto, it was returned to the Senate. The Senate President then delivered it to the Secretary of State, who assigned it chapter number 46 of the Laws of 1959.

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The Assembly also sent *Senate 264* back to the Senate. (We note, in passing, that it was delivered to the Governor subsequent to the hearing and our determination of July 1, but he did not sign it until July 27, 1959. It was given chapter number 150 of the Laws of 1959).

## II.

Applicants allege that the Senate, in approving *Senate 264*, thereby adopted certain amendments to *Senate 2*, with like effect as though physically incorporated therein, and that from that time on *Senate 2* and *Senate 264* were, "in contemplation of law, a single instrument albeit contained in two separate documents." Further, that when the General Assembly received these two bills on May 25, it had before it "a single legislative bill," and although it proceeded to approve the same "in two steps and by two votes, its final action constituted, in legal contemplation, a single reenactment, with amendments, of Senate Bill No. 2."

The argument is best stated in the words of the application itself:

"24. In form, the Senate and General Assembly purported to reconsider Senate Bill No. 2 and to pass or approve the same by two-thirds of all the members of each house, and such action, if legally effective would operate to render Senate Bill No. 2 a law upon such approval by the General Assembly on May 25, 1959, pursuant to Article V, Section I, paragraph 14(a) of the Constitution.

25. Applicants allege that despite the form, the substance and effect of the above-described action in the two houses was to amend and reenact Senate Bill No. 2 and that the consequences thereof are governed by the provisions of Article V, Section I, paragraph 14(b) of the said Constitution, under and by which the same did not become a law."

Applicants, by way of conclusion of law, aver that

"\* \* \* the provisions of the Constitution are operative according to the substance and the fact of the action of the Legislature, without regard to the form taken or procedure followed, and \* \* \* the consequences of amending and reenacting a bill which has been returned by the Governor with objections and with recommendation

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that amendments specified by him be made, are diametrically opposed to the consequences of passing and approving a bill so returned, notwithstanding the Governor's objections. \* \* \*

The whole point of the argument is that, having been amended, *Senate 2* was a new bill requiring the Governor's signature before it could become law.

By way of additional allegations, applicants claim that *Senate 2* was approved without there being compliance with other constitutional requirements, in that (a) when the General Assembly reenacted "amended" *Senate 2* on May 25, 1959, the bill "was given only a single reading, a full calendar day did not intervene following the day of the second reading, and no resolution by vote of three-fourths of all its members that the said bill was an emergency measure was made," as provided in *Art. IV, Sec. IV, par. 6*; and (b) after voting that *Senate 2* become law notwithstanding the Governor's objections, the Senate, in sending the bill to the General Assembly, failed to forward the Governor's message along with the bill, as required by *Art. V, Sec. I, par. 14(a)*.

[1] It is established law that the statute which the applicants invoke, *N. J. S. A. 1:7-1 et seq.*, permits an attack only upon the procedure of making laws—on the machinery of enactment—and not upon the constitutional validity of the law itself. *In re Freygang*, 46 N. J. Super. 14, 17 (*App. Div.* 1957), affirmed 25 N. J. 357 (*Sup. Ct.* 1957); *In re An Act Concerning Alcoholic Beverages*, 130 N. J. L. 123, 124 (*Sup. Ct.* 1943); *In re Borg*, 123 N. J. L. 104, 106 (*Sup. Ct.* 1939). Our concern is with the specific action taken by the executive and legislative branches of the State Government, and not with the substantive provisions of the statute itself.

The requirements for passage of all bills and joint resolutions are set forth in the Legislative Article of the 1947 Constitution, *Art. IV, Sec. IV, par. 6*:

"All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full

calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal."

Applicants make no claim of irregularity in the initial passage of *Senate 2* by the Senate on January 19, 1959 or by the General Assembly on May 4, 1959. Their attack is focused upon what happened to the bill after the Governor returned it for reconsideration, with his objections.

For a bill to become law in the usual course, the Governor must sign it after it has passed both houses. *Art. V, Sec. I, par. 14(a)* of the 1947 Constitution provides:

"Every bill which shall have passed both houses shall be presented to the Governor. If he approves he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved by two-thirds of all the members of that house, it shall become a law; and in all such cases the votes of each house shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. \* \* \*"

As noted, the Governor did not sign *Senate 2*; instead, on May 11, 1959 he returned it to the Senate, the house of origin, for reconsideration, with his objections, pursuant to *Art. V, Sec. I, par. 14(b)*, which provides in part that

"\* \* \* The Governor, in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. If a bill be so amended and re-enacted, it shall be presented again to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time. \* \* \*"

[2] *Paragraphs 14(a)* and *14(b)* deal with a single subject matter—the powers and duties of the Governor with regard to bills. Under *paragraph 14(a)* the Governor, in disapproving a bill, returns it with his objections. This is the conventional veto. Under the quoted portion of *paragraph 14(b)* the Governor, if he disapproves certain provisions of the bill, may return it with his objections and recommend that an amendment or amendments specified by him be made. This is commonly known as the conditional veto, or qualified veto. If the bill is so amended and re-enacted, it is presented to the Governor and it becomes law only if he signs it within ten days. He may not return the bill with objections and his recommendations a second time. The quoted provision of *paragraph 14(b)* was clearly intended to take care of a situation where the Governor does not wholly agree with the bill, but approves of it in principle or is willing to accept only portions thereof. If, on reconsideration, both Houses of the Legislature agree with the Governor and include his recommended amendments, a majority vote of all the members of the respective Houses is all that is required.

### III.

[3] We dispose, first, of the contention that the Senate, after repassing *Senate 2* by more than a two-thirds vote, failed to accompany the bill with the Governor's objections and recommendations when it was sent over to the General Assembly for action. The testimony taken before us clearly establishes that the Governor's message was received in the *Senate* on May 11, read and entered at large on the Journal, reconsidered, and passed over the Governor's objections. The bill was then sent to the General Assembly, accompanied by the Governor's message; it was received in that House, and was before the Assembly when the vote to reconsider *Senate 2*, the Governor's objections thereto notwithstanding, was taken. More than two-thirds of the Assembly was recorded in favor

of repassing the bill as it stood. The bill was then returned, together with the Governor's message, to the Senate. The requirements of *Art. V, Sec. I, par. 14(a)*, were fully met. The bill was "sent, together with the objections of the Governor, to the other house," where it was reconsidered and approved by a two-thirds vote of all the members. There was, of course, no requirement (as suggested by certain questions put in the course of the July 1 hearing) that the Governor's message be read in the Assembly before the final vote was taken.

The provision of *Art. IV, Sec. IV, par. 6*, requiring the intervention of a full calendar day following the second reading of a bill, was inapplicable. This section of the Constitution relates to bills and joint resolutions on initial passage, and not to a bill which has been returned by the Governor with his objections.

#### IV.

We next consider applicants' main attack made upon *Senate 2*: that *Senate 2* and *Senate 264* were in contemplation of law a single instrument, and although each House proceeded to approve the bills in two steps and by two votes, the final action taken by the Senate and General Assembly, respectively, constituted in legal contemplation a single re-enactment of *Senate 2* with amendments.

One of the main objectives of the Constitutional Convention of 1947 was to strengthen the relative position of the executive branch, which under the 1844 Constitution had been the weakest of the three branches of State Government. The Committee on Executive, Militia and Civil Officers, in its *Report and Proposals* of July 31, 1947 to the Constitutional Convention, declared that it had sought in its recommendations "to bring the powers of the Governor in line with the popular impression of the powers of that office and to provide for a centralization of authority and power in the office of the Governor under reasonable checks and

balances, so that the chief executive may be truly responsible to the people for the conduct of the executive branch of the government." 2 *Proceedings of the Constitutional Convention of 1947, page 1122*. To that end, the Committee, among other things, recommended in its draft article that the veto power of the Governor, which could be overridden by a bare majority, be strengthened to require a two-thirds vote in each House to override; further, that the veto, which then extended to appropriation items, should be modified so as to permit the Governor to reduce an item of appropriation as well as to veto it in its entirety. *Ibid., page 1123*. The Committee did not in its report to the Convention mention that it had further provided for a conditional veto in its final draft of the Executive Article.

Although the *Tentative Draft Proposals* of the Committee on Executive, Militia and Civil Officers, filed July 15, 1947, did not mention conditional veto, *ibid., page 117*, Proposal 3-1, set out at length in its *Report and Proposals* of July 31, 1947, contained the following language as part of paragraph 14 of *Art. V, Sec. I*:

"\* \* \* The Governor may, in returning a bill with his objections for reconsideration at any general or special session of the Legislature, recommend in his objections thereto that any amendment or amendments specified therein be made in the bill and the bill shall thereupon be before the Legislature and subject to amendment and re-enactment and may be amended and re-enacted instead of being reconsidered, and if amended and re-enacted it shall again be presented to the Governor and it shall become a law only if he signs it within ten days after presentation to him; and no bill shall be returned by the Governor a second time. \* \* \*" *Ibid., page 1131*.

(Paragraph 14 was not then divided into (a) and (b); that was done by the Committee on Arrangement and Form.)

The record of the Constitutional Convention of 1947 is completely silent as to just how this provision came to be included in the *Report and Proposals* of the Committee on Executive, Militia and Civil Officers. There was no reference to the conditional veto in the public hearings on the

*Tentative Draft Proposals.* Nor was the provision discussed in the Committee, whose proceedings are reported in 5 *Proceedings of the Constitutional Convention of 1947*. It does not appear in the monograph prepared for the Convention dealing with the Governor's veto power, 2 *Proceedings of the Constitutional Convention of 1947*, page 1418 *et seq.*

The archives of the Convention, on deposit in the State Library, throw no light on the origin of the conditional veto provision, nor do the records in the possession of the Convention's Archivist and Historian. It was undoubtedly drafted by the Committee's technician and draftsman, and then included in the final *Report and Proposals*. The provision was in all probability suggested by what appears in the Constitutions of Alabama, Massachusetts and Virginia, set out below. After being drafted, it may have been considered in consultation with the Committee on the Legislative, although the minutes of its sessions (see 3 *Proceedings of the Constitutional Convention of 1947*) are silent on the subject. The conditional veto was not discussed when the Constitutional Convention considered the Executive Article. In any event, the present language of *Art. V, Sec. I, par. 14(b)* appears in the final draft of the Constitution adopted by the Convention on September 10, 1947. See 2 *Proceedings of the Constitutional Convention of 1947*, page 1298.

[4] We see nothing in *paragraphs 14(a)* and *(b)* which requires that reconsideration of a bill returned by the Governor with his objections and recommendations of specific amendments is necessarily limited to amending the bill as recommended and returning it to the Governor, as long as two-thirds of both branches of the Legislature vote to override. The conditional veto language of *paragraph 14(b)* requires that the Governor's recommendations for amendment be accompanied by a veto message because it states that the Governor, "in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill." The words "with

his objections" are exactly those used in *paragraph 14(a)*, which deals with a straight veto, and should have the same meaning attributed to them, for what the Governor is, in effect, doing is to veto the bill qualifiedly—on condition.

[5] But even if the phrase "with his objections," standing alone, is not to be construed as implying a veto message, with the consequent right in the Legislature to override, we must consider the language which follows: "and in such case the Legislature *may* amend and reenact the bill." This is not the language of mandate. The Legislature is permitted a choice: it may accept the recommended amendments and reenact the bill with them, or it may override the conditional veto.

This construction is borne out by the language immediately succeeding: "If a bill be *so* amended and re-enacted, it shall be presented again to the Governor." Although *paragraph 14(b)* does not speak of what should be done if the bill is not "so amended," one cannot reasonably conclude that the Legislature is thereby foreclosed from acting on the bill. To imply any limitation upon the Legislature in choosing to disregard the Governor's objections and recommendations and passing the bill by a two-thirds vote of each House over his objections, would lead to a result certainly not in the contemplation of those who drafted the new Constitution of 1947. To erect such a limitation would, by inference, create an executive power that could arbitrarily frustrate the legislative authority.

We have referred to the conditional veto provisions contained in the Alabama, Massachusetts and Virginia Constitutions. The Alabama provision (*Art. V, Sec. 124*) clearly indicates that the Legislature may disregard the Governor's objections and recommended amendments, and repass a bill by a majority vote of each house, in which case the bill becomes law. The section reads:

"\* \* \* If the governor's message proposes amendment, which would remove his objections, the house to which it is sent may so amend the bill and send it with the governor's message to the other

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house, which may adopt, but can not amend, said amendment; and both houses concurring in the amendment, the bill shall again be sent to the governor and acted on by him as other bills. If the house to which the bill is returned refuses to make such amendment, it shall proceed to reconsider it; and if a majority of the whole number elected to that house shall vote for the passage of the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that house, it shall become a law. If the house to which the bill is returned makes the amendment, and the other house declines to pass the same, that house shall proceed to reconsider it, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. \* \* \*

The Massachusetts and Virginia Constitutions specifically require that where there is a conditional veto the bill, in whatever form reenacted, be returned to the Governor for approval. *Article of Amendment LVI* of the Massachusetts Constitution reads:

"The governor, within five days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the general court in which it originated with a recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the general court and subject to amendment and re-enactment. If such bill or resolve is re-enacted in any form it shall again be laid before the governor for his action, but he shall have no right to return the same a second time with a recommendation to amend."

And *Art. V, Sec. 76* of the Virginia Constitution provides that

"\* \* \* If [the Governor] approve the general purpose of any bill, but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceeding shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto: provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it,

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then, and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time.  
\* \* \*

[6] We therefore conclude that the Governor's use of a conditional veto under *paragraph 14(b)* cannot destroy the Legislature's basic right under our system to repass a bill in the form sent to the Governor, by the constitutional two-thirds vote of all the members of each House. Had the intention of those who framed the Constitution of 1947 been otherwise, it is certain that so great a limitation on the legislative power would have specifically been set forth in the final draft, and not left to implication.

## V.

[7] Despite applicants' insistence that *Senate 2* and *Senate 264*, in contemplation of law, comprised a single instrument, although contained in two separate documents and acted upon by each House of the Legislature in separate steps and by separate votes, the fact remains that *Senate 2* was given individualized attention. No use of terms of inference, such as are found in the application under consideration, can change what is entirely patent—that *Senate 2* was acted upon separately, and that after it had been repassed *Senate 264*, an entirely distinct piece of legislation, was likewise acted upon separately.

*Senate 2* became law the moment the motion that it "be reconsidered and that it become a law, the Governor's objections thereto notwithstanding," was carried in the Assembly by a more than two-thirds vote. As in the Senate, so in the Assembly, there was no vote on *Senate 264* until *Senate 2* had been disposed of. *Senate 264* was regularly passed by a majority vote after three readings. It had not yet been signed into law when the present application was filed, and so could not in any way detract from the efficacy of *Senate 2*, which became *chapter 46* of the *Laws of 1959* after it had been sent to the Secretary of State by the Senate President.

The fact that *Senate 264* was intended to amend the State Competitive Scholarship Act in some respects does not detract from what we have said. The effect of *Senate 264* was, essentially, to except from the provisions of the new act the scholarships awarded as part of the program of the State Rehabilitation Commission; to allocate the State Scholarship Commission to the State Department of Education; to make not more than 15% of the total number of scholarships awarded in any year available for use in approved colleges outside the State; and to permit the State Scholarship Commission to expend such part of any sums appropriated for the fiscal year 1959-60 as might be necessary to set up the state-wide scholarship program. These amendments, and particularly the one allocating the State Scholarship Commission to the State Department of Education, were obviously inspired by the Governor's recommendations accompanying his conditional veto. The Legislature chose to remedy the constitutional defect in *Senate 2* and to adopt a very limited number of the many recommendations made by the Governor, and no more. In its judgment, the legislation it had adopted was all that was necessary to establish and carry forward a state competitive scholarship program. Whether the program was as well considered and soundly based as one as might have been devised is not for this court to say. Time and experience will provide the answer.

That *Senate 264* followed directly after the action on *Senate 2* is of no moment. It could have been passed the next day, the next week, or the next month, and in any case would have been equally efficacious as an independent piece of legislation, representing as it did a valid exercise of the legislative power to amend a prior enactment. The shortness of the time interval attending its passage after *Senate 2* had finally been acted upon could not bring about the result which applicants claim—an integration with *Senate 2* so as to constitute, in legal contemplation, a single enactment and hence a new bill.

## VI.

Applicants base most of their argument that *Senate 2* and *Senate 264* must be considered a single reenactment, with amendments, of *Senate 2*, on what they describe as the certifications of the Speaker of the General Assembly attached to the two bills.

Appearing directly after the printed text of *Senate 2*, as filed with the Secretary of State, and stapled thereto, are two sheets: on the first there appear recitals (over the respective signatures of the Senate President and the Assembly Speaker) that the bill had received three readings and passed in the Senate on January 19 and in the Assembly on May 4, 1959. The second sheet recites (over the signature of the Senate President) that the bill had been returned by the Governor to the Senate with his objections, which had been entered at large on the Senate Journal, and that the Senate then reconsidered the bill and passed it on May 18, 1959 by a two-thirds vote, the objections of the Governor to the contrary notwithstanding. In the next column on this sheet there appears the following:

"GENERAL ASSEMBLY,  
May 25, 1959,

This bill having been sent to the General Assembly by the Senate, together with the objections of the Governor thereto, the General Assembly proceeded to reconsider said bill; and by a two-thirds vote of all of the members thereof

RESOLVED, That the same do pass,  
the objections of the Governor to  
the contrary notwithstanding;

48 members voting for, and  
6 members voting against the passage of the bill.  
By order of the General Assembly

See Next Sheet  
Speaker of the General Assembly"

"See Next Sheet" is in the handwriting of the Speaker. One is thereby referred to what appears on the lower half of the *first* sheet, undoubtedly employed for the purpose because it was so ready at hand, reading as follows:

In re Application of McGlynn. 58 N. J. Super.

"GENERAL ASSEMBLY,

May 25, 1959

This bill having been three times read and compared in the General Assembly,

RESOLVED, That the same do pass as amended by Senate #264.

By order of the General Assembly.

William Kurtz

*Speaker of the General Assembly*"

The words "by Senate #264" are in the handwriting of the Speaker.

In the case of *Senate 264* there is stapled to the bill as finally passed a sheet reciting (over the signature of the Senate President) that the bill had been read three times in the Senate and been passed on May 25, 1959. In the next column appears the following:

"GENERAL ASSEMBLY

May 25, 1959

This bill having been three times read and compared in the General Assembly,

RESOLVED, That the same do pass, as amendments [*sic*] to S2.

By order of the General Assembly.

William Kurtz

*Speaker of the General Assembly*"

The words "as amendments to S2" were written in by the Speaker.

Applicants claim that these certifications are binding and conclusive upon the court and establish the integration of the two bills. We do not agree.

[8] In the first place, the *Constitution of 1947* does not require the presiding officers of the two houses of the Legislature to sign bills. See *Art. IV, Sec. IV, par. 6*; and *Art. V, Sec. I, pars. 14 and 15*. It has been said that in such case the signatures are not considered essential; the bill may become a law even without them, since they are no part of the legislative process and are designed solely to verify the passage of the bill. See 1 *Sutherland, Statutory Construction* (2d ed. 1943), § 1304, p. 221.

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[9] Secondly, the Assembly minutes following the voting record on the repassage of *Senate 2* read:

"Ordered, that the Speaker sign the said bill, and that the Clerk carry it to the Senate and inform the Senate that the General Assembly has passed the same, without amendment."

Exactly the same language appears after the Assembly vote on *Senate 264*. Two things immediately strike the eye: (1) the only direction to the Speaker was that he *sign* the bill—nothing more; (2) the Senate was to be informed that the General Assembly had passed each bill *without amendment*. There was absolutely no authority for the Speaker inserting the language he did in the so-called certification to each bill.

We have observed that when *Senate 2* was repassed by the Assembly, there was as yet no final action on *Senate 264*. The Speaker's certification to *Senate 2*, "as amended by Senate #264" was therefore without factual support.

One other thing is deserving of mention in connection with the Speaker's certification of *Senate 2*. The certification speaks of "This bill having been three times read and compared in the General Assembly." Obviously, the bill was not read three times; after it had come over from the Senate the Assembly took the bill as it stood and voted to override. In short, the minutes of the Assembly show that the certification on its face was without factual basis and without authority.

[10, 11] Applicants, however, contend that our consideration is limited to the certification, and that we may not consult the Assembly minutes. They rely on *Pangborn v. Young*, 32 N. J. L. 29 (*Sup. Ct.* 1866). Chief Justice Beasley there held that where an act of the Legislature, duly authenticated as such, was on file in the office of the Secretary of State, an exemplification of such act in due form was conclusive evidence of its existence and contents, and that it was not competent for the court to go behind such attestation or to receive the evidence of the journals

of the Houses to show that the law as actually passed varied from that on file with the Secretary of State. *Pangborn* was decided in 1866. On March 3, 1873 the predecessor act of what is now *N. J. S. A. 1:7-1 et seq.*, under which the present proceedings are taken, was passed. *L. 1873, c. 116; 4 C. S. 4978.* By that act the Legislature on its own motion relaxed the *Pangborn* doctrine to permit an attack upon a statute as not having been enacted in the manner provided by the Constitution. *In re Low, 88 N. J. L. 28, 30 (Sup. Ct. 1915).* The present statute authorizes a full judicial inquiry into the regularity of the passage of any statute, *N. J. S. A. 1:7-2 and 3*, upon application of the Attorney General (at the direction of the Governor) or any two or more citizens of the State, brought within one year after the law has been filed with the Secretary of State. *N. J. S. A. 1:7-1 and 4.*

We are not limited to a consideration of the bill itself, as filed in the office of the Secretary of State. The journal of each House is a competent source of evidence. 1 *Sutherland, op. cit.*, § 1304, p. 221. And see *In re Low*, above, 88 *N. J. L.*, at page 31; *Simon v. State, 86 Ark. 527, 111 S. W. 991 (Sup. Ct. 1908).* We have no hesitation in holding that an erroneous signature or certification may be attacked by reference to the minutes of either House of the Legislature, if necessary. The statute, *N. J. S. A. 1:7-1 et seq.*, affords this court the widest scope in the matter of evidence. *In re Jaegle, 83 N. J. L. 313 (Sup. Ct. 1912)*, and *In re Public Utility Board, 83 N. J. L. 303 (Sup. Ct. 1912)*, cited by applicants, are not to the contrary.

[12] Applicants would endow the Speaker's certification with a greater solemnity than the minutes of the Assembly because of its rules, adopted pursuant to the 1947 *Constitution, Art. IV, Sec. IV, par. 3*, which authorizes each House to determine the rules of its proceedings. Thus, Rule 4:8, referring to the Speaker's duties, states generally that he "shall sign all acts, addresses and joint resolutions." *New Jersey Legislative Manual (1959), p. 730. Rule 15:18* directs

the Speaker to sign any bill, joint resolution or concurrent resolution passed by the Assembly. *Ibid.*, p. 745. This rule, read in its context, has reference to matters originating in the Assembly, and not to a situation like the present one. More in point is Assembly Rule 20:4, *ibid.*, p. 751, relating to a bill originating in the Senate, passed by both Houses, presented to the Governor, and then returned by him to the Senate with his objections, with or without recommendation for amendment. After the Senate has reconsidered the bill and agreed to pass it by a two-thirds vote of all members, the Governor's objections to the contrary notwithstanding, the bill is to be sent to the Assembly, and if approved there by a two-thirds vote, "the same shall be returned to the Senate certified by the Speaker of the General Assembly, that the General Assembly reconsidered the bill with the date thereof and that two-thirds of the members of the General Assembly agreed to pass the bill, the objections of the Governor to the contrary notwithstanding." The rule speaks for itself; it limits the certification to exactly what is expressly stated in the rule. The Speaker may not place his own construction upon the action taken in the Assembly, particularly when it flies in the face of what actually took place. Certainly, the Speaker has no authority to certify to things which never happened—here, for example, that *Senate 2* had been "three times read," and that "the same do pass as amended by Senate #264." The Assembly minutes clearly state that *Senate 2* was reenacted, the Governor's objections notwithstanding, and directed that "the Speaker sign the said bill and that the Clerk carry it to the Senate and inform that body that the Assembly had passed the same, without amendment."

[13-15] Our courts have held that applicants who challenge the validity of a statute as not having been passed in the manner provided by the Constitution, must establish the truth of what they assert by clear and convincing evidence. This is the rule which guides the court in exercising its functions under *N. J. S. A. 1:7-3*:

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In re Application of McGlynn.      58 N. J. Super.

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“After a full hearing the court may, if satisfied that the constitutional and statutory provisions relating to the enactment and approval of laws and joint resolutions have not been complied with, adjudge the law or joint resolution or any part thereof to be void.”

*In re An Act Concerning Alcoholic Beverages*, above, 130 N. J. L., at page 125; *In re Petition of Attorney General*, 98 N. J. L. 586 (*Sup. Ct.* 1923); *In re Low*, above, 88 N. J. L., at pages 30–31. It is also well settled that our courts will not set aside the actions of the Legislature unless the unconstitutionality of what has been done is manifest. *In re Petition of Attorney General*, above, 98 N. J. L., at page 590. We hold that applicants have clearly failed to discharge the burden of proof which is theirs.

## VII.

We need not consider applicants' argument that *Senate Bill No. 259* is a further indication that what the Legislature did here was to reenact *Senate 2* with amendments. *Senate 259*, as explained in section I of this opinion, was passed by the Senate, reconsidered and placed back on second reading for further consideration, and thereafter no further action was taken on the bill. There was nothing more here than a still-born legislative intention to act.

For the reasons herein set forth at length, the application is dismissed.

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58 N. J. Super.

Cwik v. Zylstra.

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HENRY J. CWIK, SR., GUARDIAN AD LITEM, ETC., PLAINTIFF-APPELLANT, v. LOUIS ZYLSTRA AND TESSIE ZYLSTRA, DEFENDANTS-RESPONDENTS.

Superior Court of New Jersey  
Appellate Division

Argued October 13, 1959—Decided November 5, 1959.

## SYNOPSIS

Action by father of child against child's maternal grandparents for injuries sustained by two and one-half year old child when he fell into a pail of scalding water while in care of grandparents wherein there was testimony that child and his brother were playing in area where water was placed and that grandmother knew that he should not have been there but that she did not attempt to warn him of presence of water. From adverse judgment of the trial court, the father appealed. The Superior Court, Appellate Division, Freund, J. A. D., held that there was sufficient evidence to take to the jury the issue of whether grandmother should have foreseen what happened and was therefore negligent.

Judgment affirmed as to grandfather but reversed and remanded for a new trial as to grandmother.

### 1. Negligence ⇨ 136(16)

In action by father of child against child's maternal grandparents for injuries sustained by two and one-half year old child when he fell into a pail of scalding water while in care of grandparents, wherein there was testimony that child and his brother were playing in area where water was placed and that grandmother knew that he should not have been there but that she did not attempt to warn him of presence of water, there was sufficient evidence to take to the jury the issue of whether grandmother should have foreseen what happened and was therefore negligent.

New Jersey. Legislature. Assembly. Committee  
on Appropriations

Memorandum From: S. J. Flink, Consultant  
Re: A-8 (State Competitive Scholarships for  
Undergraduate Study)

1958.

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MEMORANDUM

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Memorandum

FROM: S. J. Flink, Consultant,  
New Jersey Legislature, Assembly.  
TO: ~~Committee on Appropriations.~~  
RE: ← A-8 (State Competitive Scholarships for Undergraduate Study)

I have examined the above bill and submit the following recommendations and reasons.

1. Section 4 (a) which now reads: "...for a period of not less than 6 months preceding the date of his application ....."

Recommendation: The above section to read: "for a period of not less than 12 months....."

Reasons:

(1) A-50 (State Competitive Scholarship Loans) provides in Section 3 (a) for a residency in the State "of not less than one year immediately preceding the date of his application."

As a matter of policy it appears advisable that both bills should have the same eligibility requirements in terms of residency in the State.

(2) Realistically, a 1-year requirement is more equitable. Many high-schools, in and out of New Jersey, have a February graduating class. Thus, a student who graduated say, in New York State in February and moves into New Jersey in that month would be eligible for a State Scholarship for the academic year starting in September. The probability at least exists that before long the number of college applicants will exceed the absorptive capacity of the institutions of higher learning; a situation similar, if not worse, than the one which existed in the early postwar years. New Jersey

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high school graduates may therefore be placed at a disadvantage.

2. Section b (b) now reads: "he has graduated from high school within a period not greater than 1-year immediately preceding the date of his application....."

Recommendation: The above section should read: "from a high school in New Jersey....."

Reason: The bill, as it now reads, makes it possible for a student who graduated from high school in another state to apply for State Scholarships in New Jersey. It seems to me that the State of New Jersey, if it is willing to grant such scholarships, owes a primary obligation to the students in its own high schools.

In addition, I should like to submit for consideration by the Committee the following facts pertaining to Section 10 which reads:

"A State competitive scholarship may be used in any institution of collegiate grade if such institution offers a 4-year college curriculum leading to the baccalaureate degree and is accredited, or approved for this purpose, by the State Department of Education."

The above section raises two basic questions: (1) Should the winner of such State scholarship be authorized to use the grant in "any institution of collegiate grade in New Jersey"? A number of colleges located in New Jersey have never been accredited by the Middle States Association of Colleges and Secondary Schools although they received charters from the State Department of Education. Accreditation by the Middle Atlantic States Association is based on certain minimum standards of: faculty personnel, library facilities, program of study, etc. Thus the question arises: Should institutions which fail to meet the minimum standards set by the recognized collegiate body be eligible for choice by scholarship

recipients: Will the latter actually receive the type of higher education which such scholarships are designed to make available to students of proven capacity?

(2) At present, just about all private colleges in New Jersey as in all other Middle Atlantic States, have tuition charges which are substantially greater than \$1000 per year. Is it unlikely that these institutions will before long ask that the scholarships be raised to an amount equal to, or nearly equal to, their regular tuition fees? In other words, if the State grants scholarships to financially needy and intellectually qualified students will not the institutions, in turn, sooner or later ask that these amounts of such grants be brought in line with their prevailing annual tuition fees?

Respectfully submitted,

February 10, 1958

S. J. FLINK

Addendum:

I should also like to submit the recommendation that the following words be deleted from Section 10 which now reads

"A State competitive scholarship may be used in any institution of collegiate grade if such institution offers a 4-year college curriculum leading to the baccalaureate degree and is accredited, or approved for this purpose, by the State Department of Education."

Reasons:

The section as it now reads would make it possible for an institution just chartered by the New Jersey State Department of Education to be eligible to admit students who have received such state scholarships. The mere fact that an institution has been chartered and been given approval to offer a 4-year baccalaureate program does not in itself constitute evidence that the institution will subsequently meet the anticipations of the State Department of Education.

New Jersey. Legislature. Assembly. Committee  
on Education

Memorandum From: S. J. Flink, Consultant  
Re: Assembly Bill No. 50 (State Competitive  
Scholarship loans)  
1958.

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MEMORANDUM



Memorandum

FROM: S. J. Flink, Consultant  
New Jersey Legislature, Assembly,  
TO: Committee on Education,  
RE: Assembly Bill No. 50 (State Competitive Scholarship Loans),

I have examined the above bill and submit the following recommendations:

1. Section 5 (lines 8 - 15) now reads: "Payments under this act shall be made by the State Treasurer on the order of the Commissioner of Education in accordance with rules regulating the same adopted by the State Board of Education and each student receiving a scholarship loan shall enter into a contract to be evidenced by the execution and delivery by the student of a promissory note, to the order of the State Board of Education, for the payment of the principal amount of the sum loaned to him, in 5 years from the date thereof, with interest at the rate of 3% per annum."

Recommendation:

I recommend that the following sentence be added (proper phraseology to be provided by legal staff):

"The Commissioner of Education shall be authorized to extend the repayment of such loans plus interest for a period up to three years providing the student is engaged in graduate study in an accredited institution of higher learning."

Reasons:

- (1) The express purpose of this bill is to enable financially needy and intellectually qualified high school graduates to pursue a course of collegiate studies leading to the baccalaureate degree. It is safe to assume that a significant

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proportion of such students, upon completion of their college course, will decide to continue their studies on the graduate levels. They will thus not yet be earning a livelihood. The obligation to repay \$100 may thus compel them either to postpone graduate study or to do so on a restricted basis (part-time). Even in the latter case, the repayment of \$100 may be a severe strain.

(2) Graduate study involves a minimum of one year for the Master's degree and approximately three years of residence for the Ph.D. degree. For this reason, it is recommended that the repayment of the loan be extended to a maximum of three years.

2. Section 10 reads: "A State competitive scholarship loan may be used in any institution of collegiate grade in New Jersey which offers a 4-year college curriculum leading to the baccalaureate degree and is accredited by the State Department of Education."

I should like to submit for consideration by the committee the following facts pertaining to the above section:

(1) Should the winner of such State scholarship loan be authorized to use the grant in "any institution of collegiate grade in New Jersey"? A number of colleges located in New Jersey have never been accredited by the Middle States Association of Colleges and Secondary Schools although they received charters from the State Department of Education. Accreditation by the Middle Atlantic States Association is based on certain minimum standards of: faculty personnel, library facilities, program of study, etc. Thus the question arises: Should institutions which fail to meet the minimum standards set by the recognized collegiate body be

eligible for choice by scholarship loan recipients? Will the latter actually receive the type of higher education which such scholarship loans are designed to make available to students of proven capacity?

(2) At present, just about all private colleges in New Jersey, as in all other Middle Atlantic States, have tuition charges which are substantially greater than \$1,000 per year. Is it unlikely that these institutions will before long ask that the scholarship loans be raised to an amount equal to, or nearly equal to, their regular tuition fees? In other words, if the State grants scholarship loans to financially needy and intellectually qualified students will not the institutions, in turn, sooner or later ask that these amounts of such grants be brought in line with their prevailing annual tuition fees?

Respectfully submitted,

S. J. Flink

February 10, 1958