

18A:12-2 and 18A:12-3

LEGISLATIVE HISTORY CHECKLIST 973692 0075

NJSA 18A:12-2 and 18A:12-3 (School board member--prohibit municipal office)

LAWS 1981 CHAPTER 23

Bill No. S1007

Sponsor(s) Dodd

Date Introduced Feb. 11, 1980

Committee: Assembly Education

Senate Education

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 8, 1980

Senate Sept. 22, 1980

Date of approval Feb. 6, 1981

Following statements are attached if available:

Sponsor statement Yes ~~No~~ (Below)

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ Yes ~~No~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

Sponsor's statement:

This bill is designed to prevent a conflict of interest situation by prohibiting a member of a board of education from holding office as mayor or as a member of the governing body of a municipality.

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SENATE, No. 1007

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Senator DODD

Referred to Committee on Education

AN ACT concerning education and amending sections 18A:12-2 and 18A:12-3 and supplementing Chapter 12 of Title 18A of the New Jersey Statutes.

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

1 1. N. J. S. 18A:12-2 is amended to read as follows:

2 18A:12-2. No member of any board of education shall be inter-
3 ested directly or indirectly in any contract with or claim against
4 the board, nor*, in the case of local and regional school districts,*
5 shall he hold office as mayor or as a member of the governing body
6 of a municipality*, nor, in the case of county special services school
7 districts and county vocational school districts, shall he hold office
8 as a member of the governing body of a county*.

1 2. N. J. S. 18A:12-3 is amended to read as follows:

2 18A:12-3. Whenever a member of a *local or regional* board of
3 education shall cease to be a bona fide resident of the district, or
4 of any constituent district of a consolidated or regional district
5 which he represents, or shall become mayor or a member of the
6 governing body of a municipality, his membership in the board
7 shall immediately cease; and, any member who fails to attend three
8 consecutive meetings of the board without good cause may be
9 removed by it. *Whenever a member of a county special service
10 school district or a member of a county vocational school district
11 shall cease to be a bona fide resident of the district, or shall hold
12 office as a member of the governing body of a county, his member-
13 ship on the board shall immediately cease.*

1 3. (New section) Any member of a school board who also
2 holds office as a mayor or a member of a municipal governing body
3 on the effective date of this act shall continue in office until the
4 expiration of his respective term and the qualification in office of his
5 successor.

1 4. This act shall take effect immediately.

SENATE, No. 1007

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Senator DODD

Referred to Committee on Education

AN ACT concerning education and amending sections 18A:12-2 and 18A:12-3 and supplementing Chapter 12 of Title 18A of the New Jersey Statutes.

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

1 1. N. J. S. 18A:12-2 is amended to read as follows:

2 18A:12-2. No member of any board of education shall be inter-
3 ested directly or indirectly in any contract with or claim against
4 the board, *nor shall he hold office as mayor or as a member of the*
5 *governing body of a municipality.*

1 2. N. J. S. 18A:12-3 is amended to read as follows:

2 18A:12-3. Whenever a member of a board of education shall
3 cease to be a bona fide resident of the district, or of any constituent
4 district of a consolidated or regional district which he represents,
5 *or shall become mayor or a member of the governing body of a*
6 *municipality*, his membership in the board shall immediately cease;
7 and, any member who fails to attend three consecutive meetings of
8 the board without good cause may be removed by it.

1 3. (New section) Any member of a school board who also
2 holds office as a mayor or a member of a municipal governing body
3 on the effective date of this act shall continue in office until the
4 expiration of his respective term and the qualification in office of his
5 successor.

1 4. This act shall take effect immediately.

STATEMENT

This bill is designed to prevent a conflict of interest situation by prohibiting a member of a board of education from holding office as mayor or as a member of the governing body of a municipality.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1007

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: OCTOBER 16, 1980

PROVISIONS:

This bill is designed to prevent a conflict of interest situation by prohibiting a member of a board of education from holding office as mayor or as a member of the governing body of a municipality.

Section 1 amends N. J. S. 18A:12-2 to prohibit a member of a board of education from holding office as mayor or being a member of the governing body of the municipality.

Section 2 amends N. J. S. 18A:12-3 to provide that a member of a board of education who is elected and qualified as mayor or a member of the governing body of a municipality shall immediately cease to be a member of the board.

Section 3 was added to the bill in the last session by the Senate Education Committee to allow any mayor or member of a governing body of a municipality who is also a member of a board of education on the effective date of this act to continue in office on said board of education until the next annual organizational meeting of the board. Further, as amended in the Senate Education Committee, Senate Bill No. 1007 OCR prohibits a county executive or freeholder from serving on the board of a County Vocational School or a County Special Services School District.

BACKGROUND:

This bill was released by the Senate Education Committee during the last two sessions (Senate Bill No. 621, Senate Bill No. 787). It passed the Senate and was released by the Assembly Education Committee but was not voted on by the Assembly.

The common law doctrine of conflict of interest would prohibit a board member from simultaneously holding a municipal office. Recent case law has determined that holding office on both a board of education and on a municipal governing body is incompatible and that one office must be vacated.

The bases of find potential conflict have been:

N. J. S. A. 18A:22-37—submission of a defeated budget to the municipal governing body

- N. J. S. A. 18A:18-1.1—joint purchasing
- N. J. S. A. 18A:20-2.1—transfer of title to art work
- N. J. S. A. 18A:20-9.1—conveyance of sewer lines
- N. J. S. A. 18A:20-18, 22—transfer to school board of recreational facilities
- N. J. S. A. 40:48-17.1—transfer to school board of unappropriated municipal services.
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SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1007

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JULY 28, 1980

PROVISIONS:

This bill is designed to prevent a conflict of interest situation by prohibiting a member of a board of education from holding office as mayor or as a member of the governing body of a municipality.

Section 1 amends N. J. S. 18A:12-2 to prohibit a member of a board of education from holding office as mayor or being a member of the governing body of the municipality.

Section 2 amends N. J. S. 18A:12-3 to provide that a member of a board of education who is elected and qualifies as mayor or a member of the governing body of a municipality shall immediately cease to be a member of the board.

Section 3 was added to the bill in the last session by the Senate Education Committee to allow any mayor or member of a governing body of a municipality who is also a member of a board of education on the effective date of this act to continue in office on said board of education until the next annual organizational meeting of the board.

FISCAL IMPLICATIONS:

None.

BACKGROUND:

This bill was released by the Senate Education Committee during the last two sessions (S-621, S-787). It passed the Senate and was released by the Assembly Education Committee but was not voted on by the Assembly.

The common law doctrine of conflict of interest would prohibit a board simultaneously holding a municipal office.

cf. *Jones v MacDonald* 33 NJ 137; *Kaufman v Pannuccio* 121 NJ Super 137; and *Dunn v Foehlich* 155 NJ Super 253 (Jan. 5, 1978); (which held that the office of councilman and policeman were incompatible).

"When such a statutory conflict of duties exists, it is not enough (as suggested by the defendant) for the office holder to disqualify

himself when the conflict arises or to decline to act in the areas of conflict. The doctrine was designed to avoid the necessity for such an option, and the admitted need for inaction is the most compelling proof that an incompatibility exists."

It appears that an individual may not be a member of a governing body or board which employs him, and may not serve on both a local board and governing body of the same district.

This bill was upheld in two other recent decisions:

Phillips v. Hill, Superior Court, Law Division Burlington County (Docket No. L-23762-75-PW) dated March 10, 1976; and
Hamma v. Board of Education, Farmingdale, Superior Court, Law Division, Monmouth County (Docket No. L-41064-76-PW), dated July 22, 1977.

The first case involved an individual who was President of the Board of Education and was elected Mayor.

The second involved an individual who was a member of the Board of Education and was elected to be a member of the Borough Council.

Both cases involve Type II districts.

In both cases it was determined that holding office on both a board of education and on a municipal governing body is incompatible and that one office must be vacated.

The bases of finding potential conflict were:

- N.J.S.A. 18A:22-37 — submission of a defeated budget to the municipal governing body
- N.J.S.A. 18A:18-1.1 — joint purchasing
- N.J.S.A. 18A:20-2.1 — transfer of title to art work
- N.J.S.A. 18A:20-9.1 — conveyance of sewer lines
- N.J.S.A. 18A:20-18,22 — transfer to school board of recreational facilities
- N.J.S.A. 40:48-17.1 — transfer to school board of unappropriated municipal services.

SENATE COMMITTEE AMENDMENTS:

The amendments extend the provisions of this bill to prohibit a county executive or a member of a county board of chosen freeholders from serving simultaneously on the board of a county special services school district or a county vocational school.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 1007

STATE OF NEW JERSEY

ADOPTED JULY 28, 1980

Amend page 1, section 1, line 4, after "nor", insert ", in the case of local and regional school districts,".

Amend page 1, section 1, line 5, after "municipality", insert ", nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county".

Amend page 1, section 2, line 2, after "of a", insert "local or regional".

Amend page 1, section 2, line 8, after "it.", insert "Whenever a member of a county special service school district or a member of a county vocational school district shall cease to be a bona fide resident of the district, or shall hold office as a member of the governing body of a county, his membership on the board shall immediately cease.".

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER

FEBRUARY 9, 1981

PATRICK SWEENEY

Governor Brendan Byrne signed the following bills:

S-516, sponsored by Senator John T. Gregorio (D-Union), which mandates that any paid firemen have a high school diploma or equivalency certificate. The legislation indicates the increasing use of sophisticated fire fighting equipment makes the higher educational requirement necessary.

S-634, sponsored by Senator Joseph Maressa (D-Camden), which tightens enforcement by making it a violation of state law to park an unauthorized vehicle in a parking space reserved for the use of the physically handicapped. This bill specifies a penalty of a \$50 fine and 15 days in jail. The bill also provides for enforcement of the law in private parking lots and shopping centers. Under present law, vehicles authorized to use handicapped parking spaces must bear handicapped license plates or display a special certificate.

S-646, sponsored by Senator Joseph Merlino (D-Mercer), which amends the law establishing the constituent membership of the State Law Enforcement Planning Agency to include two members to be appointed by the Senate President and the Speaker of the General Assembly, as well as the Chief Justice of the State Supreme Court, a Superior Court trial judge, the Administrative Director of the Courts and the chairman and two members of the Juvenile Justice and Delinquency Prevention Advisory Committee.

S-885, sponsored by Senator Brian T. Kennedy (R-Monmouth), which amends the Criminal Code to provide that a person is guilty of a robbery if force is used upon a victim. The bill insures that purse snatching may be prosecuted as a second degree crime under the robbery statute, rather than as a third degree crime under theft.

S-1007, sponsored by Senator Frank J. Dodd (D-Essex), which prohibits a board of education member in a local and regional school district from holding office as a mayor or as a member of the governing body of a municipality. In addition, members of county special services school districts and county vocational school districts are prohibited from serving as a member of the county governing body.