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Municipal Corporations—Status of School Teacher

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THE COURT OF APPEALS, 1953 TERM

There is no question that a taxpayer has the right to examine the books, records and reports of the departments of water, gas and electricity,¹⁶ or building contracts and the bidding involved therein.¹⁷ However, generally courts in the United States have held legislation forbidding the divulgence or disclosure of information, reports and records valid,¹⁸ and it is a fairly basic concept that public policy demands that certain records be kept secret.¹⁹ New York courts have recognized the validity of statutes making public relief records confidential,²⁰ and restricting the right of inspection of health records.²¹ A holding of the Appellate Division recognized the right of secrecy where disclosure would prevent the realization of the full benefits of a department's purpose and not serve the public interest.²²

Recognizing the necessity of secrecy in an investigation, the court in a recent case, in which a taxpayer of the City of New York applied for an order to compel the Mayor to allow her to inspect a report submitted to him by the Commissioner of Investigations, upheld the provisions restricting the right of inspection and granted a motion to dismiss.²³

Status of a School Teacher

In *Daniman v. Board of Education of City of N. Y.*,²⁴ the Court of Appeals affirmed (4-3) the Appellate Division in holding that teachers are city employees, although intrinsically public education is a state function.²⁵ Petitioners' employment in the public schools and colleges of the City of New York had been terminated under the provisions of the city charter for refusing to answer questions concerning their Communist affiliations before a Senate Judiciary subcommittee. The statute provides that if an officer or employee of the *city* shall refuse to answer questions on the grounds that his answer would tend to incriminate him, his tenure of employment shall terminate.²⁶

16. *Matter of Ihrig v. Williams*, 181 App. Div. 865, 196 N. Y. Supp. 273 (1st Dep't), *aff'd* 223 N. Y. 670, 119 N. E. 1050 (1918).

17. *Matter of Egan v. Board of Water of the City of New York*, 205 N. Y. 147, 98 N. E. 467 (1912).

18. See Annotation 165 A. L. R. 1306.

19. 5 McQUILLAN, MUNICIPAL CORPORATIONS § 14.14 (3d ed. 1949).

20. *Coopersburg v. Taylor*, 148 Misc. 824, 266 N. Y. Supp. 359 (Sup. Ct. 1933).

21. *Matter of Allen*, 205 N. Y. 158, 98 N. E. 470 (1912).

22. *People ex rel. Woodill v. Fosdick*, 141 App. Div. 450, 126 N. Y. Supp. 252 (1st Dep't 1910).

23. *Cherkis v. Impelliteri*, 307 N. Y. 132, 120 N. E. 2d 530 (1954).

24. 306 N. Y. 532, 119 N. E. 2d 373 (1954).

25. N. Y. CONSTITUTION Art. XI, § 1.

26. NEW YORK CITY CHARTER § 903.

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City boards of education are state created entities,²⁷ and as such, they have been considered independent agencies,²⁸ distinct from²⁹ and beyond³⁰ a municipality's control. However in "matters not strictly educational or pedagogic" a board is subject to local regulation.³¹

In determining this area to which the local law applies, the courts have produced some seemingly inconsistent results. They have held that a teacher comes within city charter provisions prohibiting city officers from holding dual positions,³² or making it a crime for city employees to conspire to defraud the city,³³ and lower courts have held that the section now in question applied to teachers.³⁴ Conversely it has been held that a teacher is not an employee of the city where local ordinances provided that a city employee was to receive the same salary in a new position where the old one had been abolished,³⁵ or where it forbade the holding of dual positions.³⁶

In the instant case, a majority of the court applied a liberal interpretation to the New York City Administrative Code which defines a city employee as "any person whose salary in whole or in part is paid out of the city treasury."³⁷ As the petitioners' salaries were paid with funds from the city treasury and their employment with the board of education must be added to other municipally paid services in determining seniority rights under Civil Service,³⁸ the court concluded that the petitioners were employees of the city and therefore subject to dismissal.

Pensions

Before the constitutional amendment which made membership in a state or civil pension system a contractual relationship,³⁹ New York followed the traditional rule that a pension was a gratui-

27. EDUCATION LAW §§ 2557, 6201.

28. *Gunnison v. Board of Education of City of New York*, 176 N. Y. 11, 68 N. E. 106 (1903).

29. *Lewis v. Board of Education*, 258 N. Y. 117, 179 N. E. 315 (1932).

30. *Matter of Divisich v. Marshall*, 281 N. Y. 170, 22 N. E. 2d 327 (1939).

31. *Hirshfield v. Cook*, 227 N. Y. 297, 125 N. E. 504 (1919).

32. *Metzger v. Swift*, 258 N. Y. 440, 180 N. E. 112 (1932).

33. *People v. Engel*, 200 Misc. 60, 102 N. Y. S. 2d 166 (Ct. Gen. Sess. 1951).

34. *Matter of Koral v. Board of Education*, 197 Misc. 221, 94 N. Y. S. 2d 378 (Sup. Ct. 1950); *Matter of Goldway v. Board of Higher Education*, 178 Misc. 1023, 37 N. Y. S. 2d 34 (Sup. Ct. 1942).

35. *Matter of Ragsdale v. Board of Education*, 282 N. Y. 323, 26 N. E. 2d 277 (1940).

36. *Matter of Gelson v. Berry*, 233 App. Div. 20, 250 N. Y. S. 577 (2d Dep't 1931), *aff'd*, 257 N. Y. 551, 178 N. E. 791 (1931); *contra*, *Metzger v. Swift*, *supra* note 9.

37. NEW YORK CITY ADMINISTRATIVE CODE § 981-1.0.

38. CIVIL SERVICE LAW § 31.

39. N. Y. CONST. Art. V, § 7, effective July 1, 1954.