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## Local Law—Teachers Held to Be "Employees" of Municipality

John J. Cooney

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## RECENT DECISIONS

### LOCAL LAW—TEACHERS HELD TO BE “EMPLOYEES” OF MUNICIPALITY

Teachers in New York City schools and colleges refused to testify before a Senate investigating subcommittee. *Held* (3-2): Their discharge by the City Board of Education under § 903 of the New York City Charter (“If any officer or . . . employee of the city shall . . . refuse to testify . . . before any legislative committee, . . . his term or tenure of office or employment shall terminate . . .”) was lawful. *Shlakman v. Board of Higher Education*, 282 App. Div. 718, 122 N. Y. S. 2d 286 (2d Dep’t 1953).

That “public education shall be beyond control by municipalities and politics” is the declared policy of New York State. *Matter of Divisich v. Marshall*, 281 N. Y. 170, 22 N. E. 2d 327 (1939). To this end, all city boards of education are state created corporate entities, N. Y. EDUCATION LAW §§ 2551, 6201, and as such are distinct from corporate municipalities, *Lewis v. Board of Education*, 258 N. Y. 117, 179 N. E. 315 (1932). Thus, the board of education and not the municipality is the party to sue or be sued in matters involving the education department and its employees. *Gunnison v. Board of Education*, 176 N. Y. 11, 68 N. E. 106 (1903). There seems to be some confusion, however, as to what relation actually exists between municipalities and the boards, despite their distinct corporate natures. It is well established that the relation of principal and agent does not exist between them, *People ex rel. Wells & Newton Co. v. Craig*, 232 N. Y. 125, 133 N. E. 419 (1921), and that the boards are not, strictly speaking, administrative departments of the municipality, *Matter of Ragsdale v. Board of Education*, 282 N. Y. 323, 26 N. E. 2d 277 (1940). Nevertheless, it is clear that there is some relationship which in certain areas subjects the boards to municipal dictates. *Matter of Hirshfield v. Cook*, 227 N. Y. 297, 125 N. E. 504 (1919); *Metzger v. Swift*, 258 N. Y. 440, 180 N. E. 112 (1932); *Matter of Kay v. Board of Higher Education*, 260 App. Div. 9, 20 N. Y. S. 2d 898 (1st Dep’t 1940). Thus, in *Hirshfield v. Cook, supra*, the Court of Appeals stated, 227 N. Y. at 304, 125 N. E. at 506:

While the educational affairs in each city are under the general management and control of the board of education, such board is subject to municipal control in matters not strictly educational or pedagogic.

It is in defining this “not educational or pedagogic” area that inconsistency in applying local law to boards of education has arisen. Local law was held *not* to apply: 1) where certain procedural requirements of the local law affecting substantive rights of “city employees” were not followed, *Nelson v. Board of*

*Higher Education*, 263 App. Div. 144, 31 N. Y. S. 2d 825 (1st Dep't 1941); 2) where a local law guaranteed a "city employee" the same salary in a new position as in one abolished, *Matter of Ragsdale v. Board*, *supra*; 3) where local law forbade the holding of two city positions at once, *Matter of Gelson v. Berry*, 233 App. Div. 20, 250 N. Y. Supp. 577 (2d Dep't 1931), *aff'd*, 257 N. Y. 551, 178 N. E. 791 (1931). Local law was held applicable: 1) where a city investigation was concerned, *Matter of Hirshfield v. Cook*, *supra*; 2) where local law forbade the holding of two city positions at once, *Metzger v. Swift*, *supra*; *contra*: *Matter of Gelson v. Berry*, *supra*; 3) where a city official was held to act in the same capacity for the board, *Matter of Kay v. Board*, *supra*.

The precise section of the New York City Charter involved in the principal case has been invoked successfully in similar situations. In *Matter of Goldway v. Board of Higher Education*, 178 Misc. 1023, 37 N. Y. S. 2d 34 (Sup. Ct. 1942), a teacher was discharged for refusing to sign a waiver of immunity before testifying before a state legislative committee. In dismissing his petition for reinstatement, the court stated, 178 Misc. at 1025, 37 N. Y. S. 2d at 36:

The petitioner is an "employee of the city" within the intendment of § 903. . . . It is obvious that § 903 is intended to be all inclusive; to relate to all employees of the city or any of its agencies paid out of funds of the city treasury.

Exactly in point is *Matter of Koral v. Board of Education*, 197 Misc. 221, 94 N. Y. S. 2d 378 (Sup. Ct. 1950). There, as in the instant case, a board of education employee refused to testify before a Congressional Investigating Committee, and his employment was terminated by operation of § 903. The court held that the Charter provision was applicable and reiterated the doctrine of the *Hirshfield* case that boards of education are subject to municipal control in matters not strictly educational or pedagogic.

It would seem that the true doctrine as to the relationship between municipalities and state created municipal boards of education is stated by the *Hirshfield* case. As a practical matter, the municipality certainly has an interest in the conduct of people who play such an important role in the everyday activities of the locality, be they "employees" or not, in the technical sense of that term. By limiting the municipality's control over the boards to "matters not strictly educational or pedagogic," the basic policy of the state to preserve education from the vagaries of local politics will be preserved, while at the same time integrated control of municipal affairs will be assured.

John J. Cooney