St. John's Law Review

Volume 14
Number 2 *Volume 14, April 1940, Number 2*

Article 7

Dual Job Holding In the Public School System

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share under the treaty, it is doubtful whether the surrogate has the right to impound the money. If the German representative appears with an assignment, valid on its face, it is doubtful whether the surrogate would be legally justified in retaining the money.

The statute, of course, is not restricted to dictatorship. It may also apply to democracies or to any other form of government, as long as the conditions prescribed by the statute appear.

ROBERT B. F. GILLESPIE.

DUAL JOB HOLDING IN THE PUBLIC SCHOOL SYSTEM.

Although statutory and common law interdictions against the holding of multiple public positions have long been an accepted part of our jurisprudence, it was only recently that such limitations were extended to incumbents in the public school system.

For some time the Board of Education has sought to limit teachers to one position, but it has, to a large extent, been frustrated by the tenure statutes.[1] These laws provide that a person, who has secured tenure thereunder, may not be removed except for cause, after hearing, and by the vote of a majority of the Board.[2] What constitutes good and sufficient cause has been the subject of much controversy.[3]

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[1] In Hughes v. Board of Education of City of New York, 249 App. Div. 158, 291 N. Y. Supp. 462 (1st Dept. 1936), the board of education sought to remove the principal of an evening school after he had secured tenure, during his good behavior and competent service and while night school was being maintained, simply because he held the position of principal of a night school. In reversing the removal the court said that the board had power to grant the permanent tenure, and having done so it could not remove the petitioner except for cause, after hearing and by the vote of a majority of the board. A similar result was reached in Matter of Cohen v. Board of Education, 163 Misc. 638, 296 N. Y. Supp. 522, *aff'd*, 277 N. Y. 519, 13 N. E. 454 (1938).

[2] N. Y. ED. LAW § 872, subd. 3: "* * * Such person and all others employed in the teaching, examining or supervising service of the school of a city, who have served the full probationary period, or have rendered satisfactorily an equivalent period of service prior to the time this act goes into effect shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for cause after hearing, by the affirmative vote of a majority of the board."

[3] See Cooke v. Dodge, 164 Misc. 78, 82, 299 N. Y. Supp. 257, 262 (1937), where the court laid down the following rule: "The cause assigned must be substantial and not shadowy, and that the explanation must be received and acted upon in good faith and not arbitrarily. To be substantial the cause assigned must be some dereliction on the part of the subordinate, or neglect of duty, or something affecting his character or fitness for the position." The difficulties in applying this rule are obvious.

In Matter of Thomas, 33 N. Y. St. Dept. Rep. 12 (1925), it was held that the removal of a teacher pursuant to a rule that a teacher's place should become vacant on her marriage was improper. *Cf.* Matter of Weeks, 4 N. Y. St. Dept. Rep. 605 (1915), where it was held that the absence of a married teacher

However, it may be regarded as well established in New York that the mere holding of more than one job is not such cause, and can not be made the grounds for a dismissal action by the Board.[4] Nor can teachers, and others holding positions with the Board of Education, be categorized as "office holders" so as to come within the constitutional inhibitions concerning the holding of two public offices.[5] A teacher is an employee and not an office holder.[6] Thus, the only way the Board can effectuate the dismissal of a teacher with tenure, excluding dismissal for cause, is by completely abolishing the position.[7]

In 1933 the Legislature, with a view to the alleviation of unemployment among those eligible for teaching positions, and cognizant of the limitations upon the powers of the Board of Education to assist in the matter, sought to enhance the Board's powers by enacting an emergency dual job holding statute, forbidding the holding of more than one non-regular position.[8] This statute, however, although im-

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occasioned by pregnancy and maternity does not justify her removal as a teacher. See OP. ED. DEPT., 52 St. Dept. Rep. 270 (1935); School City of Elwood v. State, 203 Ind. 628, 180 N. E. 471 (1932); 56 C. J. (1932) § 337, p. 401, n.5.

[4] See note 1, *supra.*

[5] U. S. CONST. Art. I, § 6 (cited and interpreted in United States v. McCandless, 147 U. S. 692, 13 Sup. Ct. 465 (1893); N. Y. STATE CONST. art. III, § 7 (cited and construed in People *ex rel.* Gilchrist v. Murray, 73 N. Y. 535 [1878]); GREATER N. Y. CITY CHARTER § 895: "Any person holding office, whether by election or appointment, who shall, during his term of office accept, hold or retain any other civil office of honor, trust or emolument under the government of the United States, * * *, or who shall hold or accept any other office connected with the government of the city, or who shall accept a seat in the legislature, shall be deemed thereby to have vacated any office held by him under the city government; except that the mayor may accept, or may in writing authorize any other person holding office to accept, a specified civil office, in respect to which no salary or other compensation is provided. * * *." See also 2 MECHEM, THE LAW OF OFFICES AND OFFICERS (1890) § 427; Note (1935) 10 ST. JOHN'S L. REV. 83.

[6] Steinson v. Board of Education, 165 N. Y. 431, 434, 59 N. E. 300, 304 (1901) ("The plaintiff [a teacher] was not an officer but an employee"); Gelson v. Berry, 257 N. Y. 551, 178 N. E. 791 (1931).

[7] N. Y. ED. LAW § 868, subd. 2, empowers the board "To create, abolish, maintain and consolidate such positions, divisions, boards of business, as, in its judgment, may be necessary for the proper and efficient administration of its work."

This section was applied and construed in the following cases: Matter of Oldenberg, 43 N. Y. St. Dept. Rep. 117 (1933); Matter of Daley, Ed. Dept., 49 N. Y. St. Dept. Rep. 201 (1934); People *ex rel.* Kaufman v. Board of Education, 166 App. Div. 58, 151 N. Y. Supp. 585 (1st Dept. 1915); Cusack v. Board of Education, 174 N. Y. 136, 66 N. E. 677 (1903). See also Op. Ed. Dept., 30 St. Dept. Rep. 154 (1933), where it was said: "A board of education may abolish a position, the effect being to terminate the services of the incumbent, but the board may not use its powers, thus conferred by statute, for the purpose of dismissing a teacher or other employee who has secured the rights of tenure and who may not be removed except for cause after hearing."

[8] N. Y. Laws 1933, c. 726. "§ 1 It is hereby declared that a temporary emergency exists with regard to unemployment requiring the enactment of the following provision and their applications until the legislature shall find their future operation unnecessary.

portant as indicative of a legislative trend, failed to accomplish its expressed purpose, namely, the spread of employment.[9] Such failure may be attributed to a large extent, to the fact that, by its terms, it is restricted in its application to the holders of more than one *non-regular position,*[10] and further, and perhaps more important, it expressly excludes from its orbit those teachers who have secured tenure in both positions. Since all those teachers who have not secured tenure are subject to dismissal without cause,[11] irrespective of any statute, it would seem that the limitations contained in the Act of 1933 render it for all practical purposes of no particular significance. In 1938 the records of the Board of Education revealed that of 38,000 teachers employed by the Board, approximately 1,200 held more than one teaching position, some of them holding as many as four; while some 5,000 teachers were on eligible lists awaiting appointment.[12] Obviously, further legislation was necessary.

Coudert-Goldberg Bill.

In 1939 the Legislature, pursuant to popular demand, amended Section 872 of the Education Law by the addition of Subdivision 7 which provides:

> "7. Any person who, while an employee of the Board of Education in a city of one million inhabitants or more, shall accept, occupy or retain any other employment or office of emolument with such board, or who shall occupy or accept any other em-

"§ 3 In a city having a population of one million or more, the board of education shall, in its discretion, have the power to provide that any person holding, retaining, or accepting a non-regular position under said board of education * * * shall be ineligible for appointment or assignment to any other non-regular position under the said board of education during such same school year, * * *.

"§ 4 This act shall not be deemed in any wise to increase, decrease, or vacate the tenure rights, if any, which now exist in respect to any such position of such non-regular employee."

[9] See N. Y. Times, Oct. 31, 1939, p. 25, col. 8, in which it was reported that the Mayor had shown that of 36,000 teachers and supervisors in the city school system, 1,209 held dual job positions, and of these 367 were teachers receiving $1,000 or more from other positions. Seventy-two were teaching on salaries of $5,000 or more. There were also 296 teachers getting between $3,000 and $4,000, who were being paid $500 or more extra. See note 1, *supra.*

[10] N. Y. Ed. Law § 868a, subd. 1: "The term 'regular employee' means an employee serving at an annual salary and who must become a member of the retirement association created by, or pursuant to, the laws of the state of New York."

[11] *In re* McMahon, 49 N. Y. St. Dept. Rep. — (1934) ("A teacher may be dismissed for no cause at all or for any cause during his probationary period"). See Matter of O'Conner v. Emerson, 196 App. Div. 807, 812, 813, 188 N. Y. Supp. 236, 240 (4th Dept. 1921), where the court said: "There is no vested right in the position of teacher or principal, or the emoluments thereof, except as the same may be given in a limited way by some express statute."

[12] Hendon v. Board of Education, 281 N. Y. 757, 24 N. E. (2d) 20 (1940).

> ployment or office connected with the state or any civil division or agency thereof, shall be deemed thereby to have vacated his original employment or office with such board; except that the board of education, upon the recommendation of the board of superintendents, may determine * * * that such person be permitted to occupy such other employment or office for a period or periods which shall not exceed one school year in the aggregate * * *. Such board, upon like recommendation, may permit and regulate the holding of two non-regular positions by the same person." [13]

This statute, although in keeping with a legislative policy extending over a period of approximately sixty-six years,[14] is, in the subject of its application, novel in this country. In its enactment the Legislature has succeeded in effectuating the purpose expressed in the Act of 1933. The Coudert Bill not only succeeds in prohibiting the holding of multiple positions in the public schools, irrespective of the nature of the holding, but, more important, it prohibits such holding irrespective of tenure. The fact that it does violate tenure rights has been the primary ground of attack in both the cases brought thus far to subject the statute to a judicial test.[15]

In *Hendon* v. *Board of Education,*[16] the plaintiff, who had secured double tenure both as a teacher in day school and as a teacher in night school, and who was removed from the latter position by the defendant, acting pursuant to the Coudert Law, brought an action to be reinstated, contending that the tenure statutes extended him a contract, which was impaired by the statute in violation of the Constitution,[17] and further, that the said law deprived him of a vested right partaking of the nature of property.[18] The court dismissed the complaint, apparently disregarding the plaintiff's reference to the case of *Indiana ex rel. Anderson* v. *Brand,*[19] which would seem to support his position. An examination of the two cases, however, shows they are reconcilable.

In the *Anderson* case, it appeared that the Indiana Legislature, after having extended tenure to the teachers in the public school system, sought to modify the law by omitting from its provisions township school corporations which were included in the original act. The United States Supreme Court held the amendment unconstitutional, in that it impaired the obligations of a contract extended the plaintiff

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[13] N. Y. Laws 1939, c. 771.

[14] See N. Y. Laws 1873, c. 335, § 114; N. Y. Laws 1882, c. 410, § 55; N. Y. Laws 1897, c. 378, § 1549; N. Y. Laws 1901, c. 466, § 1549.

[15] Hendon v. Board of Education, 281 N. Y. 757, 24 N. E. (2d) 20 (1940), cited *supra* note 12; LaPolla v. Board of Education, 172 Misc. 364, 15 N. Y. S. (2d) 149, *aff'd,* 282 N. Y. 140, — N. E. (2d) — (1940).

[16] 281 N. Y. 757, 24 N. E. (2d) 20 (1940).

[17] U. S. CONST. Art. I, § 10.

[18] U. S. CONST. Art. XIV, § 1; N. Y. STATE CONST. art. I, § 6.

[19] 303 U. S. 95, 58 Sup. Ct. 443 (1938).

by the original tenure act. The Court, however, emphasized the fact that the pertinent statute was "couched in terms of contract", that it was the well established policy of the state to bind its instrumentalities by contract, and that the statute in issue mentioned the word "contract" twenty-five times.[20] It is to be noted that nowhere in the New York tenure statutes does the word contract appear, further, that it is, apparently, not the policy of New York to extend statutory contracts.[21]

In the case of *Dodge* v. *Board of Education,* the United States Supreme Court laid down the following rule:

> "In determining whether a law tenders a contract to a citizen it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the state the case of an obligation binding upon the state is clear. Equally clear is the case where the statute confirms a settlement of disputed rights and defines its terms. On the other hand, an act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature. This is true also of an act fixing the term or tenure of a public officer or an employee of a state agency. The presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall deem otherwise." [22]

Applying this rule to the case of *Phelps* v. *Board of Education,*[23] which involved a question as to the effect of a New Jersey tenure

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[20] *Id.* at 105.

[21] It has been "frequently reiterated by the courts of this state, that a public office is not a grant, and that the right to it does not depend upon, or partake of the nature of a contract." Long v. Mayor, 81 N. Y. 425, 428 (1880). See also 22 R. C. L. (1918) § 11, p. 379.

It is interesting to note, in this regard, that the Florida legislature anticipated just such a controversy and made express statutory provisions therefor. See 2 Fla. Laws 1937, c. 18743, § 11, p. 1147. "All employment under the provisions of this Act shall be subordinate to the right of the legislature to amend or repeal this act at any time and nothing herein contained shall ever be held, deemed or construed to confer upon persons employed pursuant to the provisions thereof, a contract which shall be impaired by the amendment or repeal of this act."

The reason for this rule and for the policy in New York may, perhaps, be found in Mial v. Ellington, 134 N. C. 131, 158, 46 S. E. 961, 970 (1903). In that case the court made an extensive survey of the cases, and epitomized in the following sentence the salient defects of a contrary decision. "If it is true that a public office is private property, the state, instead of being sovereign, finds itself in its efforts to perform its governmental functions bereft of its sovereignty, its hands tied, its progress obstructed, for that those whom it has commissioned to be her servants have, by grants of parts and parcels of her sovereignty, become her masters, and converting her commissions into grants, forbid her to proceed or go forward."

[22] 302 U. S. 74, 58 Sup. Ct. 98, *aff'g,* 364 Ill. 547, 5 N. E. (2d) 84 (1936).

[23] 300 U. S. 319, 57 Sup. Ct. 483 (1935).

statute, the Supreme Court held that no contract was created. An inspection of these cases leads to the conclusion that tenure, unless the statute granting the same is couched in the peculiar phraseology of the Indiana statute, means simply freedom from the menace of being removed at pleasure, or at the whim or caprice of one's superiors. It is thus a mere incident of office, like its salary or its duration, and is not a basis for arguing that one who enjoys tenure is in office under an inviolable contract.[24]

The second contention in the *Hendon* case was that the Coudert Law deprived him of a vested property right without due process of law. This argument, although seemingly supportable by the fact that in other professions a licensee is protected by the due process clause,[25] is decidedly against the weight of New York authority. In *People ex rel. Peixotto* v. *Board of Education*[26] the question was squarely presented to the court, and the non-vested nature of a teacher's rights was upheld against the most powerful attack that could have possibly been made upon it. In that case, the petitioner, a married woman, had been deprived of her office or employment as a teacher on no other grounds than that she had been absent from duty in order to bear a child. In justifying her ouster the court said:

> "The legislature could have provided that the relator might be dismissed for no cause whatever. She had no vested right in the position of teacher." [27]

Although the strong dissents recorded in this case, and the subsequent criticism leveled against the decision may seem to detract from its cogency, the principles therein enunciated have too often been repeated to admit of argument.[28]

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[24] "The purpose of the provision of the Teacher's Tenure Act requiring dismissal charges to be presented at a hearing, was to protect teachers from arbitrary discrimination by being subjected to unfounded and inadequate charges." Smith v. School Dist. of Philadelphia, 334 Pa. 197, 5 A. (2d) 535 (1939).

[25] In People *ex rel.* Greenberg v. Reid, 151 App. Div. 324, 326, 136 N. Y. Supp. 428 (3d Dept. 1912), the court said: "While such a license (to practice dentistry) is not, strictly speaking, either a personal or a property right, it partakes in a measure of the nature of both * * *.

"* * * All the authorities, however, * * * hold that a licensee should be given notice of the presentation of charges against him and an opportunity to be heard concerning them."

In City of Rochester v. Falk, 170 Misc. 238, 9 N. Y. S. (2d) 343 (1939), the court said: "It would seem that this right (to drive an auto) on which a livelihood may rest, may be revoked only by due process of law." See also People v. Wilson, 179 App. Div. 416, 166 N. Y. Supp. 211 (3d Dept. 1917).

[26] 212 N. Y. 463, 106 N. E. 307 (1914).

[27] *Id.* at 466, 106 N. E. at 308.

[28] In Stetson v. Board of Education, 218 N. Y. 301, 112 N. E. 1045 (1916), the court laid down the following rule:

"* * * While rights which have vested under and by virtue of a statute cannot be disturbed by a subsequent statute, the right to teach in the public schools is not vested and is always subject to regulation at the hands of the

A more cogent constitutional objection may be found in the fact that, apparently, the statutory interdiction does not extend to those engaged in private enterprise, or to professions other than teaching. It would seem that doctors, lawyers, dentists and accountants, though licensed as are teachers, may be, and have been, assigned to teach in night schools.[29] That this exclusion is inconsistent with the avowed purpose of the statute must be admitted, but whether the statute is thereby rendered vulnerable to the objection that it denies to teachers the equal protection of the laws [30] is more difficult to resolve. A relevant case is that of *McPherson* v. *Blacker*,[31] wherein the court said:

> "The inhibition that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminatory and hostile legislation." [32]

The statute in issue undoubtedly discriminated between classes and would, therefore, seem to fall within this rule. However, in subsequent cases the rule was to some extent modified or, to be more exact, particularized. Thus, in *Radice* v. *New York*, the United States Supreme Court, in commenting upon unlawful discrimination, said:

> "Of course, the mere fact of classification is not enough to put a statute beyond the reach of the equality provision of the fourteenth amendment. Such classification must not be 'purely

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legislature. The general statutes invoked by the appellant, which existed at the time of the adoption of the Greater N. Y. City Charter, do not invalidate or render inoperative the charter provisions which the appellant alleges to be inconsistent with them." See also Conner v. Mayer, 51 N. Y. 285 (1851); Long v. Mayer, 81 N. Y. 425 (1880); Dodge v. Board of Education, 302 U. S. 74, 58 Sup. Ct. 98 (1937); Higginbotham v. City of Baton Rouge, 306 U. S. 535, 59 Sup. Ct. 705 (1939).

[29] An attorney, although commonly called an officer of the court, cannot be categorized as a public officer. Thus in *In re* Garland, 4 Wall. 333, 378 (U. S. 1866), Field, J., said: "The profession of an attorney and counsellor is not like an officer created by an act of congress which depends for its continuance, its powers and its emoluments, upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution * * *." The license is merely a privilege or franchise. Matter of Co-operative Law Co., 198 N. Y. 479, 92 N. E. 15 (1910). See also Buxter v. Lietz, 139 N. Y. Supp. 46 (1913).

A license is required from physicians merely to protect the public from injury which unlearned and unskilled practitioners may cause. Brown v. Shyne, 242 N. Y. 176, 151 N. E. 197 (1926). See also Note (1926) 44 A. L. R. 1407.

It may thus be seen that any connection these professions may have with the state is purely for regulatory purposes and not such as to bring them within the purview of the statute.

[30] U. S. CONST. Art. XIV, § 1.

[31] 146 U. S. 1, 13 Sup. Ct. 3 (1892).

[32] *Id.* at 39.

> arbitrary, oppressive or capricious' * * *. But the mere production of inequality is not enough. Every selection of persons for regulation so results, in some degree. The inequality produced, in order to encounter the challenge of the Constitution, must be 'actually and palpably unreasonable and arbitrary.' " [33]

Applying this latter rule it may be observed that the test to be applied to the instant case is that of reasonableness. Whether any discrimination is reasonable is of course a matter of opinion, but in the instant case the very difficulty of detecting violators in the excluded classes would, seemingly, suffice to warrant the distinction. But if this rationalization be specious it would seem that ample authority to sustain the statute may be found by drawing an analogy to the dual office holding statutes. These statutes, remarkably similar both in terminology and effect to the one in issue, have been universally sustained.[34]

Problems in Enforcement.

More often than not, when novel legislation is proposed, the parties affected raise the cry of "injustice". The instant case provides no exception, unless it be that the complaints are, to some extent, logically sound. One of the more cogent objections advanced [35] is that under the statute even a night school teacher is restricted to but one job, and that since by statute night schools are open a maximum of one hundred nights,[36] and since the prescribed salary per night is but four dollars and fifty cents,[37] it will be difficult if not impossible for the Board of Education to obtain teachers to fill the positions without resorting to those employed in the day time, the very thing sought to be overcome by the statute. Some factual verification may be found for this argument in that a lack of non-regular teachers in trade subjects has already evidenced itself.[38] However, it is submitted that, persuasive though this argument be, it may be overcome by a strict interpretation of the statute. The statute provides that: "Such board, upon like recommendation, may permit and regulate the holding of two non-regular positions by the same person." The courts may construe this to mean that the Board has absolute discretion in permitting the holding of two non-regular positions, and that such discretion is not limited by the one-year provision. Such a holding could be supported by the fact that, although non-regular teachers would of necessity fall within the general scope of the statute as set forth in the first sentence, the Legislature deemed

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[33] 264 U. S. 292, 293, 44 Sup. Ct. 325, 326 (1924).
[34] See note 5, *supra;* see also Note (1935) 10 ST. JOHN'S L. REV. 83
[35] Hendon v. Board of Education, 281 N. Y. 757, 24 N. E. (2d) 20 (1940).
[36] N. Y. ED. LAW § 872, subd. 3.
[37] N. Y. ED. LAW § 887.
[38] N. Y. Sun, Nov. 3, 1939, p. 86, col. 3.

it necessary to appropriate a separate sentence to them. Assuming, as we must, that the separation was intentionally and consciously made,[39] it is reasonable to suppose that a distinction was intended, and that since there is no mention of a one-year period in the provision covering non-regular teachers, the inapplicability of the said period to such teachers constitutes the distinction.

It is to be observed that the statute does not carry the usual clause excluding from its application notary publics and commissioners of deeds.[40] Such persons would seem to be embraced within the clause "any other office or offices connected with the state or any civil division or agency thereof", and, therefore, the acceptance by an incumbent in the public school system of such a position would, apparently, bring him within the purview of the statute and result in a vacation of his prior position.[41] A like result would, seemingly, follow the acceptance of the position of proctor for the state or local civil service commission or the acceptance of membership to an election registry board, or of the position of enumerator under the proportional representation system.[42] Since the imposition of the statutory penalty upon the holders of these positions will probably aid very little in effectuating the avowed purpose of the statute, it would seem that their inclusion was a fortuitous one, rather than one contemplated by the Legislature.

Conclusion.

Although regulatory legislation often is productive of inequality, and always of criticism, it usually has a laudable purpose and a salutary effect. The Coudert-Goldberg Law provides no exception. It is, in substance, consistent with a judicial and legislative trend extending over a period of sixty-six years,[43] and there is no reason why it should prove less effectual than have inhibitions of a similar character. True, the Legislature failed to anticipate every eventuality,

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[39] The statute being in derogation of the common law must be strictly construed.

[40] See note 14, *supra.*

[41] See People v. Rathbone, 145 N. Y. 434, 40 N. E. 395 (1895), in which the court held that a notary is a public officer within the constitutional provisions providing that no public officer should receive any free pass, and that a person violating the same should be deemed to have vacated his office. A like rule was laid down in the case of People v. Wadhams, 176 N. Y. 9, 68 N. E. 65 (1903).

Since a notary was considered a public officer within the purview of these regulatory statutes, it follows that he would be considered the holder "of an office connected with the state" within the inhibition of the Coudert Bill.

For confirmation of this view see Letter from N. Y. City Council to the Board of Education dated June 30, 1939.

[42] Since these positions are analogous to a notary public in that they too are directly connected with the state in their inception and duties it would seem that they would also fall within the purview of the Coudert Law. See N. Y. Corp. Council Letter cited *supra* note 41.

[43] See note 14, *supra.*

but such omissions as were made do not detract from either the validity or the value of the statute. Further, they may be supplied by amendment.

It is submitted that in order to perfect the statute, and better effectuate its purpose, the following amendments should be made:

(1) Notary publics, commissioners of deeds and similar public officers should be expressly excluded from the operation of the statute. As was pointed out above, the inclusion of this group is mere supererogation; its exclusion may prevent a possible injustice.

(2) All those who retain outside employment and who derive, therefrom, an income in excess of a stated amount should be included within the statutory inhibition. The avowed purpose of the statute is to alleviate unemployment and to improve the character of teaching in the public schools.[44] The exclusion of those not employed as day teachers would seem, to some extent, to defeat this purpose.

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THE LIABILITY OF PARKING LOT OWNERS.

I.

Recently the courts have been confronted with the sometime difficult problem of determining the exact nature of the legal relationship existing between the owner of a parking lot and the owner of a car parked therein.[1] The cases indicate that the problem has been adequately solved by the courts' determination that the relationship is either one in the nature of licensor and licensee [2] or that of bailor and bailee [3] depending upon whether the owner of the car has merely hired

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[44] Hendon v. Board of Education, 281 N. Y. 757, 24 N. E. (2d) 20 (1940).

[1] The problem was presented for the first time in any jurisdiction in Pennroyal Fair Ass'n v. Hite, 195 Ky. 732, 243 S. W. 1046 (1922). The New York courts were faced with the problem for the first time in Galowitz v. Magner, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924).

[2] *Ex parte* Mobile Light & R. R., 211 Ala. 525, 101 So. 177 (1924). See Note (1924) 34 A. L. R. 925. "Cases which have refused to find a bailor-bailee relationship between car owner and parking lot operator have not specified the legal relationship existing between them. The two alternatives would be that of lessor-lessee or that of licensor-licensee." (1924) 18 MINN. L. REV. 352, 353; see (1939) 9 FORTNIGHTLY L. J. 103.

[3] Galowitz v. Magner, 208 App. Div. 6, 203 N. Y. Supp. 421 (2d Dept. 1924); Fire Ass'n of Philadelphia v. Fabian, 170 Misc. 665, 9 N. Y. S. (2d) 1018 (1938); Beetson v. Hollywood Athletic Club, 109 Cal. App. 715, 293 Pac. 821 (1930); Crawford v. Hall, 56 Ga. App. 122, 192 S. E. 231 (1937); Keenan Hotel Co. v. Funk, 93 Ind. App. 677, 177 N. E. 364 (1931); Downs v. Sley System Garages, 129 Pa. 68, 194 Atl. 772 (1937); see Jones, *The Parking Lot Cases* (1938) 27 GEO. L. J. 162; Notes (1934) 14 B. U. L. REV. 368; (1939) 37 MICH. L. REV. 468; (1932) 30 MICH. L. REV. 614.