

Mr. Charles L. Benton

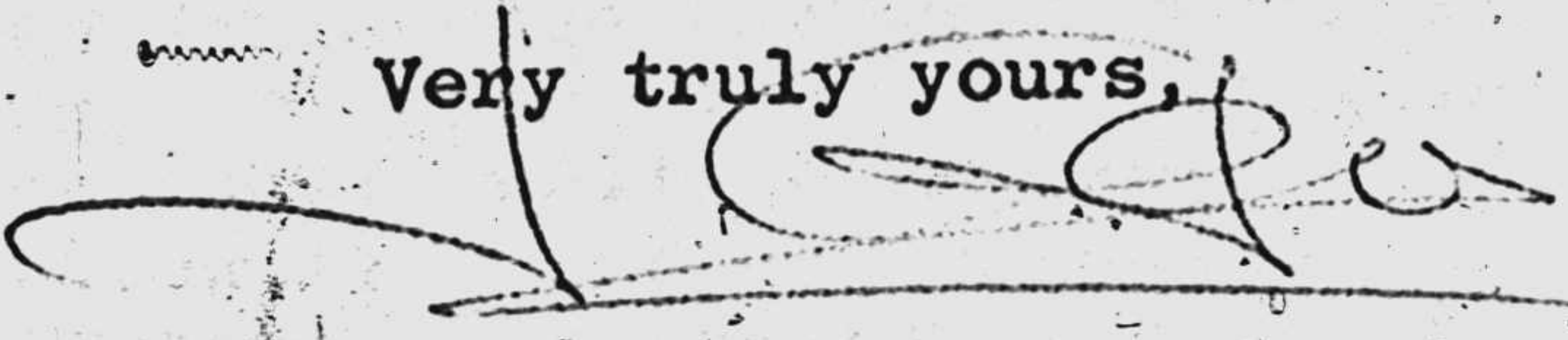
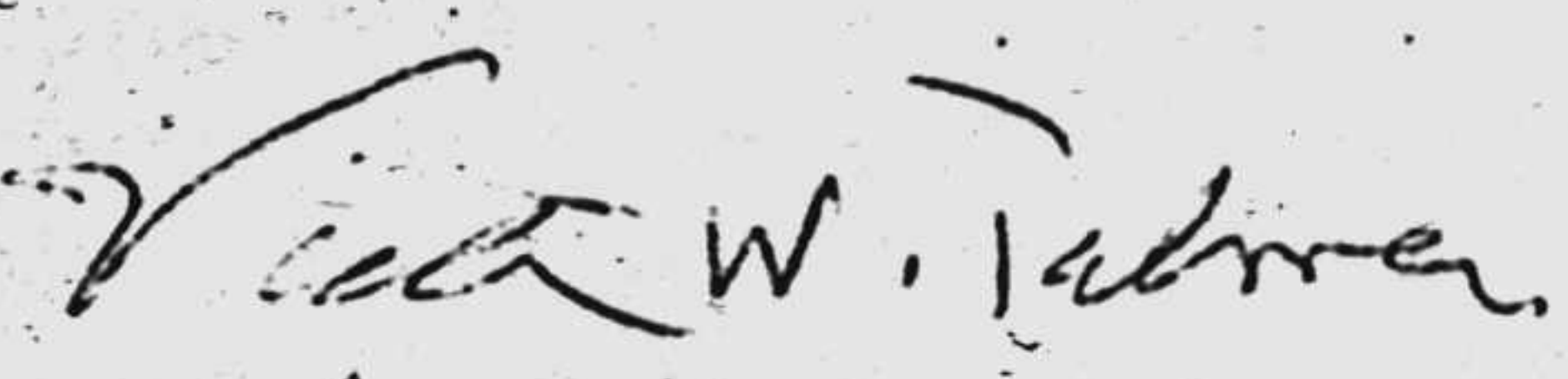
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August 11, 1966

In Martin v. Burke, 206 N.Y.S.2d 716 (1960), it was held that an exception to a law placing all positions within the Classified Civil Service shall be strictly construed and the burden of proof is upon the one claiming a position is within the exception. In that case, it was also stated that the nature of a position shall be determined by its duties and not its title.

In any other case where there is doubt as to whether or not a position qualifies as "professional" under Sec. 58(b), we believe that the burden is upon the School Board to show to the Civil Service Commission that such position so qualifies, and any final determination should be made by said Commission. See Opinions of City Solicitor, Vol. 56, page 207.

Very truly yours,


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JA/VWP/K