

LOCAL AUTHORITIES (MEMBERS' CONTRACTS) BILL

EXPLANATORY NOTE

THIS Bill is a consolidation with amendments of the law relating to the restrictions on the making of contracts by local authorities and public bodies with their members. The Bill preserves the principles of the existing law, but increases the amounts which may be paid under contracts without disqualification of the members concerned, and contains special provisions relating to subcontracts.

Clause 3 re-enacts the existing provisions defining disqualifying contracts, but makes the following changes:

- (a) The maximum amount which may be paid under any one contract without resulting in disqualification is increased from £50 to £200, and the aggregate amount which may be paid in any financial year is increased from £100 to £500:
- (b) The aggregate amount which in special cases may be paid in any financial year with the prior approval of the Audit Office is increased from £250 to £1,500:
- (c) Express provision is now made to meet the position relating to subcontracts. At present a member who is interested in a subcontract is thereby considered as having an interest in the head contract, and is disqualified if the amount payable under the head contract exceeds the prescribed limits, even though the amount payable under the subcontract is small and is well within the prescribed limits. The clause now applies the same limits to a subcontract as apply to the head contract, so that in future a member's liability to disqualification where he is a subcontractor only will depend upon the amount payable under the subcontract and not on the amount payable under the head contract:
- (d) The present provisions exempt a member from disqualification where he is interested in a contract as a member of an incorporated company of which there are more than twenty members and of which he is not the general manager. Under the Bill the basis of the exemption has been made twenty-five members (which is the limit for a private company) and the term "general manager" has been widened. A member will now be exempt if he is interested only as a member of an incorporated company with more than twenty-five members of which he is not the managing director or the general manager or a branch manager:

- (e) The present provisions exempt a member from disqualification where he is interested in a newspaper in which the local authority inserts advertisements. The clause makes it clear that this exemption relates only to contracts for advertising and that other contracts with the newspaper come within the provisions of the clause:
- (f) The clause contains a new provision that an interest of any person in a contract as an administrator or trustee of an estate or trust of which he is not a beneficiary or an interest in some other representative capacity will not result in his disqualification.

Clause 4 re-enacts without change the existing provisions that when a member is disqualified under *clause 3* an extraordinary vacancy is created and he is not eligible for re-election or reappointment until the next general or ordinary election or appointment of members of the local authority.

Clauses 5 and *6* re-enact without change the existing provisions relating to offences and to the duty of the Audit Office to commence proceedings for offences.

Clause 7 provides for repeals and consequential amendments.

Hon. Sir William Bodkin

**LOCAL AUTHORITIES (MEMBERS'
CONTRACTS)**

ANALYSIS

Title.

1. Short Title.

2. Interpretation.

3. Disqualifying contracts between local authorities and their members.

4. Extraordinary vacancy created and person affected disqualified for re-election.

5. Penalty for acting unlawfully.

6. Audit Office to institute proceedings.

7. Repeals and amendments. Schedules.

A BILL INTITULED

AN ACT to consolidate and amend the law relating to the restrictions on the making of contracts between local authorities and the members thereof. Title.

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Local Authorities (Members' Contracts) Act 1954. Short Title.

10 2. (1) In this Act, unless the context otherwise requires,— Interpretation.
1934, No. 17,
s. 2

15 “Contract”, in relation to any local authority, means a contract made by any person directly with the local authority, but does not include any contract for the employment of any person as an officer or servant of the local authority; and “contractor” has a corresponding meaning:

“Local authority” means—

(a) Every local authority or public body of any of the classes for the time being specified in Part I of the *First Schedule* to this Act:

(b) Every local authority or public body for the time being referred to in Part II of the *First Schedule* to this Act: 5

“Subcontract”, in relation to any contract made by a local authority, means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and includes any subsidiary transaction relating to any such contract or subcontract; and “sub-contractor” has a corresponding meaning. 10 15

(2) The Governor-General may from time to time, by Order in Council, amend the *First Schedule* to this Act by including therein the name of any class of local authorities or public bodies or the name of any specified local authority or public body. 20

Disqualifying contracts between local authorities and their members.

1934, No. 17, s. 3

1936, No. 58, s. 47

1940, No. 10, s. 6

1942, No. 18, s. 28

1948, No. 77, s. 27

1949, No. 18, ss. 22 (8), 86

3. No person shall be capable of being elected or appointed to be or of being a member of a local authority if he is concerned or interested in any contract made by the local authority, if the payment made or to be made by or on behalf of the local authority in respect of the contract exceeds two hundred pounds in the case of any contract or five hundred pounds altogether in any financial year in respect of all such contracts in which that person is so concerned or interested: 25 30

Provided that—

(a) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract made in any special case with the prior approval of the Audit Office on the application of the local authority. In any such special case the Audit Office may authorize the payment and receipt of such amount as it thinks fit, not exceeding in the aggregate one thousand five hundred pounds in any financial year in respect of all such contracts in which that person is so concerned or interested: 35 40

- 5 (b) Where a person is concerned or interested in any contract solely by reason of being concerned or interested in any subcontract relating thereto, the provisions of this section shall, with the necessary modifications, apply to him as if references in this section to the amount payable by or on behalf of the local authority in respect of a contract were references to the amount payable by or on behalf of the contractor in respect of the subcontract:
- 10 (c) An interest as a member of an incorporated company in which there are more than twenty-five members shall not constitute a disqualification under this section, unless the member is the managing director or the general manager or a branch manager (by whatever names they are called) of the company:
- 15 (d) In assessing under this section the amount of any payment made or to be made by or on behalf of the local authority in respect of any contract, no account shall be taken of any sum paid or to be paid as a refund of a deposit:
- 20 (e) An interest in—
- 25 (i) Any loan raised by the local authority, whether on security or otherwise; or
- (ii) Any payments made or to be made in respect of advertisements inserted by the local authority in any newspaper; or
- 30 (iii) Any lease granted or agreed to be granted to the local authority; or
- (iv) Any payment received by way of compensation under the Public Works Act 1928 for any loss, damage, or injury suffered by reason of the exercise of any power under that Act; or
- 35 (v) Any advance made by the local authority under the Rural Housing Act 1939,—
- 40 shall not constitute a disqualification under this section:

See Reprint
of Statutes,
Vol. VII,
p. 622

1939, No. 32

- (f) No employee or agent of an insurance company or of the State Fire Insurance Office shall be disqualified for being elected or appointed to be or for being a member of any Urban Fire Authority by virtue of his receiving from that company or office any remuneration, whether by way of bonus or commission or otherwise, in respect of any contract of insurance between the Urban Fire Authority and that company or office: 5
- (g) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract made before his election or appointment, if before that election or appointment his obligation in respect of the contract had been performed and the amount to be paid by or on behalf of the local authority in respect of the contract had been fixed; and any payment made thereafter by or on behalf of the local authority in respect of the contract shall not operate to disqualify that person for continuing to hold office or be taken into account for the purpose of computing the amount that may be lawfully paid to him as a member of the local authority in the same financial year in respect of any contract or contracts: 10 15 20 25
- (h) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract as an administrator or a trustee of any estate or trust in which he is not a beneficiary or as the committee of the estate of any mentally defective person under the Mental Defectives Act 1911 or as the manager of the estate of a protected person under the Aged and Infirm Persons Protection Act 1912. 30 35

See Reprint
of Statutes,
Vol. V, p. 743
Ibid.,
Vol. II, p. 887

Extraordinary
vacancy
created and
person affected
disqualified
for re-election.
1934, No. 17,
s. 4

4. (1) If any person, while holding office as a member of any local authority, becomes incapable of continuing to hold office under section *three* of this Act, his office shall thereby be vacated, and the vacancy shall be deemed an extraordinary vacancy and shall be dealt with 40

in the manner (if any) provided by law for dealing with extraordinary or casual vacancies in the membership of that local authority, and, if no provision exists for dealing with extraordinary or casual vacancies, may be dealt with in such manner as the Governor-General in Council prescribes.

(2) Every person whose office is vacated pursuant to subsection *one* of this section shall thereby be disqualified for being elected or appointed as a member of the local authority until the next general or ordinary election or appointment, as the case may be, of members thereof.

5. Every person who does any act as a member of any local authority while incapacitated under section *three* of this Act commits an offence, and is liable on summary conviction to a fine not exceeding one hundred pounds.

Penalty for acting unlawfully. 1934, No. 17, s. 5
1950, No. 91, s. 19

6. It shall be the duty of the Audit Office to institute proceedings for offences under this Act, but nothing in this section shall be so construed as to prevent any such proceedings from being taken by any other person.

Audit Office to institute proceedings. 1934, No. 17, s. 7

7. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed.

Repeals and amendments. 1934, No. 17, s. 9

(2) The Order in Council made on the twenty-third day of November, nineteen hundred and fifty-three, declaring the Senate of the University of New Zealand and the governing bodies of its constituent universities and agricultural colleges to be local authorities for the purposes of the Local Authorities (Members' Contracts) Act 1934, is hereby revoked.

Gazette, 26 November 1953, p. 1912

(3) The enactments specified in the *Third* Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(4) Any provisions in any enactment restraining the members of any local authority from contracting with it, either wholly or beyond certain limits, or disqualifying as members of the local authority any persons so contracting, and all provisions incidental to any such first-mentioned provisions, shall, except in so far as that enactment expressly provides to the contrary, be read subject to the provisions of this Act.

See Reprint
of Statutes,
Vol. VIII,
p. 568

(5) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

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SCHEDULES

Schedules.

FIRST SCHEDULE

LOCAL AUTHORITIES AND PUBLIC BODIES TO WHICH THIS ACT APPLIES

Part I—Classes of Local Authorities or Public Bodies

Class of Local Authority or Public Body	Enactment Under Which Constituted
Borough Councils	1933, No. 30— The Municipal Corporations Act 1933.
Burial ground managers	1908, No. 19— The Cemeteries Act 1908. (Reprint of Statutes, Vol. I, p. 731.)
Catchment Boards	1941, No. 12— The Soil Conservation and Rivers Control Act 1941.
Cemetery trustees	1908, No. 19— The Cemeteries Act 1908. (Reprint of Statutes, Vol. I, p. 731.)
Combined school controlling authorities	1914, No. 56— The Education Act 1914. (Reprint of Statutes, Vol. II, p. 1007.)
County Councils	1920, No. 47— The Counties Act 1920. (Reprint of Statutes, Vol. V, p. 180.)
District Milk Boards	1944, No. 30— The Milk Act 1944.
Domain Boards	1953, No. 69— The Reserves and Domains Act 1953.
Drainage Boards	1908, No. 96— The Land Drainage Act 1908. (Reprint of Statutes, Vol. IV, p. 466.)
Education Boards	1914, No. 56— The Education Act 1914. (Reprint of Statutes, Vol. II, p. 1007.)
Electric Power Boards	1925, No. 38— The Electric Power Boards Act 1925. (Reprint of Statutes, Vol. III, p. 4.)
Fire Brigade Committees	1949, No. 18— The Fire Services Act 1949.
Fire Committees	1949, No. 18— The Fire Services Act 1949.
Harbour Boards	1950, No. 34— The Harbours Act 1950.
Hospital Boards	1926, No. 18— The Hospitals Act 1926. (Reprint of Statutes, Vol. III, p. 725.)

FIRST SCHEDULE—*continued*LOCAL AUTHORITIES AND PUBLIC BODIES TO WHICH THIS ACT APPLIES—*continued*Part I—*Classes of Local Authorities or Public Bodies*—*continued*

Class of Local Authority or Public Body	Enactment Under Which Constituted
Licensing Trusts	1949, No. 43— The Licensing Trusts Act 1949.
Metropolitan Milk Boards	1944, No. 30— The Milk Act 1944.
Nassella Tussock Boards	1946, No. 2— The Nassella Tussock Act 1946.
National Park Boards	1952, No. 54— The National Parks Act 1952.
National Park local and other committees	1952, No. 54— The National Parks Act 1952.
Public reserves special Boards, Trusts, or Trust Boards	1953, No. 69— The Reserves and Domains Act 1953.
Rabbit Boards	1928, No. 8— The Rabbit Nuisance Act 1928. (Reprint of Statutes, Vol. I, p. 243.)
Railway Boards	1914, No. 32— The Local Railways Act 1914. (Reprint of Statutes, Vol. VII, p. 935.)
River Boards	1908, No. 165— The River Boards Act 1908. (Reprint of Statutes, Vol. IV, p. 513.)
Road Boards	1908, No. 166— The Road Boards Act 1908. (Reprint of Statutes, Vol. V, p. 281.)
Scenic Boards	1953, No. 69— The Reserves and Domains Act 1953.
Secondary schools governing bodies	1914, No. 56— The Education Act 1914. (Reprint of Statutes, Vol. II, p. 1007.)
Technical schools controlling authorities or Boards of Managers	1914, No. 56— The Education Act 1914. (Reprint of Statutes, Vol. II, p. 1007.)
Town Boards	1908, No. 195— The Town Boards Act 1908. (Reprint of Statutes, Vol. V, p. 333.)
Underground Water Authorities	1953, No. 56— The Underground Water Act 1953.
Urban Fire Authorities	1949, No. 18— The Fire Services Act 1949.
Water Supply Boards	1908, No. 205— The Water Supply Act 1908. (Reprint of Statutes, Vol. VIII, p. 1093.)

FIRST SCHEDULE—*continued*

LOCAL AUTHORITIES AND PUBLIC BODIES TO WHICH THIS ACT APPLIES—*continued*

Part II—Particular Local Authorities and Public Bodies

Name of Local Authority or Public Body	Enactment by Which Constituted
The Auckland Centennial Memorial Park Board	1941, No. 7 (Local)— The Auckland Centennial Memorial Park Act 1941.
The Auckland Electric Power Board	1921, No. 17 (Local)— The Auckland Electric Power Board Act 1921-22.
The Auckland Harbour Bridge Authority	1950, No. 101— The Auckland Harbour Bridge Act 1950.
The Auckland Metropolitan Drainage Board	1944, No. 8 (Local)— The Auckland Metropolitan Drainage Act 1944.
The Auckland Transport Board	1928, No. 44— The Auckland Transport Board Act 1928.
The Auckland University College Council	1882, No. 3 (Local)— The Auckland University College Act 1882.
The Board of Governors of Canterbury Agricultural College	1930, No. 31— The Canterbury Agricultural College Act 1930.
The Canterbury Museum Trust Board	1947, No. 3 (Local)— The Canterbury Museum Trust Board Act 1947.
The Canterbury University College Council	1933, No. 27— The Canterbury University College Act 1933.
The Christchurch District Drainage Board	1951, No. 21 (Local)— The Christchurch District Drainage Act 1951.
The Christchurch Transport Board	1920, No. 15 (Local)— The Christchurch Tramway District Act 1920.
The Council of the University of Otago	1946, No. 25— The University of Otago Council Act 1946.
The Dunedin Drainage and Sewerage Board	1900, No. 25 (Local)— The Dunedin District Drainage and Sewerage Act 1900.
The Fire Service Council	1949, No. 18— The Fire Services Act 1949.

*FIRST SCHEDULE—continued*LOCAL AUTHORITIES AND PUBLIC BODIES TO WHICH THIS ACT APPLIES—*continued*
Part II—Particular Local Authorities and Public Bodies—continued

Name of Local Authority or Public Body	Enactment by Which Constituted
The Hawke's Bay Crematorium Board	1944, No. 7 (Local)— The Hawke's Bay Crematorium Act 1944.
The Hutt Valley Drainage Board	1948, No. 11 (Local)— The Hutt Valley Drainage Act 1948.
The Hutt Valley Joint Transit Housing Committee	1949, No. 35— The Local Legislation Act 1949: Section 36.
The Invercargill Licensing Trust	1950, No. 33— The Invercargill Licensing Trust Act 1950.
The Massey Agricultural College Council	1952, No. 11— The Massey Agricultural College Act 1952.
The Masterton Licensing Trust	1947, No. 35— The Masterton Licensing Trust Act 1947.
The Masterton Trust Lands Trustees	1950, No. 5 (Local)— The Masterton Trust Lands Act 1950.
The Medical Research Council	1950, No. 20— The Medical Research Council Act 1950.
The Napier Airport Board	1935, No. 12 (Local)— The Napier Airport Act 1935.
The National Council of Adult Education	1947, No. 43— The Adult Education Act 1947.
The New Plymouth Airport Board	1937, No. 6 (Local)— The New Plymouth Airport Act 1937.
The New Zealand Council for Educational Research	1945, No. 26— The New Zealand Council for Educational Research Act 1945.
The New Zealand Institute for the Blind	1926, No. 18— The Hospitals Act 1926. (Reprint of Statutes, Vol. III, p. 725.)
The Ngarimu V.C. and 28th (Maori) Battalion Memorial Scholarship Fund Board	1945, No. 33— The Ngarimu V.C. and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945
The North Shore Drainage Board	1951, No. 19 (Local)— The North Shore Drainage Act 1951.
The Otaki and Porirua Trusts Board	1943, No. 4 (Private)— The Otaki and Porirua Trusts Act 1943.
The Papawai and Kaikokirikiri Trusts Board	1943, No. 3 (Private)— The Papawai and Kaikokirikiri Trusts Act 1943.

FIRST SCHEDULE—*continued*

LOCAL AUTHORITIES AND PUBLIC BODIES TO WHICH THIS ACT APPLIES—*continued*
 Part II—*Particular Local Authorities and Public Bodies—continued*

Name of Local Authority or Public Body	Enactment by Which Constituted
The Petone and Lower Hutt Gas Board	1922, No. 13 (Local)— The Petone and Lower Hutt Gas Act 1922.
The Riccarton Bush Trustees	1914, No. 15 (Local)— The Riccarton Bush Act 1914.
The Selwyn Plantation Board	1953, No. 96— The Selwyn Plantation Board Act 1953.
The Senate of the University of New Zealand	1908, No. 132— The New Zealand University Act 1908. (Reprint of Statutes, Vol. II, p. 1121.)
The Victoria University College Council	1933, No. 26— The Victoria University College Act 1933.
The Waerenga-a-hika Trust Board	1947, No. 2 (Private)— The Waerenga-a-hika Trust Act 1947.
The Waikato Airport Board	1939, No. 12 (Local)— The Waikato Airport Act 1939.
The Wellington City and Suburban Water Supply Board	1927, No. 24 (Local)— The Wellington City and Suburban Water Supply Act 1927.
The Whangarei Airport Board	1937, No. 10 (Local)— The Whangarei Airport Act 1937.

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1934, No. 17—
The Local Authorities (Members' Contracts) Act 1934.
- 1935, No. 12 (Local)—
The Napier Airport Act 1935: Subclause (2) of clause 5 of the Second Schedule.
- 1936, No. 58—
The Statutes Amendment Act 1936: Section 47.
- 1937, No. 6 (Local)—
The New Plymouth Airport Act 1937: Section 11.
- 1937, No. 10 (Local)—
The Whangarei Airport Act 1937: Subsection (2) of section 8.
- 1939, No. 12 (Local)—
The Waikato Airport Act 1939: Subsection (2) of section 8.
- 1940, No. 10—
The Rural Housing Amendment Act 1940: Section 6.
- 1941, No. 12—
The Soil Conservation and Rivers Control Act 1941: Subsection (2) of section 54.
- 1942, No. 18—
The Statutes Amendment Act 1942: Section 28.
- 1943, No. 3 (Private)—
The Papawai and Kaikokirikiri Trusts Act 1943: Section 6.
- 1943, No. 4 (Private)—
The Otaki and Porirua Trusts Act 1943: Section 6.
- 1945, No. 26—
The New Zealand Council for Educational Research: Subsection (4) of section 3.
- 1945, No. 33—
The Ngarimu V.C. and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945: Subsection (4) of section 4.
- 1947, No. 35—
The Masterton Licensing Trust Act 1947: Subsection (2) of section 14.
- 1947, No. 43—
The Adult Education Act 1947: Subsection (2) of section 3.
- 1947, No. 2 (Private)—
The Waerenga-a-hika Trust Act 1947: Section 7.
- 1948, No. 77—
The Statutes Amendment Act 1948: Sections 27 and 29.
- 1949, No. 18—
The Fire Services Act 1949: Subsection (2) of section 80 and so much of the Fifth Schedule as relates to the Local Authorities (Members' Contracts) Act 1934.
- 1949, No. 43—
The Licensing Trusts Act 1949: Subsection (2) of section 14.
- 1950, No. 33—
The Invercargill Licensing Trust Act 1950: Subsection (2) of section 15.
- 1950, No. 91—
The Statutes Amendment Act 1950: Sections 18 and 19.
- 1950, No. 5 (Local)—
The Masterton Trust Lands Act 1950: Subsection (3) of section 11.
- 1952, No. 54—
The National Parks Act 1952: Subsection (3) of section 50.
- 1953, No. 96—
The Selwyn Plantation Board Act 1953: Subsection (5) of section 3.

THIRD SCHEDULE

ENACTMENTS AMENDED

Title of Act	Nature of Amendment
1941, No. 7 (Local)— The Auckland Centennial Memorial Park Act 1941	By omitting from subsection (3) of section 3 the words "the Local Authorities (Members' Contracts) Act 1934".
1944, No. 30— The Milk Act 1944	By omitting from subsection (3) of section 12 the words "and the Local Authorities (Members' Contracts) Act 1934".
1944, No. 7 (Local)— The Hawke's Bay Crematorium Act 1944	By omitting from subsection (3) of section 5 the words "and the Local Authorities (Members' Contracts) Act 1934".
1944, No. 8 (Local)— The Auckland Metropolitan Drainage Act 1944	By omitting from subsection (2) of section 5 the words "the Local Authorities (Members' Contracts) Act 1944".
1946, No. 2— The Nassella Tussock Act 1946	By omitting from subsection (4) of section 21 the words "and the Local Authorities (Members' Contracts) Act 1934".
1947, No. 3 (Local)— The Canterbury Museum Trust Board Act 1947	By omitting from subsection (4) of section 2 the words "the Local Authorities (Members' Contracts) Act 1934 and".
1947, No. 9 (Local)— The Riccarton Bush Amend- ment Act 1947	By omitting from section 8 the words "The Board shall be deemed to be a local authority within the meaning of the Local Authorities (Members' Contracts) Act 1934, but, notwithstanding anything therein contained", and substituting the words "Notwithstanding anything in the Local Authorities (Members' Contracts) Act 1954".
1948, No. 11 (Local)— The Hutt Valley Drainage Act 1948	By omitting from subsection (3) of section 5 the words "the Local Authorities (Members' Contracts) Act 1934".
1949, No. 35— The Local Legislation Act 1949	By omitting from subsection (8) of section 36 the words "the Local Authorities (Members' Contracts) Act 1934".

THIRD SCHEDULE—continued

ENACTMENTS AMENDED—continued

Title of Act	Nature of Amendment
1950, No. 20— The Medical Research Council Act 1950	By omitting from subsection (2) of section 3 the words “for the purposes of the Local Authorities (Members' Contracts) Act 1934 and”.
1950, No. 101— The Auckland Harbour Bridge Act 1950	By omitting from subsection (3) of section 3 the words “the Local Authorities (Members' Contracts) Act 1934”.
1951, No. 19 (Local)— The North Shore Drainage Act 1951	By omitting from subsection (2) of section 4 the words “the Local Authorities (Members' Contracts) Act 1934”.
1951, No. 21 (Local)— The Christchurch District Drainage Act 1951	By omitting from subsection (2) of section 4 the words “and the Local Authorities (Members' Contracts) Act 1934”.
1953, No. 56— The Underground Water Act 1953	By omitting from subsection (2) of section 6 the words “the Local Authorities (Members' Contracts) Act 1934”.